

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

MR. DAVID ANDREWS
P. O. BOX 276
SLOCOMB, ALABAMA 36375

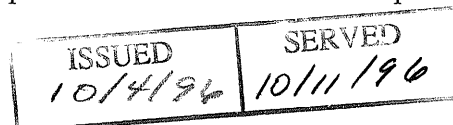
ORDER NO. 97-001-SW

FINDINGS OF FACT

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 to 22-22A-16, as amended, and the Solid Waste Disposal Act, Code of Alabama 1975, §§ 22-27-1 to 22-27-7, as amended, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following FINDINGS OF FACT:

1. Code of Alabama § 22-27-2(6), as amended, defines an "unauthorized dump" as, among other things, "any solid waste disposal site which does not meet the regulatory provisions of this article."

2. On May 12, 1995, personnel from the Department observed that tires and other miscellaneous solid waste had been disposed of on property owned by Mr. David Andrews (hereinafter "the Owner") located on his property off Highway 103 in Fadette in Geneva County, Alabama. On May 30, 1995, a Notice of Violation (hereinafter "NOV") was sent to Mr. David Andrews for violations at the aforementioned site. On August 10, 1995, personnel in the Land Division of the Department received a letter from Mr. David Andrews which stated that the removal of the tires at the site would occur in September of 1995. A follow-up inspection of the



site on April 4, 1996 revealed that the tires had not been removed from the site. A second NOV was sent to Mr. Andrews on April 16, 1996 there has been no response to the April 16, 1996 NOV. As of the date of this Order, there has been no abatement of the site.

3. Code of Alabama § 22-27-5(c), as amended, requires all solid waste disposal sites to have a permit from the Department. To date, the Owner still has not applied for nor obtained a permit for the disposal site or properly closed said site in accordance with applicable regulations.

4. Code of Alabama § 22-27-4(b), declares unauthorized dumps to be public nuisance per se, a menace to public health, and a violation of the article.

5. The Owner operates or has operated or allows the operation of an unpermitted solid waste disposal site on property owned by him located in Geneva County, Alabama in violation of ADEM Admin. Code R. 335-13-5-.01.

6. The assessment of civil penalties for violations of the Department's Rules and Regulations, and for violations of any order, permit conditions, license, certification, or variance issued by the Department is authorized by Code of Alabama § 22-22A-5(18), , as amended. The statute also authorizes that the penalty amount may range from \$100.00 to \$25,000.00 for each violation, so long as the penalty amount does not exceed \$250,000.00 in any given order. Each day a violation continues constitutes a separate violation. In addition to the foregoing "Findings of Fact", the Department has considered the factors detailed in the aforementioned statute in determining the appropriate penalty amount in this particular instance. Those factors are listed as follows:

(a) The seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public;

- (b) The standard of care manifested by Mr. David Andrews;
- (c) The economic benefit which delayed compliance may confer upon Mr. David Andrews;
- (d) The nature, extent and degree of success of Mr. David Andrews' efforts to minimize or mitigate the effects of such violation upon the environment;
- (e) Mr. David Andrews' history of previous violations;
- (f) Mr. David Andrews' ability to pay the assessed penalty.

ORDER

Based on the foregoing FINDINGS OF FACT and pursuant to §§ 22-22A-1 to 22-22A-16, and 22-27-1 to 22-27-7 Code of Alabama 1975, as amended, it is hereby ORDERED:

A. That within thirty (30) days from the receipt of notice of this Order, the Owner will pay to the Department a civil penalty in the amount of \$800.00.

B. That the Owner will upon receipt of notice of this Order immediately and continuing thereafter cease and desist from the unpermitted disposal of solid wastes.

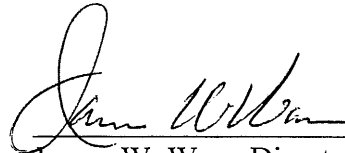
C. That within ninety (90) days from the receipt of notice of this Order the Owner shall complete the removal of all tires at the above referenced site by removing said tires to a permitted tire processor or to a permitted tire landfill, or pursuant to the requirements of ADEM Admin. Code R. 335-13-1-.13, the Owner will submit to the Department a plan for on-site closure of the above unpermitted solid waste disposal site.

D. That within thirty (30) days from the submission to the Department of the closure plan referenced in paragraph C., above, the Owner will complete implementation of the accepted plan for closure of the above-referenced site.

E. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Owner for the violations cited herein.

F. That failure to comply with the provisions of the Order shall constitute cause for commencement of legal action by the Department against the Owner for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 4th day of October 1996.

A handwritten signature in cursive script, appearing to read "James W. Warr", is written over a horizontal line.

James W. Warr, Director
Alabama Department of
Environmental Management
1751 Cong. W. L. Dickinson Drive
Montgomery, Alabama 36130
(334) 271-7700

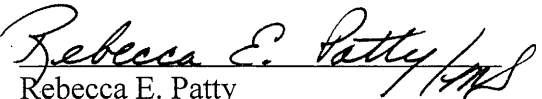
CERTIFICATE OF SERVICE

I, Rebecca E. Patty, hereby certify that I have served the foregoing proposed Administrative Order No. 97-001-SW upon David Andrews by sending the same, postage paid, through the United States Mail, as Certified Mail No. P 841 388 919, with instructions to forward and return receipt requested to:

CERTIFIED MAIL NO. P 841 388 919

Mr. David Andrews
P. O. Box 276
Slocomb, Alabama 36375

DONE this 4th day of October, 1996.


Rebecca E. Patty
Associate General Counsel