

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

November 20, 2014

Fed Ex 8054 7434 3340

Ms. Cyndel Malen Burdett
14275 County Road 24
Verbena, Alabama 36091

Dear Ms. Burdett:

RE: Order No. 15-013-SW

Please find enclosed ADEM Order No. 15-013-SW which requires you to take certain actions in regard to alleged violations of the Solid Waste and Recyclable Materials Management Act. This Order underwent a 30 day public notice and no comments were received by the Department. Please note that the assessed civil penalty is due within 45 days, and an abatement plan is due within 30 days of the issuance date of the Order.

Pursuant to Code of Alabama 1975, §22-22A-7(c)(1), as amended, this Order may be appealed by filing a request for a hearing before the Environmental Management Commission which should comply with the requirements of ADEM Admin. Code chap. 335-2-1.

If you have any questions concerning this matter, please contact Paul Searcy at (334) 271-7819 in Montgomery.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip D. Davis", followed by a long horizontal line.

Phillip D. Davis, Chief
Land Division

Enclosure

PDD/pes

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

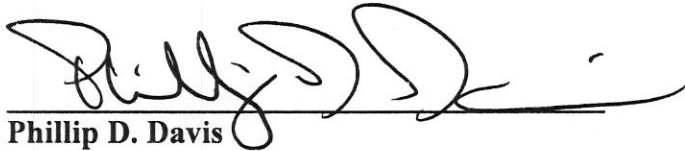
Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

**I, Phillip D. Davis, hereby certify that I have this date served the foregoing
Administrative Order on upon the person listed below by Federal Express, properly
addressed and postage prepaid to:**

**Ms. Cyndel Malen Burdett
14275 County Road 24
Verbena, AL 36091**

Done this 20th day of November, 2014.


Phillip D. Davis

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
)
)

Cyndel Malen Burdett)
Unauthorized Solid Waste Dump)
Verbena, Chilton County, Alabama)
_____)

Order No. 15-013-SW

FINDINGS OF FACT

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Solid Wastes and Recyclable Materials Management Act (hereinafter "SWRMMA"), Ala. Code §§ 22-27-1 to 22-27-18, as amended, and the ADEM Administrative Code promulgated thereunder, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following finding of facts:

1. Cyndel Malen Burdett (hereinafter "Ms. Burdett") is the owner of Parcel 19-04-19-0-000-005.000 located at 14275 County Road 24 in Verbena, Chilton County, Alabama, which is the subject of this Administrative Order.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), and Ala. Code 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, as amended.

4. Ala. Code §22-27-2(37), as amended, and ADEM Admin. Code r. 335-13-1-.03 (139) define an “unauthorized dump” as “any collection of solid wastes either dumped or caused to be dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department.”

5. Ala. Code § 22-27-4(b), as amended, states the following: “The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined...”

6. Ala. Code § 22-27-10(b), as amended, states the following: “The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article.”

7. ADEM Admin. Code r. 335-13-1-.13 (1) (a) prohibits unauthorized dumps.

8. On December 4, 2013, Department personnel conducted an inspection and documented the existence of an unauthorized solid waste dump (hereinafter “UAD”) located on the property of Ms. Burdett at 14275 County Road 24 in Verbena, Chilton County, Alabama within parcel 19-04-19-0-000-005.000. Property ownership was determined by a review of Chilton County records. The UAD consisted of construction/demolition waste.

9. On February 5, 2014, the Department issued a Notice of Deficiency (hereinafter “NOD”) to Ms. Burdett regarding the UAD.

10. The Department did not receive a written response to the February 5, 2014 NOD.

11. On March 20, 2014, the Department issued a Notice of Violation (hereinafter "NOV") to Ms. Burdett requiring abatement and closure of the UAD, and the submittal of associated documentation.

12. The Department has not received a written response to the March 20, 2014, NOV.

13. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Ms. Burdett did not comply with the requirements applicable to solid waste disposal. The Department is unaware of any irreparable harm to the environment, any immediate threat to health or safety of the public as a result of these violations.

B. THE STANDARD OF CARE: Ms. Burdett failed to abide by applicable solid waste requirements and failed to comply with directives from the Department regarding the proper abatement and closure of the UAD.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Ms. Burdett has realized an economic benefit as a result of the violations listed above.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts by Ms. Burdett to mitigate any potential effects upon the environment and human health that may have been caused as a result of the unauthorized solid waste dump.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is not aware of previous violations of applicable solid waste requirements by Ms. Burdett.

F. THE ABILITY TO PAY: Ms. Burdett has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has also considered the penalty range imposed for similar violations at other UAD.

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Solid Waste Dump	\$0 - \$25,000

The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000.00 is appropriate. The civil penalty is summarized in Attachment A.

ORDER

Based on the foregoing findings of fact and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7, and 22-27-11, as amended, it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, Ms. Burdett shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P O Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference Ms. Burdett's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Ms. Burdett shall cease and desist from operating an UAD.

C. That, within thirty days of the issuance of this Order, Ms. Burdett shall submit an abatement plan to the Department in accordance with ADEM Admin. Code d iv. 335-13. This plan shall include a schedule for abatement completion. Ms. Burdett shall implement the abatement plan and remove the wastes onsite to an approved landfill unit.

D. Ms. Burdett shall document abatement activities by submitting the following to the Department within thirty days of abatement completion:

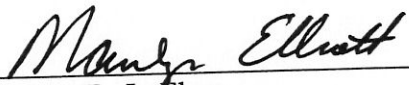
1. Time period in which the abatement activities occurred.
2. Total volume of waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, before, during, and after abatement.
6. Documentation that the site was properly closed to prevent erosion.
7. Documentation that the site has been secured to prevent any future illegal dumping.

E. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

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

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

ORDERED and ISSUED this 19th day of November, 2014.



Lance R. Lefleur
Director

Attachment A

**Cyndel Burdett
Verbena, Chilton County
Unauthorized Solid Waste Dump**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Operation of an unauthorized dump	1	\$4,000	\$1,000		
					Total of Three Factors
TOTAL PER FACTOR		\$4,000	\$1,000		\$5,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
Total Adjustments (+/-) Enter at Right	

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$5,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$5,000

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.

COBY