



Alabama Department of Environmental Management  
adem.alabama.gov

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Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

March 14, 2019

**FED EX MAIL NO. 8342 2351 8631**  
**RETURN RECEIPT REQUESTED**

Oren Bell  
621 County Road 444  
Fruithurst, Alabama 36262

Dear Mr. Bell:

RE: Order No. 19-043-SW

Please find enclosed ADEM Order No. 19-043-SW, which requires you to take certain actions in response to alleged violations of applicable requirements of Division 4 of the ADEM Administrative Code. This Unilateral Order underwent a thirty-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 of 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 regarding this matter, please contact Mr. Matthew Boggan at (334) 271-7978 or by email at [rmboggan@adem.alabama.gov](mailto:rmboggan@adem.alabama.gov).

Sincerely,

Stephen A. Cobb, Chief  
Land Division

**Issued: 03-14-2019**

**Served: 03-18-2019**

SAC/tlw

Enclosure

CC via email: A. Todd Carter, Office of General Counsel, ADEM  
Jerome Hand, Office of External Affairs, ADEM



**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Oren Bell**  
**621 County Road 444 UAD**  
**Fruithurst, Cleburne County, Alabama**

Order No. 19 -043 -SW

**FINDINGS**

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended; the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18, as amended; and the Alabama Department of Environmental Management's (hereinafter "ADEM" or "the Department") Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, the Department makes the following FINDINGS:

1. Oren Bell (hereinafter "Mr. Bell") is responsible for an unauthorized solid waste dump (hereinafter "UAD") located at 621 County Road 444 in Fruithurst, Cleburne County, Alabama (parcel 18 10 02 09 0 000 009.004) (hereinafter "the Site"), which is the subject of this Administrative Order.

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

3. Pursuant to Ala. Code § 22-22A-4(n), as amended, 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. Pursuant to Ala. Code § 22-27-10(b), as amended, and ADEM Admin. Code r. 335-13-11-.03(2), any person who participates in the creation or operation of an unauthorized dump, or contributed to an unauthorized dump, shall be responsible for the removal of the waste or otherwise the closure of the unauthorized dump in accordance with this article and rules of the department. If those who created, operated, or contributed to an unauthorized dump do not

remove or close the unauthorized dump, the landowner shall also be responsible for the removal or otherwise the closure of the unauthorized dump.

5. On April 6, 2018, Department personnel conducted an initial site inspection and observed the presence of an UAD. A review of Cleburne County property records revealed Mr. Bell as the owner of the Site. In addition, Mr. Bell was residing on the Site at the time of inspection. The inspection and a review of Mr. Bell's compliance with certain requirements of Division 13 of the ADEM Admin. Code revealed the following:

Pursuant to ADEM Admin. Code rs. 335-13-1-.13(1)(a) and (2), unauthorized dumps are prohibited and must be closed in a manner determined to be necessary by the Department.

As noted during the inspection, Department personnel observed approximately 200 cubic yards of regulated solid waste, consisting of household waste and construction and demolition waste, disposed of on the Site. A subsequent review of departmental records revealed that the Department has not issued to Mr. Bell or any other persons a solid waste disposal facility permit for the Site. Consequently, the Department has determined that the area on the Site where the aforementioned regulated solid waste was disposed constitutes an UAD, and Mr. Bell is responsible for the UAD.

6. On April 11, 2018, the Department issued to Mr. Bell a Notice of Violation (hereinafter "NOV") requiring the abatement and closure of the UAD.

7. The Notice of Violation was returned to the Department unclaimed.

8. On May 17, 2018, Department reissued the Notice Violation via FedEx.

9. On May 21, 2018, the Notice of Violation was delivered to the residence via FedEx.

10. The Department has not received a response to the NOV.

11. 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 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. 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: The creation, contribution to, or operation of a UAD is a public nuisance per se and a menace to public health. With regards to the UAD located at the Site, the Department is unaware of any irreparable harm to the environment, or any immediate threat to human health or to the safety of the public as a result of this violation.

B.     THE STANDARD OF CARE: Mr. Bell failed to abide by requirements applicable to the disposal of solid wastes 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 Mr. Bell has realized a significant economic benefit as a result of the violation cited herein.

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

E.     HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Mr. Bell does not have a documented history of violations of the applicable requirements of Division 13 of the ADEM Admin. Code.

F.     THE ABILITY TO PAY: The Department does not have any evidence indicating Mr. Bell is unable to pay the civil penalty.

12.    The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as other factors, and has concluded that a civil penalty is appropriate for the violation cited herein (see Attachment A, which is made a part of the Department's FINDINGS).



## **ORDER**

Based on the foregoing FINDINGS 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 the issuance of this Order, Mr. Bell shall pay to the Department a civil penalty in the amount of \$5,000 for the violation cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department 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 Mr. Bell's name and address and the ADEM Administrative Order number of this action.

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

C. That, not later than thirty days after the issuance of this Order, Mr. Bell shall submit a site closure plan to the Department in accordance with ADEM Admin. Code r. 335-13-1-.13(2)(b)1. This plan shall include a schedule for site closure completion. Mr. Bell shall implement the site closure plan and ensure the removal of all regulated solid waste from the area of the open dump and disposal of such wastes in a solid waste land disposal facility permitted to accept the waste.

D. That, within thirty days of completion of remediation activities, Mr. Bell shall document closure activities by submitting the following information to the Department:

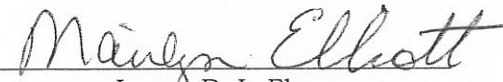
2. Total volume of waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, before and after remediation.
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 Mr. Bell for the violation 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 Mr. Bell for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 14 day of March, 2019.

  
Lance R. LeFleur  
Director

**Attachment A**

Mr. Oren Bell  
Unauthorized Solid Waste Dump  
Fruithurst, Cleburne County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Creation of an Unauthorized Dump	1	\$4,500	\$500.00	\$0	Total of Three Factors
TOTAL PER FACTOR		\$4,500	\$500.00	\$0	\$5,000

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
	\$0

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

Footnotes

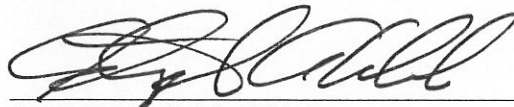
\* See the "FINDINGS" portion of the Order for a detailed description of each violation and the penalty factors.

## ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Stephen A. Cobb, do hereby certify that I have served the executed Administrative Order  
Number 198-043-SW upon the person listed below by sending the same, postage paid, through  
FedEx Tracking Number 8342 2351 8631 , with the instructions to forward and return receipt to:

Mr. Oren Bell  
621 County Road 444  
Fruithurst, AL 36262


Done this 13<sup>th</sup> day of March, 2019.

A handwritten signature in dark ink, appearing to read "Stephen A. Cobb", is written over a horizontal line.

Stephen A. Cobb, Chief  
Land Division  
Alabama Department of Environmental Management





834223518631 



Delivered  
Monday 3/18/2019 at 10:34 am



**DELIVERED**

Signature not required

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[OBTAIN PROOF OF DELIVERY](#)

**FROM**  
MON US

**TO**  
AL US

**Shipment Facts**

**TRACKING NUMBER**  
834223518631

**SERVICE**  
FedEx 2Day

**WEIGHT**  
0.5 lbs / 0.23 kgs

**DELIVERED TO**  
Residence

**TOTAL PIECES**  
1


**TOTAL SHIPMENT WEIGHT**  
0.5 lbs / 0.23 kgs

**TERMS**  
Shipper

**SHIPPER REFERENCE**  
FUND CODE 422

**PACKAGING**  
FedEx Envelope

**SPECIAL HANDLING SECTION**  
Deliver Weekday, Residential Delivery

**STANDARD TRANSIT**  
 3/19/2019 by 8:00 pm

**SHIP DATE**  
 Fri 3/15/2019

**ACTUAL DELIVERY**  
Mon 3/18/2019 10:34 am

**Travel History**

Local Scan Time 

Monday, 3/18/2019

10:34 am	AL	Delivered Left at front door. Package delivered to recipient address - release authorized
7:53 am	EASTABOGA, AL	On FedEx vehicle for delivery
7:05 am	EASTABOGA, AL	At local FedEx facility

Saturday , 3/16/2019		
8:18 am	EASTABOGA, AL	At local FedEx facility
8:18 am	EASTABOGA, AL	At local FedEx facility Package not due for delivery
7:00 am	IRONDALE, AL	Left FedEx origin facility
Friday , 3/15/2019		
9:50 pm	BIRMINGHAM, AL	At destination sort facility
7:56 pm	MONTGOMERY, AL	Left FedEx origin facility
3:51 pm	MONTGOMERY, AL	Picked up