

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

May 9, 2014

**CERTIFIED MAIL NO.** 91 7199 9991 7032 3198 2557  
**RETURN RECEIPT REQUESTED**

Irby Jordan  
103 W Savannah Street  
Dothan, Alabama 36301

Dear Mr. Jordan:

**RE: Order No. 14-061-ST**

Please find enclosed ADEM Order No. 14-061-ST which requires you to take certain actions in regard to alleged violations of the Alabama Scrap Tire Environmental Quality 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 Hunter Mathews at (334) 274-4233 in Montgomery.

Sincerely,

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

Phillip D. Davis, Chief  
Land Division

Enclosure

PDD/hwm

**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**  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (FAX)

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
IN THE MATTER OF: )  
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 )

Irby Jordan )  
Unauthorized Scrap Tire Accumulation )  
Cottonwood, Houston County, Alabama )  
\_\_\_\_\_ )

Order No. 14 -061 -ST

FINDINGS OF FACT

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), the Alabama Scrap Tire Environmental Quality Act Ala. Code §§ 22-40A-1 to 22-40A-24, as amended, and the ADEM Administrative Code promulgated there under, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following findings of fact:

1. Irby Jordan (hereinafter “Mr. Jordan”) is responsible for the creation of an unauthorized scrap tire accumulation located off of Gene Terry Road in Cottonwood, Houston 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 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-40A-11 (2006 Rplc. Vol.), the Department is the state agency authorized to administer and enforce the provisions of the Alabama Scrap Tire Environmental Quality Act Ala. Code §§ 22-40A-1 to 22-40A-24, as amended.

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Order No. 14 –XXX –ST

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4. Ala. Code §22-40A-4(a), as amended, states that “No person may accumulate more than 100 scrap tires, except as a permitted processor, registered receiver, permitted landfill. . .”

5. Ala. Code §22-40A-4(b), as amended, states that “No person may expose accumulated scrap tires to the elements for more than 30 days.”

6. Ala. Code §22-40A-5(a), as amended, states that “accumulations of scrap tires for whatever purpose not in accordance with this chapter, shall be removed by the person who created or maintained the accumulation, or if that person responsible is not determined, by the landowner or financial interest holder if the landowner or financial interest holder does not qualify as an innocent landowner.”

7. ADEM Admin. Code r. 335-4-2-.01(2) states that the responsible party for a scrap tire site shall be responsible for the remediation of the site.

8. ADEM Admin. Code r. 335-4-4-.01 (1) states that “No person may accumulate more than 100 scrap tires, except a permitted processor, a person who registers as required in 335-4-3-.01(2), or a permitted [Solid Waste Disposal Facility] . No person may expose scrap tires to the elements for more than thirty (30) days”

9. On May 15 2013, Department personnel conducted an inspection and documented the existence of an unauthorized scrap tire accumulation located off of Gene Terry Road in Cottonwood, Houston County, Alabama. The Department determined that Mr. Jordan was responsible for the creation of the unauthorized scrap tire accumulation. The accumulation consisted of approximately 1,000 scrap tires.

10. On June 20, 2013, the Department issued a Notice of Violation (hereinafter "NOV") to Mr. Jordan for the unauthorized scrap tire accumulation requiring abatement and closure of the site, and the submittal of associated documentation.

11. The Department has not received a response to the June 20, 2013, NOV.

12. On August 9, 2013, the Department issued a Failure to Respond (hereinafter "FTR") letter requesting a response to the June 20, 2013, NOV.

13. The Department has not received a response to the August 9, 2013, FTR letter.

14. On January 22, 2014, Department personnel conducted a follow-up inspection and documented the continued existence of an unauthorized scrap tire accumulation. There was no evidence of abatement of the site observed during the follow-up inspection.

15. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), 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: Mr. Jordan did not comply with the requirements applicable to the proper management of scrap tires. The Department is unaware of any irreparable harm to the environment as a result of these violations. This unauthorized accumulation of scrap tires may pose a threat to human health due to the possible presence of disease vectors.

B.     THE STANDARD OF CARE: Mr. Jordan failed to demonstrate a standard of care commensurate with applicable scrap tire management requirements and failed to respond to notices from the Department.

C.     ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Mr. Jordan has realized a significant economic benefit as a result of the violations noted.

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

E.     HISTORY OF PREVIOUS VIOLATIONS: Mr. Jordan has a history of previous violations of scrap tire laws and regulations.

F.     THE ABILITY TO PAY: Mr. Jordan 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 unauthorized scrap tire accumulations.

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Scrap Tire Accumulation	\$0 - \$25,000
Additive Costs per Statute	\$5 per scrap tire

The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$14,000 is appropriate. The civil penalty is summarized in Attachment A.

### **ORDER**

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-11, 22-40A-4(a), 22-40A-4(b), and 22-40A-5(a), it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, Mr. Jordan shall pay to the Department a civil penalty in the amount of \$14,000.00 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 Mr. Jordan'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, Mr. Jordan shall cease and desist from operating an unauthorized scrap tire accumulation.

C. That, within thirty days of the issuance of this Order, Mr. Jordan shall submit a remediation plan to the Department in accordance with Division 4 regulations. This plan shall include a schedule for remediation completion. Remediation activities shall not commence until the remediation plan is approved by the Department. . Mr. Jordan shall implement the abatement plan and remove the waste onsite to an approved landfill unit.

D. Mr. Jordan shall document remediation activities by submitting the following to the Department within thirty days of remediation completion:

1. Time period in which the remediation activities occurred.
2. Total volume of scrap tires and solid waste removed from the property.
3. A copy of waste receipts documenting that all scrap tires were properly disposed of or beneficially reused in an approved manner and that all regulated solid waste was properly disposed.
4. Documentation that all regulated wastes were removed from the property.
5. Photographs of the site, before, during, and after remediation.

E. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent

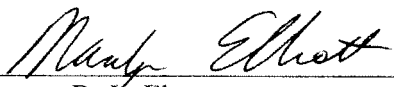


with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

F. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Mr. Jordan 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 Mr. Jordan for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 9<sup>th</sup> day of MAY, 2014.

  
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Lance R. LeFleur  
Director

# ATTACHMENT A

## Penalty Synopsis

Mr. Irby Jordan

Unauthorized Scrap Tire Accumulation

Cottonwood, Houston County

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-4-4.01 (1) state no person may accumulate more than 100 scrap tires.	1	\$4,000	\$2,500	\$2,500
ADEM Admin Code r. 335-4-4.01 (1) state no person may accumulate more than 100 scrap tires. (\$5/tire x 1000 tires)		\$5,000	\$0	\$0
<b>Totals:</b>	1	\$9,000	\$2,500	\$2,500

Economic Benefit\*: \$0  
Mitigating Factors\*: \$0  
Ability to Pay\*: \$0  
Other Factors\*: \$0

**Total Civil Penalty: \$14,000**

### Footnotes

\* See the "Findings" of the Order

**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 regular United States  
Mail, properly addressed and postage prepaid to:**

**Mr. Irby Jordan  
4138 Gene Terry Road  
Cottonwood, AL 36320**

Done this 9<sup>th</sup> day of MAY, 2014.

  
\_\_\_\_\_  
Phillip D. Davis

FedEx® Tracking

802524245257

Ship (P/U) date :  
Fri 7/25/2014 5:05 pm

Actual delivery :  
Mon 7/28/2014 1:42 pm

MON US

AL US

**Delivered**  
*Signature not required*

A signature is required for this shipment. If you're not going to be home, you can easily redirect it to a FedEx location for convenient pickup. »

Travel History

Date/Time	Activity	Location
7/28/2014 - Monday		
1:42 pm	Delivered	AL
	Left at front door. Package delivered to recipient address - release authorized	
8:35 am	On FedEx vehicle for delivery	DOTHAN, AL
7/26/2014 - Saturday		
8:32 am	At local FedEx facility	DOTHAN, AL
6:06 am	At destination sort facility	TALLAHASSEE, FL
7/25/2014 - Friday		
11:47 pm	Arrived at FedEx location	MEMPHIS, TN
7:51 pm	Left FedEx origin facility	MONTGOMERY, AL
5:06 pm	Picked up	MONTGOMERY, AL

Shipment Facts

Tracking number	802524245257	Service	FedEx Priority Overnight
Weight	0.5 lbs / 0.23 kgs	Signature services	Direct signature required
Delivered To	Residence	Total pieces	1
Total shipment weight	0.5 lbs / 0.23 kgs	Packaging	FedEx Envelope
Special handling section	Deliver Weekday, Residential Delivery, Direct Signature Required		