

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

RICK BISHOP)

BISHOP AND COMPANY, LLC)

TROY, ALABAMA)

ORDER NO. 98-100-SW

FINDINGS

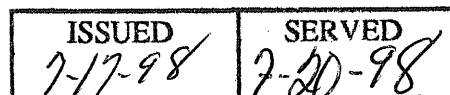
Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 through 22-22A-16, as amended, and the Solid Waste Disposal Act, Code of Alabama 1975, §§ 22-27-1 through 22-27-7, as amended, the Alabama Department of Environmental Management (hereinafter "the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

1. Code of Alabama 1975, § 22-27-2(6) 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 March 26, 1998, Department personnel of the Solid Waste Branch inspected an unauthorized solid waste dump located on Highway 29 North, Troy, Alabama on property owned and operated by Rick Bishop (hereinafter "the Operator"), owner of Bishop and Company, LLC.

3. Department personnel observed regulated waste, consisting of construction/demolition debris, disposed of at the site. On April 9, 1998, a Notice of Violation (hereinafter "NOV") was sent to the Operator for violations at the aforementioned site.

4. The inspection also revealed the Operator had disposed of unregulated waste consisting of stumps and limbs. Pursuant to ADEM Admin. Code R. 335-13-1-.03(31) and 335-



13-1-.03(120), uncontaminated concrete, gravel, soil, brick, weathered waste asphalt paving, rock, yard trimmings, leaves, stumps and limbs are excluded from the definition of "Construction/Demolition Waste" and/or "Rubbish". Thus, the Operator is permitted to continue disposing of said unregulated waste at the site.

5. On May 15, 1998, the Department received a written response to the April 9, 1998 NOV from the Operator. In the response, the Operator indicated August 31, 1998 as the date by which removal of the unauthorized solid waste at the site would be completed.

6. Code of Alabama 1975, § 22-27-5(c) requires all solid waste disposal sites to have a permit from the Department. To date, the Operator has neither applied for nor obtained a permit for the solid waste disposal site.

7. The Operator operated or has operated an unpermitted solid waste disposal site on the property located on Highway 29 North of Troy, Alabama, in violation of ADEM Admin. Code R. 335-13-5-.01.

8. The assessment of civil penalties for violations of the Department's rules and regulations, and for violations of any order, permit condition, license, certification or variance issued by the Department is authorized by Code of Alabama 1975, § 22-22A-5(18), as amended. The statute also authorizes that the penalty amount may range from \$100 to \$25,000 per day for each violation, so long as the penalty amount does not exceed \$250,000 in any given order. Each day a violation continues constitutes a separate violation. In addition to the foregoing "findings", 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;

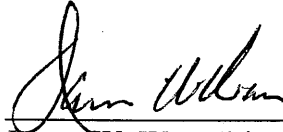
- (b) The standard of care manifested by the Operator;
- (c) The economic benefit which delayed compliance may have conferred upon the Operator;
- (d) The nature, extent and degree of success of the Operator's efforts to minimize or mitigate the effects of such violations upon the environment;
- (e)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

ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama 1975, §§ 22-22A-5(10), 22-22A-5(18), and 22-27-7, as amended, it is hereby ORDERED:

- A. That not later than 30 days after receipt of notice of this Order, the Operator shall pay to the Department a civil penalty in the amount of \$1,000.00.
- B. That the Operator shall completely remove all unauthorized solid waste at this site to a permitted solid waste disposal facility by August 31, 1998.
- C. That immediately upon receipt of notice of this Order and continuing each and every day thereafter, the Operator shall cease and desist from the unpermitted disposal of solid wastes.
- D. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Operator for the violations cited herein.
- E. That failure to comply with the provisions of this Order shall constitute cause for commencement of legal action by the Department against the Operator for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 17th day of July, 1998.

A handwritten signature in black ink, appearing to read "James W. Warr", written over a horizontal line.

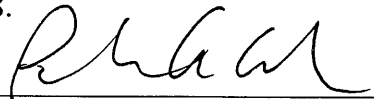
James W. Warr, Director
Alabama Department of
Environmental Management
1751 Cong W.L. Dickinson Drive
Montgomery, Alabama 36109-2608
(334) 271-770

CERTIFICATE OF SERVICE

I, Prudence A. Cash, hereby certify that I have served Administrative Order No. 98-100-SW, upon Bishop & Company, L.L.C. by sending the same, postage paid, through the United States Mail, as Certified Mail No. P 496 260 041, with instructions to forward and return receipt requested to:

Mr. Richard E. Bishop
Bishop & Company, L.L.C.
1497 Swindall Road
Troy, Alabama 36081

DONE this 17th of July, 1998.



Prudence A. Cash