

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

ROOSEVELT TARVER)
HIGHWAY 165)
PHENIX CITY, AL)

ORDER NO. 95-087-SW

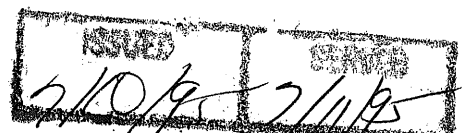
FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 through 22-22A-16 (1990 Rplc. Vol. & 1991 Supp.), and the Solid Waste Disposal Act, Code of Alabama 1975, §§ 22-27-1 through 22-27-7 (1990 Rplc. Vol. & 1992 Supp.), the Alabama Department of Environmental Management (hereinafter or "the Department") makes the following FINDINGS:

1. Section 22-27-2(6), Code of Alabama 1975 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 April 7, 1993 personnel from the Department observed that roofing waste had been disposed of on a site located behind the club owned and/or operated by Roosevelt Tarver, (hereinafter "the Operator") on Highway 165 in Russell County, Alabama. A Notice of Violation was issued citing these violations on April 28, 1993.

3. On October 1, 1993 personnel from the Department observed the same wastes disposed of on this site. A second



Notice of Violation was issued on October 14, 1993 citing these same violations. On November 4, 1994 personnel from the Department visited the site and observed that the dump has not been closed as required by ADEM rules and a third Notice of Violation was issued on November 29, 1994. As of the date of this Order, the Operator has taken no action to abate this unauthorized solid waste dump.

4. Section 22-27-5(c), Code of Alabama 1975 requires all solid waste disposal sites to have a permit from the Department. To date, the Operator still has neither applied for nor obtained a permit for the disposal site or properly closed the site in accordance with applicable regulations.

5. Section 22-27-4(b), Code of Alabama 1975 declares unauthorized dumps to be a public nuisance per se, a menace to public health, and a violation of the article.

6. The Operator owns and operates, or has operated, an unpermitted solid waste disposal site on his property located off Highway 165 South, Phenix City, Alabama in violation of ADEM Administrative Code R. 335-13-5-.01.

7. On June 7, 1994 the Operator was issued Administrative Order No. 94-081-SW for operating an unauthorized tire dump on property owned by the Operator located off Lato Road, Russell County, Alabama. As of the date of this order, the Operator has not complied with the requirements of that order.

8. 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 §22-22A-5(18), Code of Alabama 1975, 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", 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 confer upon Roosevelt Tarver;

(d) The nature, extent and degree of success of Roosevelt Tarver's efforts to minimize or mitigate the effects of such violation upon the environment;

(e) Roosevelt Tarver's history of previous violations;

(f) Roosevelt Tarver's ability to pay the assessed penalty.

ORDER

Based on the foregoing FINDINGS and pursuant to §§ 22-22A-1 to 22-22A-16, and 22-27-1 to 22-27-7 Code of Alabama 1975, (1990 Rplc. Vol. and 1992 Supp.), it is hereby ORDERED:

A. That within 30 days from the date of receipt of notice of this Order, the Operator will pay to the Department a civil penalty in the amount of Five Hundred Dollars (\$500.00).

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

C. That within 30 days of the date of receipt of this Order, pursuant to the requirements of ADEM Administrative Code R. 335-13-1-.13, the Operator will submit for the Department's review a plan for closure of the above unpermitted solid waste disposal site.

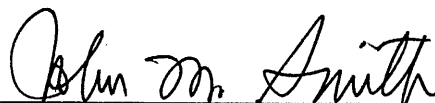
D. That within 30 days from the completion of the Department's review and acceptance of the plan referenced in paragraph C., above, the Operator will complete implementation of the accepted plan for closure of the above-referenced site.

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

F. 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 10th day of July, 1995.



John M. Smith, Director
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Environmental Management
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