

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
)
)

CITY OF TROY, ALABAMA)
JIMMY LUNSFORD, MAYOR)
PO Box 549)
TROY, AL 36081)
_____)

ORDER NO. 96-034-SW

FINDINGS OF FACT

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

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 October 21, 1994 personnel from the Department inspected a solid waste dump located on Mr. Larry Shaver's property located off Holmes Lane. Mr. Shaver alleged that the City of Troy (hereinafter "the Operator") was responsible for the illegal disposal of the tires at this site. The original complainant also informed the Department that he saw City of Troy personnel dumping the tires in the gully on Mr. Shaver's land. On April 20, 1995 a Notice of Violation (hereinafter "NOV") were sent to City of Troy, Alabama for violations at the aforementioned site.

3. The City Attorney for the City of Troy, Alabama in a letter to the Department, dated July 13, 1995 stated that "it appears that the City of Troy did have involvement in placing some of the

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tires located in the subject gully during a period of time, when it was the understanding of the City that it was legal to do so."

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 not applied for nor obtained a permit for the disposal site or properly closed said 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 operates or has operated, an unpermitted solid waste disposal site located off Holmes Lane in Troy, Alabama in violation of ADEM Admin. Code R. 335-13-5-.01.

7. 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 City of Troy, Alabama;
- (c) The economic benefit which delayed compliance may confer upon the City of Troy, Alabama;
- (d) The nature, extent and degree of success of the City of Troy, Alabama's efforts to minimize or mitigate the effects of such violation upon the environment;
- (e) The City of Troy, Alabama's history of previous violations;
- (f) The City of Troy, Alabama's ability to pay the assessed penalty.

ORDER

Based on the foregoing FINDINGS OF FACT and pursuant to §§ 22-22A-1 to 22-22A-16, and 22-27-1 to 22-27-7 Code of Alabama 1975, as amended, it is hereby ORDERED:

A. That within 30 days from the receipt of notice of this Order, the Operator will pay to the Department a civil penalty in the amount of \$1,000.00. As an alternative the Operator may choose to apply the \$1,000.00 penalty to the cost of clean up of the solid waste disposal site upon submission of receipts within 30 days after removal of the tires from the site. However, if the appropriate receipts are not submitted within the aforementioned time frame, the \$1,000.00 civil penalty becomes immediately due and payable to the department.

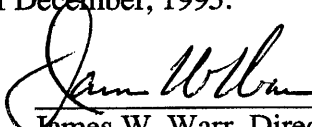
B. That the Operator will upon receipt of notice of this Order immediately and continuing thereafter cease and desist from the unpermitted disposal of solid wastes.

C. That within 180 days from the date of receipt of notice of this order, the Operator will complete the removal of all tires at the above-referenced site.

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 19th day of December, 1995.


James W. Warr, Director
Alabama Department of
Environmental Management
1751 Cong. W. L. Dickinson Drive
Montgomery, Alabama 36130
(205) 271-7700

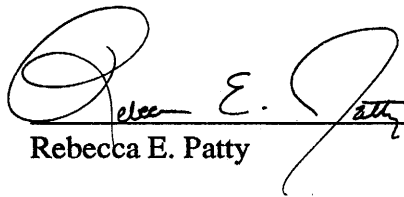
CERTIFICATE OF SERVICE

I, Rebecca E. Patty, hereby certify that I have served the foregoing Administrative Order No. 96-034-SW upon the City of Troy, Alabama by sending the same, postage paid, through the United States Mail, as Certified Mail No. Z 363 302 974, with instructions to forward and return receipt requested to:

CERTIFIED MAIL NO. Z 363 302 974

Mr. Jimmy Lunsford, Mayor
City of Troy, Alabama
PO Box 549
Troy, Alabama 36081

DONE this 19th day of December, 1995.


Rebecca E. Patty