

LANCE R. LEFLEUR
DIRECTOR



KAY IVEY
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

March 21, 2019

CERTIFIED MAIL NO: 91 7199 9991 7030 3272 4752
RETURN RECEIPT REQUESTED

TREE PROS LLC
ATTN SAMUEL YOUNG
18761 REMLAP DRIVE
REMLAP ALABAMA 35133

Re: Administrative Order No. 19-047-AP

Dear Mr. Young:

Please find enclosed ADEM Administrative Order No. 19-047-AP which requires certain actions to be taken regarding violations of the Alabama Air Pollution Control Act. In issuing this Order, the Department took into consideration all available information concerning these violations, including any written response or oral comments submitted on behalf of Tree Pros, LLC. Please note that the assessed civil penalty is due to the Department within 45 days.

Please be advised that failure to comply with the terms of this Order can result in penalties of up to \$25,000 per day for each violation as well as possible criminal penalties. Pursuant to Code of Alabama 1975, § 22-22A-7(c)(1), this Order may be appealed by filing a request for hearing before the Environmental Management Commission and should comply with the requirements of ADEM Admin. Code R. 335-2-1-.04. Copies of ADEM Admin. Code, Division 2, Environmental Management Commission regulations may be viewed or downloaded from ADEM's Webpage at <http://www.adem.state.al.us/Regulations/regulations.htm> or may be obtained by submitting a request in writing to the ADEM-Permits & Services Division.

If you have any questions concerning this matter, please contact Don Barron by email at drb@adem.alabama.gov or by phone at (334) 271-7879.

Sincerely,

Ronald W. Gore, Chief
Air Division

RWG/DWB/mcn

Enclosure

cc: Tom Johnston, Office of General Counsel

Issued: 03-21-2019

Served: 06-07-2019

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
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Tree Pros, LLC

Remlap, Blount County, Alabama

ADMINISTRATIVE
ORDER NO: 19-047-AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), the Alabama Department of Environmental Management (hereinafter, the “Department” or “ADEM”) Administrative Code of Regulations (hereinafter, “ADEM Admin. Code R.”) promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended, the Department makes the following FINDINGS:

1. Tree Pros, LLC (hereinafter, “TP”) is a tree service operating in and from Remlap, Blount County, Alabama.
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 § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. ADEM Admin. Code r. 335-3-3-.01(2)(b)1 states that "...open burning must take place on the property on which the combustible fuel originates."

5. ADEM Admin. Code r. 335-3-3-.01(2)(b)4 states that "Only vegetation and untreated wood may be burned. It is unauthorized to open burn heavy oils, asphalt products, plastics, vinyl materials, insulation, paper, cardboard, natural or synthetic rubber, salvage or scrap materials, chemicals, garbage, treated or painted wood, or any trash."

6. On August 7, 2018, the Department received a complaint that TP had been importing vegetation and burning it for years on property located at latitude, longitude (33.8331, -86.5848) off of Remlap Drive in Remlap, Blount County (hereinafter, the "Site").

7. On August 17, 2018, Department personnel conducted a complaint investigation at the Site and observed evidence of illegal open burning of a large quantity of imported vegetation and various refuse, such as glass and metal products.

8. On August 29, 2018, the Department issued a Notice of Violation (NOV) to TP regarding the unauthorized open burning which requested a written response be received by the Department on or before September 26, 2018. As of this date, the Department has not received the requested response to the NOV

9. 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 \$25,000.00 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 violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: TP conducted unauthorized open burning at the Site. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by TP to comply with the applicable requirements of the ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)4.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: TP likely derived economic benefit by not legally disposing of imported vegetation and refuse.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by TP to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: TP has no previous history of violations with the Department for illegal open burning.

F. THE ABILITY TO PAY: TP has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty

herein is appropriate (*See* “Attachment A”, which is hereby incorporated into these Findings).

ORDER

Based upon the foregoing FINDINGS and pursuant to Ala. Code §§22-22A-5(10), 22-22A-5(12), 22-22-5(18), and 22-28-18 (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, TP shall pay to the Department a civil penalty in the amount of \$4,000.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environment Management by certified or cashier’s check and shall be submitted to:

Office of General Counsel
Alabama Department of
Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, immediately upon receipt of this Order and continuing thereafter, TP shall ensure immediate and future compliance with ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-.01(2)(b)4.

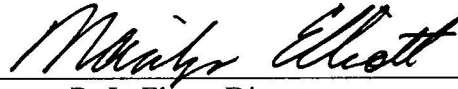
C. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. Except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve TP of its obligations to comply in the future with any permit or other written direction from the Department.

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

F. That, failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against TP for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 21st day of March, 2019.

A handwritten signature in black ink, appearing to read "Lance R. LeFleur", is written over a horizontal line.

Lance R. LeFleur, Director
Alabama Department of Environmental
Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

CERTIFICATE OF SERVICE

I, Ronald W. Gore, do hereby certify that I have served this Administrative Order upon the person(s) listed below by sending the same, postage paid, through the United States Mail **91 7199 9991 7030 3272 4752** with instructions to forward and return receipt, to:

Tree Pros, LLC
Attention: Samuel Young
18761 Remlap Drive
Remlap, Alabama 35133

DONE this the 21st day of March 2019.



Ronald W. Gore
Chief - Air Division
Alabama Department of
Environmental Management

ATTACHMENT A

Tree Pros, LLC
Remlap, Blount County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Illegal open burning	1	\$2,000	\$1,000	\$0	
					Total of Three Factors
TOTAL PER FACTOR		\$2,000	\$1,000	\$0	\$3,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	\$0

Economic Benefit (+)	\$1,000
Amount of Initial Penalty	\$4,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$4,000.00

Footnotes

* See the "Department's Findings" portion of the Order for a detailed description of each violation and the penalty factors.

Track Another Package +

Tracking Number: 9171999991703032724929

Remove X

On Time

Expected Delivery on

FRIDAY

7 JUNE 2019 ⓘ by 8:00pm ⓘ

✓ Delivered

June 7, 2019 at 9:49 am
Delivered, Left with Individual
REMLAP, AL 35133

Get Updates ✓

Feedback

Text & Email Updates	✓
Return Receipt Electronic	✓
Tracking History	^
<p>June 7, 2019, 9:49 am Delivered, Left with Individual REMLAP, AL 35133 Your item was delivered to an individual at the address at 9:49 am on June 7, 2019 in REMLAP, AL 35133.</p>	

June 7, 2019, 7:57 am

Out for Delivery
REMLAP, AL 35133

June 7, 2019, 7:47 am

Sorting Complete
REMLAP, AL 35133

June 7, 2019, 6:19 am

Arrived at Unit
PINSON, AL 35126

June 6, 2019, 1:48 pm

Arrived at USPS Regional Facility
BIRMINGHAM AL DISTRIBUTION CENTER ANNEX

June 6, 2019

In Transit to Next Facility

June 6, 2019, 12:20 pm

Departed USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

June 5, 2019, 9:23 pm

Arrived at USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

June 5, 2019, 8:08 pm

Accepted at USPS Origin Facility
MONTGOMERY, AL 36104

June 5, 2019

Pre-Shipment Info Sent to USPS, USPS Awaiting Item

Feedback

Product Information



Track Another Package +

Tracking Number: 9171999991703032724752

Remove X

Your item has been delivered to the original sender at 9:43 am on April 23, 2019 in MONTGOMERY, AL 36130.

Delivered

April 23, 2019 at 9:43 am
Delivered, To Original Sender
MONTGOMERY, AL 36130

Feedback

Return Receipt Electronic



Tracking History



April 23, 2019, 9:43 am

Delivered, To Original Sender
MONTGOMERY, AL 36130

Your item has been delivered to the original sender at 9:43 am on April 23, 2019 in MONTGOMERY, AL 36130.

April 23, 2019, 5:25 am

Arrived at Unit
MONTGOMERY, AL 36119

April 18, 2019

In Transit to Next Facility

April 14, 2019, 3:11 pm

Arrived at USPS Regional Facility
GAINESVILLE FL DISTRIBUTION CENTER

April 11, 2019, 8:43 am

Unclaimed/Being Returned to Sender
REMLAP, AL 35133

March 23, 2019, 8:39 am

Delivery Attempted - No Access to Delivery Location
REMLAP, AL 35133

March 23, 2019, 7:21 am

Out for Delivery
REMLAP, AL 35133

March 23, 2019, 7:11 am

Sorting Complete
REMLAP, AL 35133

March 23, 2019, 6:56 am

Arrived at Unit
PINSON, AL 35126

March 22, 2019, 9:41 am

Arrived at USPS Regional Facility
BIRMINGHAM AL DISTRIBUTION CENTER ANNEX

March 21, 2019, 9:56 pm

Arrived at USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

March 21, 2019, 8:41 pm

Accepted at USPS Origin Facility
MONTGOMERY, AL 36104

March 21, 2019

Pre-Shipment Info Sent to USPS, USPS Awaiting Item

Feedback