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

September 6, 2019

CERTIFIED MAIL NO. 91 7199 9991 7039 3052 3914
RETURN RECEIPT REQUESTED

Tim McCollum
Southern Industrial Properties, L.L.C.
2631 F L Shuttlesworth Drive
Birmingham, Alabama 35234

Re: Administrative Order No. 19- 111- SW

Dear Mr. McCollum:

Please find enclosed ADEM Administrative Order No. 19-111-SW which requires you to take certain actions regarding a violation of the Solid Wastes and Recyclable Materials Management 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), this Order may be appealed by filing a request for a 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 div. 335-2, Environmental Management Commission regulations, may be viewed or downloaded from ADEM's website at http://www.adem.alabama.gov/alEnviroRegLaws/files/Division2.pdf or may be obtained by submitting a request in writing to ADEM Permits and Services Division.

If you have any questions concerning this matter, please contact Ms. Tiffani Alexander at (334) 271-7760.

Sincerely,

Stephen A. Cobb, Chief
Land Division

Issued: 09-05-2019

Served: 09-11-2019

SAC/TLA/tlw

Enclosure

CC via email: A. Todd Carter, ADEM Office of General Counsel
Leigh Ann Clecker, ADEM Office of General Counsel
Jerome Hand, ADEM Office of External Affairs

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
Southern Industrial Properties, L.L.C.	)	
Southern Industrial Properties UAD	)	Order No. 19 -111 -SW
Birmingham, Jefferson County, Alabama	)	

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended; the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18, as amended; and the Alabama Department of Environmental Management's (hereinafter "ADEM" or "the Department") Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, the Department makes the following FINDINGS:

1. Southern Industrial Properties, L.L.C. (hereinafter "Southern Industrial Properties") is the owner of real property located at 3501 33rd Terrace North in Birmingham, Jefferson County, Alabama (parcel 23-00-18-3-003-001.000) (hereinafter "the Site"), and thus responsible for an unauthorized solid waste dump (hereinafter "UAD"), at the Site which is the subject of this Administrative Order.

2. Pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, the Department is a duly constituted department of the State of Alabama.

3. Pursuant to Ala. Code § 22-22A-4(n), as amended, and Ala. Code 22-27-9(a), as amended, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, as amended.

4. Pursuant to Ala. Code § 22-27-10(b), as amended, and ADEM Admin. Code r. 335-13-11-.03(2), any person who participates in the creation or operation of an unauthorized dump, or contributed to an unauthorized dump, shall be responsible for the removal of the waste or otherwise the closure of the unauthorized dump in accordance with this article and rules of the department. If those who created, operated, or

contributed to an unauthorized dump do not remove or close the unauthorized dump, the landowner shall also be responsible for the removal or otherwise the closure of the unauthorized dump.

5. On October 8, 2015, Department personnel conducted an initial site inspection in response to a citizen complaint and observed the presence of an UAD on the above-mentioned site. A review of Jefferson County property records revealed Southern Industrial Properties, L.L.C. as the owner of the Site. At the time of inspection, Southern Industrial Properties had ceased operation on the Site. The Site was populated with dilapidated buildings, which appeared to have been abandoned for an indeterminate amount of time. Although there were recyclable or recoverable materials strewn about the Site, there was no evidence that any recycling activities or any other industrial operations were occurring. The inspection and a review of Southern Industrial Properties' compliance with certain requirements of Division 13 of the ADEM Admin. Code revealed the following:

Pursuant to ADEM Admin. Code rs. 335-13-1-.13(1)(a) and (2), unauthorized dumps are prohibited and must be closed in a manner determined to be necessary by the Department.

On October 8, 2015, Department personnel observed approximately 111,010 cubic yards of waste pallets, construction/demolition waste, and scrap tires open dumped on the Site without a permit from the Department, thereby constituting the creation of an UAD. The Department has determined that Southern Industrial Properties is responsible for the UAD.

6. On November 2, 2015, the Department issued to Southern Industrial Properties a Notice of Violation (hereinafter "NOV") requiring the abatement and closure of the UAD.

7. The Department did not receive a response to the NOV.

8. On January 25, 2016, the Department sent a Failure to Respond (FTR) letter to Southern Industrial Properties.

9. On July 28, 2016, the Department received a response to the FTR letter, stating the UAD would be removed, with plans for the majority of materials to be recycled and minimal disposing of the waste in a landfill within a period up to six months.

10. On February 6, 2019, Department personnel conducted a follow-up inspection of the Site and documented the continued existence of the UAD.

11. On February 13, 2019, the Department issued another NOV to Southern Industrial Properties for failing to remediate the UAD.

12. The Department has not received a response to the NOV.

13. 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 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed $250,000. 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: The creation, contribution to, or operation of a UAD is a public nuisance per se and a menace to public health. With regards to the UAD located at the Site, the Department is unaware of any irreparable harm to the environment, or any immediate threat to human health or to the safety of the public as a result of this violation.

B. THE STANDARD OF CARE: Southern Industrial Properties failed to abide by requirements applicable to the disposal of solid wastes and failed to comply with directives from the Department regarding the proper abatement and closure of the UAD.

Furthermore, after being informed in writing by the Department to cease operating the UAD and to close it by removing all regulated solid waste to a permitted landfill unit, Southern Industrial Properties provided the Department with an action plan for cleaning up the Site, but failed to follow through on its commitment.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if Southern Industrial Properties has realized a significant economic benefit as a result of the violation cited herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts by Southern Industrial Properties to mitigate any potential effects upon the environment and human health that may have been caused as a result of the UAD.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Southern Industrial Properties has a documented history of violations of the applicable requirements of Division 13 of the ADEM Admin. Code.

F. THE ABILITY TO PAY: The Department does not have any evidence indicating Southern Industrial Properties is unable to pay the civil penalty.

14. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c, as amended, as well as other factors, and has concluded that a civil penalty is appropriate for the violation cited herein (see Attachment A, which is made a part of the Department's FINDINGS).

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7, and 22-27-11, as amended, it is hereby ORDERED:

A. That, not later than forty-five days of issuance of this Order, Southern Industrial Properties shall pay to the Department a civil penalty in the amount of $25,000

for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department 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 Southern Industrial Properties' name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon issuance of this Order and continuing each and every day thereafter, Southern Industrial Properties shall cease and desist from operating an UAD.

C. That, within thirty days of issuance of this Order, Southern Industrial Properties shall submit a site closure plan to the Department in accordance with ADEM Admin. Code r. 335-13-1-.13(2)(b)1. This plan shall include a schedule for site closure completion. Southern Industrial Properties shall implement the site closure plan and remove the wastes onsite to an approved landfill unit. The remediation of this Site must be completed within 180 days of site closure plan approval by the Department.

D. That, within thirty days of completion of remediation activities, Southern Industrial Properties shall document closure activities by submitting the following information to the Department:

1. Time period in which the remediation activities occurred.
2. Total volume of waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, before and after remediation.

6. Documentation that the site was properly closed to prevent erosion.

7. Documentation that the site has been secured to prevent any future illegal dumping.

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 Southern Industrial Properties for the violation 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 Southern Industrial Properties for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 5th day of September, 2019.

Marilyn Elliott

Lance R. LeFleur
Director

Attachment A

Southern Industrial Properties, L.L.C.
Unauthorized Solid Waste Dump
Birmingham, Jefferson County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Responsible for or creation of an Unauthorized Dump	1	$20,000	$5,000	$0	Total of Three Factors
TOTAL		$20,000	$5,000	$0	$25,000

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	$0
Ability to Pay (-)	$0
Other Factors (+/-)	$0
	$0

Economic Benefit (+)*	$0
Amount of Initial Penalty	$0
Total Adjustments (+/-)	$0
FINAL PENALTY	**$25,000**

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

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Stephen A. Cobb, hereby certify that I have this date served the foregoing Administrative Order upon the person listed below by regular USPS Certified Mail, properly addressed and postage prepaid to:

Tim McCollum
Southern Industrial Properties, L.L.C.
2631 F L Shuttlesworth Drive
Birmingham, Alabama 35234

Done this 6th day of September, 2019.

Stephen A. Cobb

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Delivered

September 11, 2019 at 11:56 am
Delivered, Front Desk/Reception/Mail Room
BIRMINGHAM, AL 35234

Get Updates

Feedback

Text & Email Updates

Return Receipt Electronic

Tracking History

September 11, 2019, 11:56 am
Delivered, Front Desk/Reception/Mail Room
BIRMINGHAM, AL 35234
Your item was delivered to the front desk, reception area, or mail room at 11:56 am on September 11, 2019 in BIRMINGHAM, AL 35234.

September 11, 2019, 4:43 am
Departed USPS Regional Facility
BIRMINGHAM AL DISTRIBUTION CENTER ANNEX

September 10, 2019, 11:28 am
Arrived at USPS Regional Facility
BIRMINGHAM AL DISTRIBUTION CENTER ANNEX

September 10, 2019, 3:46 am
Departed USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

September 9, 2019, 10:26 pm
Arrived at USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

September 9, 2019, 9:11 pm
Accepted at USPS Origin Facility
MONTGOMERY, AL 36104

September 9, 2019
Pre-Shipment Info Sent to USPS, USPS Awaiting Item

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