

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )

DAVE CUMMANS )

ETOWAH COUNTY, ALABAMA )

ORDER NO. 99-055-SW

**FINDINGS**

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

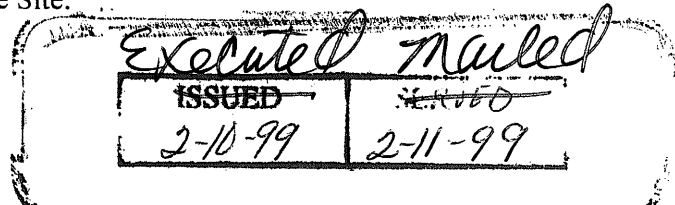
1. Section 22-27-2(6) of the Code of Alabama defines an "unauthorized dump" as, among other things, "any solid waste disposal site which does not meet the regulatory provisions of this article."

2. ADEM Admin. Code R. 335-13-5-.01 provides that "[a]ll solid waste shall be disposed of in a landfill unit permitted by the Department." The disposal of solid waste in an unpermitted site constitutes the establishment of an unauthorized dump.

3. Unauthorized dumps are both a public nuisance and a potential threat to public health as declared by Ala. Code 1975 § 22-27-4(b), and must be closed.

4. On May 14, 1998, Department personnel observed construction/demolition wastes, furniture, stumps, limbs, leaves, trash, auto parts, and other solid wastes had been disposed on property owned by Dave Cummins (the Operator") located in and around a pond on Willis Creek Road in Gadsden, Alabama (the "Site"). Department personnel observed that some of the solid wastes had been dumped in the pond and were resting in water.

5. On June 4, 1998, Department personnel observed stumps, furniture, shingles, construction/demolition debris, limbs, leaves, rubble, garbage, plastic, sheetrock, roofing, springs, mattresses and other solids wastes had been disposed of at the Site.



6. On June 16, 1998, the Department sent a Notice of Violation to the Operator for violations of the Solid Wastes Disposal Act and its implementing regulations arising from the operation of an unauthorized dump at the Site. The Notice of Violation required that the Operator submit a written response to the Department within 30 days describing actions to be taken to abate the Site and a chronology detailing time frames for completion. The June 16, 1998 Notice of Violation noted “[t]o properly remediate this unauthorized dump, all unauthorized waste must be removed from this site and disposed in a permitted solid waste disposal facility.”

7. On July 7, 1998, the Operator submitted a letter to John Poole, Chief, ADEM Land Division, responding the June 16, 1998 Notice of Violation. This letter stated that the debris referred to in the Notice of Violation had been removed and taken to a permitted solid waste disposal facility.

8. On July 21, 1998, Department personnel performed a compliance evaluation inspection at the Site. On July 21, Department personnel observed that much of the waste identified in the June 16, 1998 Notice of Violation had been removed as requested by the Department. Department personnel observed that other solid wastes not present at the time of the June 4, 1998 inspection, including boards, particleboard, roofing, pallets, dishwasher, and table, had been disposed of at the Site.

9. On August 3, 1998, the Department sent a letter to the Operator notifying him of the continued operation of an unauthorized dump at the Site, in violation of ADEM Admin. Code Division 13 regulations. The notification required that the Operator “remove all of the regulated waste to a permitted landfill and submit copies of the receipts received from the landfill for disposing of this waste to the Department.”

10. On August 19, 1998, Department personnel performed a compliance evaluation inspection at the Site. On August 19, Department personnel observed that construction/demolition waste, wood, pallets, sheetrock, boards, mattresses, plastic, rags, cardboard, trees, and other solid wastes had been disposed of at the Site. Department personnel observed some of the solid wastes at the Site being burned.

11. On August 20, 1998, the Operator submitted a letter to Archie Pennington, Inspector, Solid Waste Branch, ADEM Land Division, in response to the Department's August 3, 1998 letter. This letter stated that the solid wastes referred to in the Department's August 3, 1998 letter had been removed. The Operator attached to this letter a copy of a receipt for the disposal of approximately 1.4 tons of solid waste from the Etowah Solid Waste Disposal Authority. This receipt, dated August 17, 1998, pre-dated the Department's August 21, 1998 inspection of the Site.

12. As of the date of this Order, there has not been full abatement of the Site.

13. 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 Ala. Code 1975, §§ 22-22A-5(10), 22-22A-5(18), and 22-27-7, as amended, it is hereby ORDERED:

A. That immediately upon receipt of notice of this Order and continuing thereafter, the Operator shall cease and desist from the unpermitted disposal of solid wastes, as required by ADEM Admin. Code R. 335-13-5-.01.

B. That not later than 30 days after receipt of notice of this Order, and pursuant to the requirements of ADEM Admin. Code R. 335-13-1-.13, the Operator shall submit for the Department's review a plan for closure of the unpermitted solid waste disposal site.

C. That not later than 30 days after completion of the Department's review and acceptance of the plan referenced in paragraph B above, the Operator shall complete implementation of the accepted plan for closure of the above-referenced site.

D. 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 **two thousand dollars (\$ 2,000.00)** for the violations contained herein. This penalty shall be made payable by certified or cashier's check to ADEM and shall be remitted to:

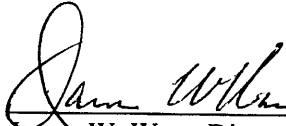
**Office of General Counsel  
Alabama Department of Environmental Management  
Post Office Box 301463  
Montgomery, Alabama 336130-1463**

All checks shall reference the Operator's name and address, and the ADEM Administrative Order number of this action.

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 10<sup>th</sup> day of February, 1999.



James W. Warr, Director  
Alabama Department of Environmental Management  
1751 Cong. W. L. Dickinson Drive  
Montgomery, Alabama 36109-2608  
(334) 271-7700

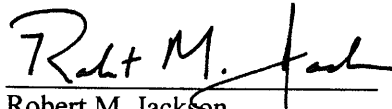
CERTIFICATE OF SERVICE

I, Robert M. Jackson, hereby certify that I have served the foregoing Administrative Order No. 99-055-SW upon Dave Cummans by sending the same, postage paid, through the United States Mail, as Certified Mail, with instructions to forward and return receipt requested to:

**CERTIFIED MAIL NO. Z 422 406 581**

Dave Cummans  
Cummans Construction  
P.O. Box 406  
Gadsden, Alabama 35902

DONE this 10<sup>TH</sup> of February, 1999.

  
Robert M. Jackson