

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

July 12, 2019

CERTIFIED MAIL NO: 91 7199 9991 7037 0284 1543

KEITH MITCHELL  
12116 PULASKI PIKE  
TONEY ALABAMA 35773

Re: Administrative Order No. 19-088-AP

Dear Mr. Mitchell:

Please find enclosed ADEM Administrative Order No. 19-088-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 Keith Mitchell. 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](mailto:drb@adem.alabama.gov) or by phone at (334) 271-7879.

Sincerely,

Ronald W. Gore, Chief  
Air Division

RWG/DWB/mcn

Enclosure

Issued: 07-12-2019

Served: 07-15-2019

cc: Tom Johnston, Office of General Counsel

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:	)	
	)	
Keith Mitchell	)	
Toney, Madison County, Alabama	)	ADMINISTRATIVE
	)	ORDER NO: 19-088-AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-17 (2015 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2015 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. Keith Mitchell (hereinafter, “Mitchell”) owns real property in and around 12116 Pulaski Pike Toney, Madison County, Alabama (hereinafter, the “Site”).
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17 (2015 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2015 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 (2015 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 February 26, 2019, the Department received a complaint of open burning of imported vegetation being conducted at the Site.

7. On February 28, 2019, the Department received a second complaint of open burning of imported vegetation being conducted at the Site.

8. On March 1, 2019, Department personnel conducted a complaint investigation at the Site and observed a large quantity of imported vegetation being burned. Department personnel also observed evidence of previously burned refuse. During the investigation, Mitchell informed Department personnel that he was being paid to have the vegetation dumped on his property. Mitchell also refused to accept the warning notice from the Department Inspector.

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: Mitchell 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 Mitchell 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: Mitchell 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 Mitchell to mitigate possible effects of this violation upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: On July 26, 2013, the Department received two complaints of unauthorized open burning being conducted by Mitchell during the Burn Ban. During the complaint investigation, the Department Inspector observed unauthorized open burning at the Site. Mitchell informed the Department Inspector that he was burning cardboard boxes when the fire got out of control and consumed several tires. The Department Inspector gave Mitchell a Warning Letter and a copy of the Open Burning Regulations. Mitchell was also advised to cease all unauthorized open burning.

F. THE ABILITY TO PAY: Mitchell 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 (2015 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Mitchell shall pay to the Department a civil penalty in the amount of \$5,000.00 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, Mitchell 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 Mitchell of his 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 Mitchell 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 Mitchell for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 12<sup>th</sup> day of July, 2019.

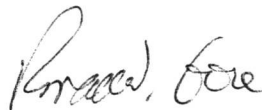
  
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Lance R. LeFleur, Director  
Alabama Department of Environmental  
Management  
1400 Coliseum Boulevard  
Montgomery, Alabama 36110-2059  
(334) 271-7700

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 7037 0284 1543** with instructions to forward and return receipt, to:

Keith Mitchell  
12116 Pulaski Pike  
Toney, Alabama 35773

DONE this the 12<sup>th</sup> day of July, 2019.



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

## ATTACHMENT A

Keith Mitchell  
Toney, Madison County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Illegal open burning	1	\$2,000	\$1,500	\$500	
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$2,000</b>	<b>\$1,500</b>	<b>\$0</b>	<b>\$4,000</b>

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	\$5,000
Total Adjustments (+/-)	\$0
<b>FINAL PENALTY</b>	<b>\$5,000.00</b>

### 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: 9171999991703702841543

Remove X

Expected Delivery on

MONDAY  
15 JULY 2019 ⓘ by 8:00pm ⓘ

✓ Delivered

July 15, 2019 at 9:50 am  
Delivered  
TONEY, AL 35773

Get Updates ✓

Feedback

- Text & Email Updates ✓
- Return Receipt Electronic ✓
- Tracking History ^

July 15, 2019, 9:50 am  
Delivered  
TONEY, AL 35773  
Your item was delivered at 9:50 am on July 15, 2019 in TONEY, AL 35773.

July 15, 2019, 9:05 am  
Out for Delivery  
TONEY, AL 35773

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**July 15, 2019, 8:55 am**

Sorting Complete

TONEY, AL 35773

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**July 15, 2019, 8:51 am**

Arrived at Unit

TONEY, AL 35773

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**July 14, 2019**

In Transit to Next Facility

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**July 13, 2019, 9:23 pm**

Departed USPS Regional Facility

BIRMINGHAM AL DISTRIBUTION CENTER ANNEX

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**July 13, 2019, 11:21 am**

Arrived at USPS Regional Facility

BIRMINGHAM AL DISTRIBUTION CENTER ANNEX

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**July 12, 2019, 10:51 pm**

Arrived at USPS Regional Facility

MONTGOMERY AL DISTRIBUTION CENTER

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**July 12, 2019, 9:36 pm**

Accepted at USPS Origin Facility

MONTGOMERY, AL 36104

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**July 12, 2019**

Pre-Shipment Info Sent to USPS, USPS Awaiting Item

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**Product Information**

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**See Less**

Feedback