

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)
)
PACE INDUSTRIES, INC.)
LYNN LANDFILL)
)
WINSTON COUNTY, ALABAMA)
PERMIT NO. 67-13)

ORDER NO. 98-126-SW

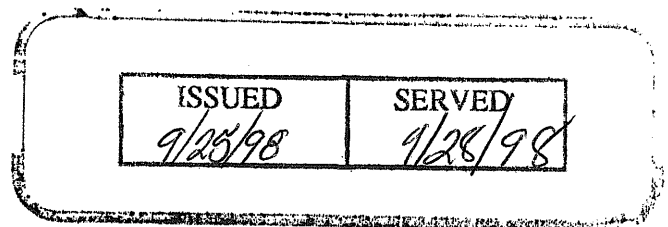
FINDINGS

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

1. Code of Alabama 1975, § 22-27-2(7) defines a "Construction/Demolition Landfill" as "a discrete area of land or an excavation that receives construction/demolition waste, and/or rubbish and/or water treatment (alum) sludge, foundry waste meeting Rule 335-13-4-.26(3), and that is not a land application unit, surface impoundment, or injection well as those terms are defined in this Rule."

2. On June 26, 1997, the Department issued Permit No. 67-13 to Pace Industries, Inc. (hereinafter "the Permittee") to operate a Construction/Demolition landfill.

3. On July 20, 1998, Department personnel of the Solid Waste Branch inspected the Construction/Demolition landfill owned and operated by Pace Industries, Inc. (hereinafter "the Permittee"). During the inspection, Department personnel observed the following violations of Division 13 of ADEM Admin. Code, Solid Waste Program, at the aforementioned site:



a. ADEM Admin. Code R. 335-13-4-.21(1)(a) states that “the operation and use of the landfill unit shall be as stipulated in the permit.”

Due to the following violations, the landfill is not being operated in accordance with Permit No. 67-13 and the Permittee is in violation of ADEM Admin. Code R. 335-13-4-.21(1)(a).

b. ADEM Admin. Code R. 335-13-4-.16(2)(c)2(i) provides that “the minimum frequency for Methane monitoring shall be quarterly for Municipal Solid Waste Landfills (hereinafter “MSWLF”) and yearly for Construction/Demolition Landfills (hereinafter “C/DLF”) and Inert Landfills (hereinafter “ILF”). All monitoring reports shall be submitted to the Department and placed in the operating record of the facility within 30 days of the monitoring event.”

The Permittee is in violation of ADEM Admin. Code R. 335-13-4-.16(2)(c)2(i) as the facility has been in operation for over a year and has not yet submitted a Methane monitoring report.

c. ADEM Admin. Code R. 335-13-4-.23(1)(a)1 provides that “all waste shall be covered as follows: [a] minimum of six inches of compacted earth or other alternative cover material that includes but is not limited to foams, geosynthetic or waste products, and is approved by the Department shall be added at the conclusion of each week’s operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter and scavenging.”

At the time of the inspection, the facility had not been recently covered in violation of ADEM Admin. Code R. 335-13-4-.23(1)(a)1.

d. ADEM Admin. Code R. 335-13-4-.23(1)(c) states that "all waste shall be confined to as small an area as possible and placed onto an appropriate slope not to exceed 4 to 1 (25%) or as approved by the Department."

At the time of the inspection, the facility had three open faces. If the facility decides to operate on a new face, the other face(s) should be covered with dirt. This is a violation of ADEM Admin. Code R. 335-13-4-.23(1)(c).

e. ADEM Admin. Code R. 335-13-4-.23(2)(b) provides that "litter shall be controlled within the permitted facility."

Litter around the perimeter of the facility has not been picked up on a regular basis in violation of ADEM Admin. Code R. 335-13-4-.23(2)(b).

4. On July 31, 1998, a Notice of Violation (hereinafter "NOV") was sent to Wayne Bass of Pace Industries, Inc. for the above-referenced violations at the aforementioned site.

5. In addition to the July 31, 1998 NOV, the facility has been cited for violations discovered during two other inspections. On April 21, 1998, an NOV was sent to the Permittee for violations of ADEM Admin Code R. 335-13-4-.23(1)(c) and ADEM Admin. Code R. 335-13-4-.23(2)(b). On October 30, 1997, a Noncompliance Warning letter was sent to the Permittee for violations of ADEM Admin. Code R. 335-13-4-.23(1)(a)1, 335-13-4-.23(1)(c), 335-13-4-.23(2)(b) and 335-13-4-.23(2)(f). At the time of the July 20, 1998 inspection, there had been no improvements as the same violations continue to occur.

6. On August 18, 1998, the Department issued a draft Administrative Order to the Permittee citing the violations set forth herein.

7. On September 1, 1998, the Department received a written response to the draft Order from the Permittee.

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

ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama 1975, §§ 22-22A-5(10), 22-22A-5(18), and 22-27-7, as amended, it is hereby ORDERED:

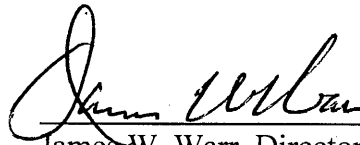
A. That not later than 30 days after receipt of notice of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$1,500.00.

B. That not later than 30 days after receipt of this Order, the Permittee shall achieve compliance with the Division 13 requirements of the ADEM Admin. Code.

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

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

ORDERED and ISSUED this 25th day of September, 1998.



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