

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )

ROOSEVELT TARVER )  
76 LATO ROAD )  
SEALE, AL 36875 )

95-086-SW

FINDINGS OF FACT

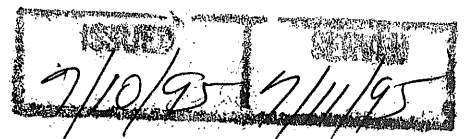
Pursuant to the Alabama Solid Wastes Disposal Act, Code of Alabama (1975) §§ 22-27-1 through 22-27-49, and the Alabama Environmental Management Act, Code of Alabama (1975) §§ 22-22A-1 through 22-22A-16 the Alabama Department of Environmental Management makes the following FINDINGS OF FACT:

1. Section 22-27-2(6), Code of Alabama 1975 defines an "unauthorized dump" as among other things, "any solid waste disposal site which does not meet the regulatory provisions of this article".

2. On October 1, 1993 personnel from the Department observed that tires were disposed of on a site located off Lato Road, Russell County, Alabama and operated by Mr. Roosevelt Tarver, (hereinafter "the Operator").

3. On June 7, 1994 the Operator was issued Administrative Order No. 94-081-SW for operating an unauthorized dump at this same location. As of the date of the following Order, the Operator has taken no action to comply with the requirements of Order No. 94-081-SW.

4. On August 9, 1994 and on November 9, 1994 personnel from the Department visited the site. No action to properly abate the dump has been taken.



5. Section 22-27-5(c), Code of Alabama 1975 requires all solid waste disposal sites to have a permit from the Department. To date, the Operator still has not applied for nor obtained a permit for the disposal site or properly closed said site in accordance with applicable regulations.

6. Section 22-27-4(b), Code of Alabama 1975 declares unauthorized dumps to be a public nuisance per se, a menace to public health, and a violation of the article.

7. The Operator operates an unpermitted solid waste landfill in violation of ADEM Admin. Code R. 335-13-5-.01.

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 §22-22A-(518), Code of Alabama 1975 as amended. The statute also authorizes that the penalty amount may range from \$100.00 to \$25,000.00 for each violation, so long as the penalty amount does not exceed \$250,000.00 in any given order. Each day a violation continues constitutes a separate violation. In addition to the forgoing "Findings of Fact", 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 Roosevelt Tarver;

(c) The economic benefit which delayed compliance may confer upon Roosevelt Tarver;

(d) The nature, extent and degree of success of Roosevelt Tarver's efforts to minimize or mitigate the effects of such violation upon the environment;

(e) Roosevelt Tarver's history of previous violations;

(f) Roosevelt Tarver's ability to pay the assessed penalty.

#### ORDER

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975) §§ 22-22A-1 through 22-22A-16, the Department hereby ORDERS:

A. That within 30 days from the date of receipt of notice of this Order, the Operator will pay to the Department a civil penalty in the amount of One Thousand Dollars (\$1000.00).

B. That the Operator will upon receipt of notice of this Order immediately and hereafter cease and desist from the unpermitted disposal of solid wastes.

C. That within 30 days from the date of receipt of notice of this Order, pursuant to the requirements of ADEM Admin. Code R. 335-13-1-.13, the Operator will submit for the Department's review a plan for closure of the above unpermitted solid waste disposal site.

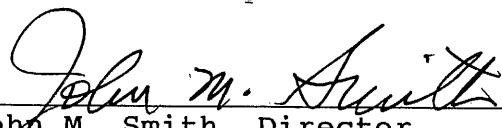
D. That within 30 days from the completion of the Department's review of the plan referenced in paragraph C.,

above, the Operator will complete implementation of the above plan for the closure of the above site.

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 the failure to comply fully with the provisions of this Order shall constitute cause for the 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 July, 1995.

  
John M. Smith, Director  
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Environmental Management  
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