

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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IN THE MATTER OF )  
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HILL'S AUTO PARTS & SCRAP METAL )  
15 DRY CREEK COVE ROAD )  
LACEY'S SPRING, ALABAMA )  
(MORGAN COUNTY) )  
\_\_\_\_\_ )

ADMINISTRATIVE ORDER NO. 05-126-WP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 through 22-22A-16, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Code of Alabama 1975, §§ 22-22-1 through 22-22-14, as amended, the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and the National Pollutant Discharge Elimination System (hereinafter "NPDES") administered by the Alabama Department of Environmental Management (hereinafter "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act (hereinafter "FWPCA") § 402, 33 U.S.C. § 1342, the Solid Wastes Disposal Act, Code of Alabama (1975), §§ 22-27-1 through 22-27-7, as amended, and the regulations promulgated pursuant thereto, The Alabama Scrap Tire Environmental Quality Act, Code of Alabama (1975), §§ 22-40A-1 through 22-40A-23, and the regulations promulgated pursuant thereto, and the Alabama Air Pollution Control Act of 1971, Code of Alabama (1975), §§ 22-28-1 through 22-28-23, and the regulations promulgated pursuant thereto, the Department makes the following FINDINGS:

1. Mr. Robert Hill (hereinafter “the Operator” or “the Permittee”) is the owner and operator of Hill’s Auto Parts & Scrap Metal, an industrial activity, i.e., an automobile salvage yard (hereinafter “the Facility”), in Lacey’s Spring (Morgan County), Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended.

3. Pursuant to Code of Alabama (1975), § 22-22A-4(n), the Department is the state water pollution control agency for the purposes of the FWPCA and the AWPCA.

4. Pursuant to Code of Alabama (1975), § 22-22A-4(n), the Department is the agency responsible for the promulgation and enforcement of solid waste regulations in accordance with the Solid Waste Disposal Act, 42 U.S.C. §§ 3251 et seq.

5. Code of Alabama (1975), § 22-22-9(i)(3) provides that “[e]very person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the [Department] in writing for a permit and must obtain such permit before discharging such pollution.”

6. ADEM Admin. Code R. 335-6-6-.03 (2) provides that “[n]o person, required to apply for a storm water discharge permit by 40 CFR 122.26 (2000), shall discharge pollutants into waters of the state without first having applied for a valid NPDES permit, coverage under a valid General NPDES Permit, or coverage under a valid NPDES Registration.”

7. 40 CFR § 122.26(a)(ii) requires an NPDES permit for discharges associated with industrial activity.

8. The Operator was issued coverage under general NPDES Permit #ALG18-0282 (hereinafter “the Permit”), effective February 1, 2003, authorizing the discharge of storm water to Dry Creek, a water of the State, subject to certain terms, limitations and conditions.

9. Part I of the Permit requires that the Permittee submit to the Department Discharge Monitoring Reports (hereinafter “DMR’s”) for DSN001-1 on a semi-annual basis.

10. The Permittee violated Part I of the Permit by failing to submit DMR's for DSN001-1 for the semi-annual periods of July 1, 2003 to December 31, 2003, January 1, 2004 to June 30, 2004, July 1, 2004 to December 31, 2004, and January 1, 2005 to June 30, 2005.

11. Part IV A 1. b. of the Permit requires the Permittee to take measures to prevent the spillage or loss of fluids, oil, grease, gasoline, etc., thereby preventing the contamination of storm water from these substances.

12. An inspection by Department personnel on August 4, 2004, revealed engines on the ground with numerous oil stains, indicating that the Permittee had violated Part IV A. 1.b. of the Permit by failing to take effective measures to prevent the spillage or loss of fluids.

13. On February 15, 2005, Department personnel observed recent staining from oil loss/spillage, again indicating that the Permittee had violated Part IV A. 1.b. of the Permit.

14. Code of Alabama (1975), § 22-40A-4(a), as amended, provides that "[n]o person may accumulate more than 100 scrap tires, except as a permitted processor, registered receiver, or permitted landfill."

15. Code of Alabama (1975), § 22-40A-6(e), as amended, provides that "All receivers shall register without fee with the department and obtain a receiver number..."

16. ADEM Admin. Code R. 335-3-3-.01 prohibits open burning unless approved by the Department.

17. ADEM Admin. Code R. 335-4-4-.02(2)(h) provides that "[n]o operations or activities involving open flames shall be conducted within twenty-five (25) feet of a tire materials pile."

18. During an inspection of the Facility by the Department on May 19, 2005, it was determined the Operator was in violation of Code of Alabama (1975), § 22-40A-4, and ADEM Admin.

Code R. 335-4-3-.01 for accumulating more than 100 scrap tires and not registering the facility as a scrap tire site.

19. During the inspection on May 19, 2005, it was determined the Operator was in violation of Code of Alabama (1975), § 22-40A-6, and ADEM Admin. Code R. 335-4-3-.01 for failure to register as a Class One Receiver selling used tires.

20. During the inspection by the Department on May 19, 2005, it was determined by the Department that the Operator had burned an undetermined amount of tires, in violation of the open burning restriction found at ADEM Admin. Code R. 335-3-3-.01, and violated Code of Alabama 1975), § 22-40A-19 and ADEM Admin. Code R. 335-4-4-.02 for performing an operation that involves open flames within 25 feet of scrap tire piles.

21. Code of Alabama (1975), § 22-27-4(b), as amended, provides that “[t]he formation of an unauthorized dump is . . . a public nuisance per se, a menace to public health, and a violation of [the Solid Wastes Disposal Act]. . . .” 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.”

22. During inspections by Department personnel on February 3, 2005, and April 28, 2005, it was determined that the Operator had expanded the Facility from its original site to a location on Delwood Drive (approximately 800 feet south of State Road 36) in Lacey’s Spring (Morgan County), Alabama (hereinafter “Site One”). At this new site, the Operator has disposed of scrap tires and other solid waste, and witnesses have observed that the Operator has buried solid waste at this site, creating an unauthorized dump. These actions are violations of the Solid Wastes Disposal Act pursuant to Code of Alabama (1975), § 22-27-4(b), and ADEM Admin. Code R. 335-13-5-.01, as well as violation of the Alabama Scrap Tire Environmental Quality Act, pursuant to Code of Alabama (1975), § 22-40A-6, and ADEM Admin. Code R. 335-4-3-.01.

23. During inspection by Department personnel on April 28, 2005, it was determined that the Operator had burned scrap tires at Site One, in violation of ADEM Admin. Code R. 335-3-3-.01.

24. During a reconnaissance inspection by Department personnel on April 8, 2005, it was noted that the Operator has discharged storm water into Dry Creek, a water of the State, at Site One, and, therefore, discharges from Site One are a violation of Code of Alabama (1975), § 22-22-9(i)(3) and ADEM Admin. Code R. 335-6-6-.30(2).

25. The Permit does not authorize discharges of pollutants from Site One into Dry Creek without a permit, nor has the Operator obtained a Permit for discharges at Site One.

26. The Operator has continually failed to comply with the issued Permit and has continued to discharge pollutants into a water of the state without a permit at Site One.

27. During inspections by Department personnel on February 3, 2005, and April 28, 2005, it was determined that the Operator had expanded the Facility from its original site to a location on Delwood Drive (approximately 1200 feet south of State Road 36) in Lacey's Spring (Morgan County), Alabama (hereinafter "Site Two"). Witnesses have observed that solid waste has been buried on this property. The Operator has not obtained a permit from the Department for the disposal of solid waste at Site Two, and, therefore, is in violation of Code of Alabama (1975), § 22-27-4(b) and ADEM Admin. Code R. 335-13-5-.01.

28. During an inspection by Department personnel on April 28, 2005, it was determined that the Operator had placed wrecked vehicles at Site Two, creating another automobile salvage yard which requires coverage under an NPDES permit pursuant to Code of Alabama (1975), § 22-22-9(i)(3), ADEM Admin. Code R. 335-6-6-.03(2), and 40 C.F.R. §122.26(a)(ii).

29. The Operator has not obtained NPDES coverage for Site Two.

## ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-22-9(i) and (k), 22-27-7, 22-28-10(2), 22-40A-18 and 22-40A-19(b), as amended, it is hereby ORDERED;

A. That, immediately upon receipt of this Order and each and every day hereafter, the Operator will comply with all terms, conditions, and limitations of the Permit to include Best Management Practices requirements and Discharge Monitoring Reporting requirements.

B. That, not later than 45 days after receipt of this Order, the Operator will cease all unpermitted discharges to waters of the state at all sites at which industrial activity is conducted, including but not limited to Sites One and Two, or shall submit to the Department a General Permit application, along with the appropriate fees, to permit all sites which require an NPDES permit, including Sites One and Two identified in this Order.

C. That, not later than 45 days after receipt of this Order, the Operator will submit for the Department's review and comment a report, prepared by a professional engineer licensed in the State of Alabama, addressing the facility's environmental housekeeping and the steps that have been taken and/or being taken to correct these violations. That, if the measures outlined in the report have not yet been implemented, the Operator shall have fully implemented those measures no later than 60 days after receipt of this Order.

D. That, not later than 60 days after receipt of this Order, the Operator shall remove all scrap tires at the Facility and Site One in compliance with ADEM Admin. Code Division 4, including transportation by a permitted scrap tire transporter utilizing manifest with scrap tires taken to a permitted processor, permitted landfill or registered fuel user.

E. That, not later than 60 days after receipt of this Order, the Operator shall have excavated and disposed of waste resulting from burning of scrap tires and other waste at the Facility and Site One, with waste disposed of in a permitted landfill.

F. That, not later than 60 days after receipt of this Order, the Operator shall have removed all waste illegally disposed of at Site One and said waste shall have been disposed of in a permitted landfill.

G. That, not later than 30 days after receipt of this Order, the Operator shall perform actions necessary to determine if waste has been buried at Site One and Two and shall commence excavation of all buried waste. Prior to commencing this investigation, the Operator shall coordinate with Department personnel to be present at the investigation, and the Operator shall allow Department personnel to direct where excavation shall be performed. The Operator shall coordinate with the Department so as to allow sufficient notice for Department personnel to be present at the excavation and not delay the excavation beyond the 30 day deadline set herein. Prior to commencing excavation, the Operator shall comply with all applicable requirements of ADEM Admin. Code Chap. 335-6-12.

H. That, if regulated solid waste and scrap tires are found to have been buried, not later than 120 days after receipt of this Order, the Operator shall ensure that said solid waste and scrap tires have been removed and managed in compliance with the requirements of ADEM Admin. Code Divisions 4 and 13, including transportation by a permitted scrap tire transporter utilizing manifest with scrap tires taken to a permitted processor, permitted landfill or registered fuel user. Prior to transmission to a permitted processor, permitted landfill or registered fuel user, the Operator shall ensure that any electronics waste has been separated and disposed of appropriately.

I. That, not later than 120 days after receipt of this Order, Site One and Two shall be restored and vegetated to minimize erosion.

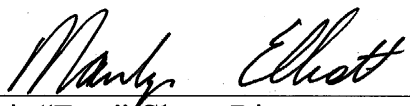
J. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

K. That, 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 the Operator of its obligations to comply in the future with any permit.

L. That this Order requires corrective action only, and the issuance of this ORDER does not preclude the Department from seeking civil or criminal fines or other appropriate sanctions or relief against the Operator for the violations cited herein. The Department expressly reserves the right to assess a civil penalty against the Operator for the violations cited herein at a later date.

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

ORDERED and ISSUED this the 21<sup>th</sup> day of Sept, 2005.

for   
Onis "Trey" Glenn, Director  
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