



Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

January 29, 2021

CERTIFIED MAIL NO: 9489 0090 0027 6295 4234 21

JON'S TREE SERVICE LLC
ATTN JON PIERCE
PO BOX 984
ALABASTER ALABAMA 35007

Re: Administrative Order No. 21-026-AP

Dear Mr. Pierce:

Please find enclosed ADEM Administrative Order No. 21-026-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 Jon's Tree Service, LLC. Please note that the assessed civil penalty is due 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 or by phone at (334) 271-7879.

Sincerely,

Ronald W. Gore, Chief
Air Division

RWG/DWB/mcn
Enclosure

Issued: 01-29-2021

Served: 02-03-2021

cc: Shawn Sibley, Office of General Counsel



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

Jon's Tree Service, LLC)

Chelsea, Shelby County, Alabama)

ADMINISTRATIVE

ORDER NO: 21-026-AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-17, *as amended*, the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, *as amended*, 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. Jon's Tree Service, LLC (hereinafter, "Jon's") is a tree trimming service operating in and around Chelsea, Shelby County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, *as amended*.

3. Pursuant to Ala. Code § 22-22A-4(n), *as amended*, 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, *as amended*.

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)(d) states that "Permission to open burn under the provision of this paragraph is revoked during the months of May, June, July, August, September, and October in Baldwin, DeKalb, Etowah, Jefferson, Lawrence, Madison, Mobile, Montgomery, Morgan, Russell, Shelby, and Talladega Counties.

6. On October 8, 2020, the Department was notified by the Chelsea Fire Department of unauthorized open burning of a large quantity of imported vegetation conducted by Jon's on property located at latitude/ longitude (33.298239, -86.656328) at Lot 1 of Chelsea Farms in Chelsea, Shelby County, Alabama (hereinafter, the "Site"). Local officials previously responded to complaints of unauthorized open burning at the Site on August 8, August 12, and September 30, 2020.

7. 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 violations, 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: Jon's conducted unauthorized open burning of imported vegetation. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Jon's 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)(d).

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Jon's likely derived an economic benefit by not legally disposing of the imported vegetation.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Jon's to mitigate possible effects of this violation upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Jon's does not have a history with the Department for violating the Open Burning Regulations.

F. THE ABILITY TO PAY: Jon's 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, *as amended*, it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Jon's shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violation 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, Jon's shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(d).

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 Jon's of its 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 Jon's for the violation 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 Jon's

for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 29th day of January, 2021.

Marilyn Elliott

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 **9489 0090 0027 6295 4234 21** with instructions to forward and return receipt, to:

Jon's Tree Service, LLC
Attention: Jon Pierce
PO Box 984
Alabaster, Alabama 35007

DONE this the 29th day of January, 2021.



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

ATTACHMENT A

Jon's Tree Service, LLC
Chelsea, Shelby County, AL

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

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
FINAL PENALTY	\$5,000.00

Footnotes

* See the "Department's Findings" portion of the Order for a detailed description of each violation and the penalty factors.

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✓ Delivered

February 3, 2021 at 11:11 am
Delivered
ALABASTER, AL 35007

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Tracking History



February 3, 2021, 11:11 am
Delivered
ALABASTER, AL 35007
Your item was delivered at 11:11 am on February 3, 2021 in ALABASTER, AL 35007.

February 2, 2021, 3:10 pm
Available for Pickup
ALABASTER, AL 35007

February 1, 2021, 4:13 am
Departed USPS Regional Facility
BIRMINGHAM AL DISTRIBUTION CENTER ANNEX

January 31, 2021
In Transit to Next Facility

January 30, 2021, 11:28 pm
Arrived at USPS Regional Facility
BIRMINGHAM AL DISTRIBUTION CENTER ANNEX

January 30, 2021, 12:42 pm
Departed USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

January 29, 2021, 11:06 pm
Arrived at USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

Product Information



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FAQs