

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)
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)

MR. CLAUDE R. NICHOLSON)

ORDER NO. 01-078-SW

Elba, Alabama)
_____))

FINDINGS OF FACT

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 to 22-22A-16, as amended, and the Solid Waste Disposal Act, Code of Alabama 1975, §§ 22-27-1 to 22-27-7, as amended, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") 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 July 29, 1999 personnel from the Department observed that construction debris, old appliances, old furniture and other miscellaneous items had been disposed of on property owned and operated by Mr. Claude R. Nicholson (hereinafter "the Operator") off of County Road 337 in Coffee County, Alabama.

3. On August 25, 1999 a Notice of Violation (hereinafter "NOV") was sent to Claude R. Nicholson for violations at the aforementioned site. The Department received a response to the

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NOV dated October 28, 1999 and a follow-up response (in response to a Department letter) dated November 16, 1999.

4. 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.

5. 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.

6. The Operator operates or has operated, an unpermitted solid waste disposal site located in Coffee County, Alabama in violation of ADEM Admin. Code R. 335-13-5-.01.

7. The assessment of civil penalties for violations of the Department's Rules and Regulations, and for violations of any order, permit conditions, license, certification, or variance issued by the Department is authorized by §22-22A-5(18), 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.

ORDER

Based on the foregoing FINDINGS OF FACT and pursuant to §§ 22-22A-1 to 22-22A-16, and 22-27-1 to 22-27-7 Code of Alabama 1975, as amended, it is hereby ORDERED:

A. That within 30 days from the receipt of notice of this Order, the Operator will pay to the Department a civil penalty in the amount of Five Hundred Dollars (\$500.00).

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

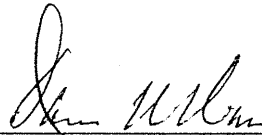
C. That within 30 days from the receipt of notice of this Order, and pursuant to the requirements of ADEM Admin. Code R. 335-13-1-.13, the Operator will submit for the Department's review a plan for closure of the above-unpermitted solid waste disposal site.

D. That within 30 days from the completion of the Department's review and acceptance of the plan referenced in paragraph C., above, the Operator will complete implementation of the accepted plan for closure of the above-referenced 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 failure to comply with the provisions of this Order shall constitute cause for 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 9TH day of March, 2001.



James W. Warr, Director
Alabama Department of
Environmental Management
P. O. Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700

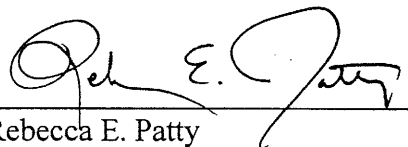
CERTIFICATE OF SERVICE

I, Rebecca E. Patty, hereby certify that I have served Administrative Order No. 01-078-SW upon Mr. Claude R. Nicholson by sending the same, postage paid, through the United States Mail, as Certified Mail, with instructions to forward and return receipt requested to:

CERTIFIED MAIL NO. 7000 1530 0000 6472 5705

Mr. Claude R. Nicholson
P. O. Box 503
Elba, Alabama 36323

DONE this 9 day of March, 2001.



Rebecca E. Patty