

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

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

March 17, 2011

CERTIFIED MAIL NO. 91 7108 2133 3936 5742 1100
RETURN RECEIPT REQUESTED

Mr. Elvis W. Howard
1609 Branch Avenue
Prichard, Alabama 36612

Dear Mr. Howard:

Subject: **Administrative Order**
Mr. Elvis Wayne Howard
1609 Branch Avenue
Mobile County
Prichard, Alabama

Please find enclosed ADEM Administrative Order No. 11-065-SW which requires you to take certain actions in regard to alleged violations of the Solid Wastes and Recyclable Materials Management Act. Please note that in response to the comments you submitted to the Department, the Order has been revised to exclude a civil penalty and include a schedule for abatement completion by September 9, 2011. Be advised that the Department will verify proper closure of the site by conducting an inspection following the September 9, 2011 deadline.

If you have any questions regarding this matter, please contact Otis Todd of the Enforcement and Remediation Section at (334) 271-7767 or by email at otodd@adem.state.al.us.

Sincerely,

A handwritten signature in black ink, appearing to read "Wm. Gerald Hardy", is written over a horizontal line.

Wm. Gerald Hardy, Chief
Land Division



Enclosure
WGH/olt

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)

Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

)	
IN THE MATTER OF:)	Order No. 11-065-SW
)	
Mr. Elvis Wayne Howard)	
1609 Branch Avenue)	
Prichard, Mobile County, Alabama 36612)	
)	

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2009 Cum Supp.), and the ADEM Administrative Code promulgated hereunder, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following finding of facts:

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
2. Elvis Wayne Howard is the responsible party for an unauthorized solid waste dump located at 1609 Branch Avenue in Prichard, Mobile County, Alabama, which is the subject of this administrative order.
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.) and Ala. Code § 22-27-9(a) (2006 Rplc. Vol. and 2010 Cum. Supp.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable

Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2010 Cum. Supp.).

4. Ala. Code §22-27-2(36) (2006 Rplc. Vol. and 2010 Cum. Supp.) defines an “unauthorized dump” as “any collection of solid wastes either dumped or caused to be dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department.”

5. Ala. Code § 22-27-4(b) (2006 Rplc. Vol. and 2010 Cum. Supp.) states the following: “The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined...”

6. Ala. Code § 22-27-10(b) (2006 Rplc. Vol. and 2010 Cum. Supp.) states the following: “The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article.”

7. ADEM Admin. Code r. 335-13-1-.13 (1) (a) prohibits open or unauthorized dumps.

8. On March 17, 2010, Department personnel conducted an inspection and documented the existence of an unauthorized solid waste dump (hereinafter “UAD”) located on the property of Mr. Elvis Wayne Howard (hereinafter “Mr. Howard”) within parcel R022210440004053 at 1609 Branch Avenue in Prichard, Mobile County, Alabama. Property ownership was determined by a review of Mobile County records. The UAD consisted of discarded appliances and scrap metal.

9. On April 2, 2010, the Department issued a Notice of Deficiency (hereinafter “NOD”) to Mr. Howard for an UAD.

10. The Department did not receive a response to the April 2, 2010 NOD.

11. On May 18, 2010, the Department issued a Notice of Violation to Mr. Howard requiring abatement and closure of the site, and the submittal of associated documentation.

12. The Department did not receive a response to the May 18, 2010 NOV.

ORDER

Based on the foregoing findings of fact and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7 and 22-27-11, it is hereby ordered:

A. That, immediately upon the issuance of this Order and continuing each and every day thereafter, Mr. Howard shall cease and desist from operating an UAD.

B. That, Mr. Howard shall complete all abatement and closure activities of the site in accordance with ADEM Admin. Code r. Div. 335-13 regulations by September 9, 2011. Mr. Howard shall document abatement activities by submitting monthly reports to the Department for review. The monthly reports shall include at a minimum the following and shall be submitted to the Department no later than the 15th day of the month following the end of the preceding month:

1. Total volume of solid waste removed from the property during the preceding month.
2. Name of the disposal facility where solid waste was disposed or offered for recycling.

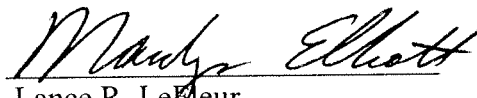
3. A copy of waste receipts documenting proper disposal or approved beneficial use.

4. Photographs of the site documenting abatement activities for the reporting period.

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

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

ORDERED and ISSUED this 16th day of March, 2011.


Lance R. LeFleur
Director

CERTIFICATE OF SERVICE

I, Wm. Gerald Hardy, hereby certify that I have this date served the foregoing Administrative Order via the US Postal Service:

Mr. Elvis Wayne Howard
1609 Branch Avenue
Prichard, Alabama 36612

Done this 17th day of March, 2011.

Wm. Gerald Hardy
Name

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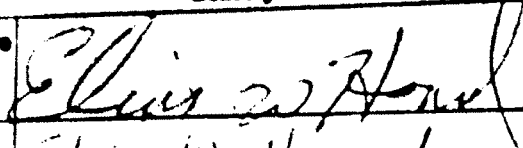


Date: 03/25/2011

Valerie Jackson:

The following is in response to your 03/25/2011 request for delivery information on your Certified Mail(TM) item number 7108 2133 3936 5742 1100. The delivery record shows that this item was delivered on 03/24/2011 at 12:28 PM in MOBILE, AL 36612. The scanned image of the recipient information is provided below.

Signature of Recipient:

Signature	
Name	Elvin W Howard

Address of Recipient:

Address	1409 Branch
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Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service