

ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management

adem.alabama.gov

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Post Office Box 301463

Montgomery, Alabama 36130-1463

(334) 271-7700

FAX (334) 271-7950

BOB RILEY
GOVERNOR

December 30, 2008

CERTIFIED MAIL NO. #7007 0710 0001 6200 7826
RETURN RECEIPT REQUESTED

Mr. Dan Youngblood
P.O. Box 246
Daleville, AL 36322

Dear Mr. Youngblood:

RE: Consent Order No. 09-028-CSW

Please find enclosed ADEM Consent Order No. 09-028-CSW which requires you to take certain actions in regard to alleged violations of the Solid Wastes and Recyclable Materials Management Act. This Order has been issued with the consent of you and the Department. Please note that the assessed civil penalty is due within 45 days of the effective date of the Order.

If you have any questions concerning this matter, please contact Allen Shehane at (334) 271-7751 in Montgomery.

Sincerely,

Wm. Gerald Hardy, Chief
Land Division

Enclosure

WGH/ags



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

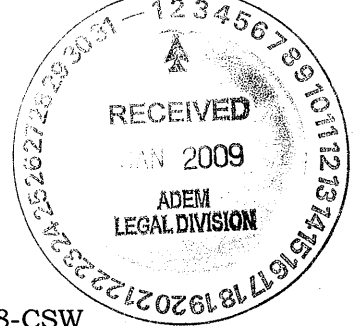
Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (Fax)



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)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



IN THE MATTER OF

ORDER NO. 09-028-CSW

MR. DAN YOUNGBLOOD
PO BOX 246
DALEVILLE, AL 36322
COFFEE COUNTY

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Mr. Dan Youngblood (hereinafter "the Owner"), 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 (2008), and the ADEM Administrative Code promulgated thereunder.

STIPULATIONS

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. Pursuant to Ala. Code §§ 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Management Act, Ala. Code §§ 22-27-1 to 22-27-18 (2008).

3. Ala. Code §§ 22-27-2(36) (2006 Rplc. Vol.), defines an "unauthorized dump" as, among other things, "any solid waste disposal site which does not meet the regulatory provisions of this article."

4. On September 10, 2007 a representative of the Department inspected an unauthorized dump on the property of Mr. Dan Youngblood ("Owner") located at the intersection of Highway 84 East and Boll Weevil Circle in Enterprise, Coffee County, Alabama. The dump consisted of construction/demolition debris from Enterprise High School.

5. On September 14, 2007, the Department issued a Notice of Violation (NOV) to Mr. Dan Youngblood. The NOV documented that Mr. Youngblood was the owner of the property where said unauthorized dump was located and that according to ADEM Admin. Code r. 335-13-1-.13(2)(g) he was required to close the subject dump by removing all unauthorized waste to a permitted landfill approved to accept this waste stream. The NOV required Mr. Youngblood to submit a cleanup plan for ADEM's review and approval within 30 days from receipt of the NOV. The Department has not received a written response from Mr. Youngblood as required by the NOV.

6. On January 15, 2008, a follow-up inspection was conducted by a representative of the Department. Results of the inspection revealed that regulated solid waste remains at this site and efforts to address the noted violations have not occurred.

7. Ala. Code §§ 22-27-5(c) (2006 Rplc. Vol.), requires solid waste disposal sites except those which have certificates of exception to have a permit from the Department. To date, the Owner has neither applied for nor obtained a permit for the disposal site.

8. Mr. Youngblood operates or has operated an unpermitted solid waste disposal site located at the intersection of Highway 84 East and Boll Weevil Circle in Enterprise, Coffee County, Alabama, in violation of ADEM Admin. Code r. 335-13-5-.01.

9. The Owner consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. The Owner neither agrees nor disagrees with the Stipulations presented in this Consent Order, but, in an effort to cooperate with the Department and to comply with the provisions of the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2008), and the ADEM Administrative Code promulgated thereunder, has consented to the terms of this Consent Order.

10. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

11. The Owner neither admits nor denies that the aforementioned violations listed in the Stipulations occurred and enters into this Consent Order with the understanding that this Consent Order shall not be deemed or construed at any time for any purpose by anyone (including but not limited to other parties who may attempt to bring claims in any legal, administrative, or other proceeding) as an admission by the Owner of liability.

12. The Owner neither admits nor denies the Department's contentions and the Department neither admits nor denies the Owner's contentions.

13. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, 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 be less than \$100.00 or 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 a violation continues shall constitute a separate violation.

14. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Owner/Owner disposed and/or allowed the disposal of solid waste on his property in violation of ADEM Solid Waste Regulations. The Department has no evidence of any irreparable harm to the environment resulting from the alleged violations.

B. THE STANDARD OF CARE: The Department alleges that the Owner/Owner did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been a significant economic benefit conferred. However, by not obtaining a solid waste permit for the subject activities, the Department alleges that the Owner benefited as a result of avoided permit fees and costs associated with monitoring and reporting that would have been required under the permit.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Owner has no known history of prior violations of a similar nature and extent.

F. THE ABILITY TO PAY: The Owner 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 (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000.00 is appropriate and consistent with the historical penalty range imposed by the Department for similar violations, as follows:

<u>Type of Violation</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Solid Waste Dumps	\$500 to \$5,000

It should be noted that the Special Order by Consent is a negotiated settlement, and therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and in the desire to resolve this matter amicably without incurring the unwarranted expense of litigation.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, the Owner, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Owner agree to enter into this ORDER with the following terms and conditions:

A. That, not later than forty-five days after receipt of this Order, the Owner shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

All checks shall reference the Owner's name and address and the ADEM Order number of this action.

B. That, immediately upon receipt of this Order and continuing thereafter, the Owner shall cease and desist from the unpermitted disposal of solid wastes.

C. That, within forty-five days from receipt of this Order, the Owner shall complete the removal of all regulated waste from the above referenced site and submit to the Department a written report prepared by a registered Professional Engineer licensed to practice engineering in the State of Alabama documenting the actions that were taken to abate the unauthorized dump. The report, at minimum, shall include the following:

1. Time period in which the cleanup occurred.

2. Total volume (in cubic yards) of waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, both before and after cleanup.
6. Documentation that site was seeded and mulched to prevent erosion.
7. Documentation that site has been secured to prevent any future illegal dumping in the future.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The Owner agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

F. For purposes of this Consent Order only, the Owner agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Owner also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, it shall be limited to the defenses of *Force Majeure*, compliance with this Agreement, and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Owner, including the Owner's contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Owner) and which delays or prevents performance by a date required by the Consent Order.

Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Owner, the Department will extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but the Department is not obligated to do so.

G. The parties agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Owner which would constitute possible future violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Owner shall not object to such future Orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not resolved in this Consent Order.

H. The parties agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Owner hereby waives any hearing on the terms and conditions of same.

I. The parties agree that this Consent Order shall not affect the Owner's obligation to comply with any federal, State, or local laws or regulations.

J. The parties agree that, should any provision of this Consent 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 herein shall remain in full force and effect.

K. The parties agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

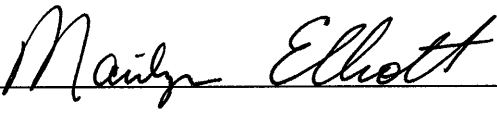
L. The parties agree that, except as otherwise set forth herein, this Consent Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State, or local law, and shall not be construed to waive or relieve the Owner of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



Dan Youngblood



Onis "Trey" Glenn, III

11-6-08

Date

12/30/08

Date