

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF  
CITY OF HEFLIN  
P.O. Box 128  
MONTGOMERY, ALABAMA

ORDER NO. 95-058-SW

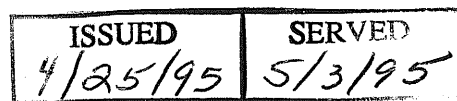
FINDINGS

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 "the Department") makes the following FINDINGS:

1. Section 22-27-2(6), Code of Alabama 1975, as amended, defines an "unauthorized dump" as, among other things, "any solid waste disposal site which does not meet the regulatory provisions of this article."

2. In 1989, the City of Heflin was given verbal approval to operate a solid waste landfill contingent upon applying for a landfill permit. However, during the interim period the City of Heflin (hereinafter "the Operator") was required to comply with all regulations regarding solid waste disposal during the permitting process.

3. On October 27, 1987 an application for a landfill permit was received by the Department on behalf of the City of



Heflin. On November 10, 1987 the Department issued a letter to Jack Wood, Mayor of Heflin, citing deficiencies in the City's permit application. Other correspondence was exchanged between the City of Heflin and the Department.

4. As of the date of this Order the City has not addressed all deficiencies in its permit application.

5. On June 14, 1994 an inspection of the site revealed that there were four areas where waste had been disposed of and was left uncovered. One fire was observed by Departmental personnel. An inspection on October 13, 1994 revealed that there was no change in the site. A Notice of Violation was sent to the City on January 3, 1995. As of the date of this Order the City has failed to obtain a permit to operate its landfill.

6. Section 22-27-5(c), Code of Alabama 1975, as amended, 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.

7. Section 22-27-4(b), Code of Alabama 1975, as amended, declares unauthorized dumps to be a public nuisance per se, a menace to public health, and a violation of the article.

8. The Operator owns and operates, or has operated, an unpermitted solid waste disposal site on County Road 66 North of Heflin, Alabama, in violation of ADEM Admin. Code R. 335-13-5-.01.

9. 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. In addition to the foregoing "Findings", the Department has considered the factors detailed in the aforementioned statute in determining the appropriate penalty amount in this particular instance. Those factors are listed as follows:

(a) The seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public;

(b) The standard of care manifested by the City of Heflin;

(c) The economic benefit which delayed compliance may confer upon the City of Heflin;

(d) The nature, extent and degree of success of the City of Heflin's efforts to minimize or mitigate the effects of such violation upon the environment;

(e) The City of Heflin's history of previous violations;

(f) The City of Heflin's ability to pay the assessed penalty.

#### ORDER

Based on the foregoing FINDINGS and pursuant to §§ 22-22A-1 to 22-22A-16, 22-22A-5(10), 22-22A-5(18), 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 One Thousand Dollars (\$1000.00).

As an alternative, the Operator may choose to apply the \$1,000.00 penalty to the cost of closure for the landfill upon submission of receipts within 30 days of final closure of said landfill. However, if the appropriate receipts are not submitted within the aforementioned time frame, the \$1,000.00 civil penalty becomes immediately due and payable to the Department.

As a second alternative, the Operator may choose to apply the \$1,000.00 penalty to the cost of obtaining a permit for the landfill upon submission of receipts within 30 days of final permitting of said landfill. However, if the appropriate receipts are not submitted within the aforementioned time frame, the \$1,000.00 civil penalty becomes immediately due and payable to the Department.

The Operator must pay the civil penalty within thirty (30) days from the date of notice of this Order or must notify the Department in writing within thirty (30) days from the date of notice of this Order of his election of one of the two afore-mentioned alternatives.

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

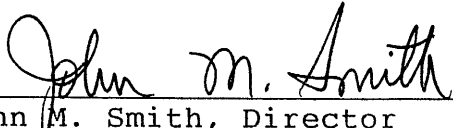
Order, and pursuant to the requirements of ADEM Admin. Code R. 335-13-1-.13, the Operator will submit for the Department's review a plan for closure of the above-referenced unpermitted solid waste disposal site. That within 60 days from the receipt of notice of this Order, and pursuant to the requirements of ADEM Admin. Code R. 335-13-5-.01-.06, the Operator apply for a permit for the above-referenced 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 25<sup>th</sup> day April, 1995.

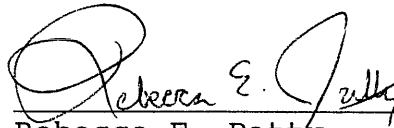
  
\_\_\_\_\_  
John M. Smith, Director  
Alabama Department of  
Environmental Management  
1751 Cong. W. L. Dickinson Drive  
Montgomery, Alabama 36130  
(205) 271-7700

CERTIFICATE OF SERVICE

I, Rebecca E. Patty, hereby certify that I have served this Administrative Order No. 95-058-SW upon City of Heflin by sending the same postage paid, through the U.S. Mail, as Certified Mail No. Z 073 536 144, with instructions to forward and return receipt requested to:

Mr. Jack Woods, Mayor  
City of Heflin  
P.O. Box 128  
Heflin, Alabama 36264

DONE this 25<sup>th</sup> day of April, 1995.

  
\_\_\_\_\_  
Rebecca E. Patty