

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

CITY OF HALEYVILLE
HALEYVILLE, ALABAMA

ORDER NO. 95-038-SW

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama, 1975, §§ 22-22A-1 through 22-22A-16 (1990 Rplc. Vol. & 1991 Supp.), and the Solid Waste Disposal Act, Code of Alabama 1975, §§ 22-27-1 through 22-27-7 (1990 Rplc. Vol. & 1992 Supp.), the Alabama Department of Environmental Management (hereinafter ADEM or "the Department") makes the following FINDINGS:

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 September 29, 1994, personnel from the Department observed that metal, sheet rock, lumber, plastic, tires, rubbish, construction/demolition debris, and other miscellaneous solid waste had been disposed of on a site located in the SW 1/4 of the SW 1/4, Township 9 South, Range 10 West on the northern side of Highway 5 within the City limits of Haleyville and operated by the City of Haleyville, (hereinafter "the Operator"). A City of Haleyville sanitation dump truck was observed unloading it's contents at the dump

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site. A Notice of Violation was issued to the operator on September 6, 1994.

3. 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.

4. 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.

5. The Operator operates, or has operated, an unpermitted solid waste disposal site located on the north of Highway 5 within the Haleyville city limits in violation of ADEM Administrative Code R. 335-13-5-.01.

6. 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 operator;

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

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

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

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

7. On October 27, 1994, the Department sent to the Operator a proposed administrative order setting forth the foregoing allegations.

8. On November 9, Haleyville submitted a written response to the proposed Order and on November 29, representatives of the City met with Department officials to discuss the proposed order. Haleyville acknowledged that the disposal had occurred, but asserted that most of the disposed material was yard trimmings and similar wastes. Further, the City asserted that all disposal ceased following the September inspection, and

that cover material had been placed over the site prior to receipt of the proposed order.

9. Subsequently, on January 10, 1995, Haleyville submitted an affidavit from its Sanitation Director attesting to the content of the material. The City also submitted information estimating the disposal area, the volume of material disposed, and an estimate of the cost to remove the material if required. The City estimated costs in excess of \$22,000.00 for removal and urged that removal would impose a significant financial hardship.

10. Based on the information obtained by the Department through various means including an inspection by the Department staff, it appears that the material has been covered by a substantial amount of dirt as would be required under the Department's landfill closure regulations, that the placement of cover material and closure occurred prior to receipt of the proposed order, and that the nature of the material in the dump will not pose a significant threat to human health or the environment.

ORDER

Based on the foregoing FINDINGS and pursuant to §§22-22A-1 to 22-22A-16, and 22-27-1 to 22-27-7 Code of Alabama 1975, (1990 Rplc. Vol. and 1992 Supp.), it is hereby ORDERED:

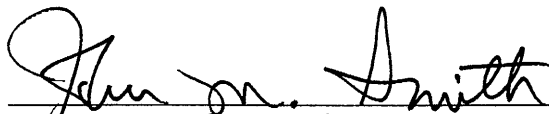
A. That within 30 days from the date of receipt of notice of this Order, the Operator will pay to the Department a civil penalty in the amount of \$1,000.00.

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 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.

D. This Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning the City of Haleyville, which would constitute possible violations not addressed in this Order, or if the violations noted herein continue, then such future violations shall be addressed in Orders as may be issued by the Department, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the City of Haleyville shall not object to such future orders, litigation or enforcement action based on the issuance of this Order.

ORDERED AND ISSUED this 39th day of January, 1995.

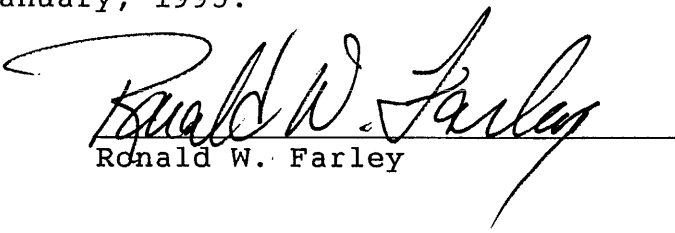

John M. Smith, Director
Alabama Department of
Environmental Management
1751 Cong. W. L. Dickinson Drive
Montgomery, Alabama 36130
(205) 271-7700

CERTIFICATE OF SERVICE

I, Ronald W. Farley, hereby certify that I have served Administrative Order No. 95-038-SW upon the City of Haleyville by sending the same postage paid, through the U.S. Mail, as Certified Mail No. Z 073 536 139, with instructions to forward and return receipt requested to:

The Honorable Larry Gilliland, Mayor
City of Haleyville
1901 11th Avenue
Haleyville, Alabama 35565

Done this 31st day of January, 1995.



Ronald W. Farley