

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

February 8, 2012

CERTIFIED MAIL NO. 7004 1160 0006 6053 3521
RETURN RECEIPT REQUESTED

KEN SCROGGIN
EAGER BEAVERS TREE SERVICE LLC
106 CAVENDISH CIRCLE
MADISON AL 35758-7437

RE: ADMINISTRATIVE ORDER 12-066-AP
EAGER BEAVERS TREE SERVICE LLC
MADISON AL 35758-7437

Dear Mr. Scroggin:

Enclosed please find Administrative Order No. 12-066-AP which requires certain actions to be taken regarding violations of applicable environmental laws and regulations at the above referenced site. In issuing this Order, the Department took into consideration all available information concerning these violations, including any written response or oral comments submitted on behalf of the owner/operator.

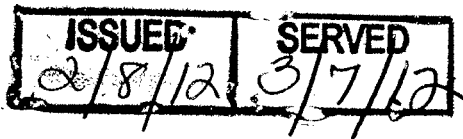
Please be advised that failure to comply with the terms of this Order can result in penalties of up to Twenty-Five Thousand Dollars (\$25,000) per day for each violation as well as possible criminal penalties. Pursuant to Code of Alabama 1975, §22-22A-7(c)(1) this Order may be appealed by filing a request for a hearing before the Environmental Management Commission and should comply with the requirements of ADEM Admin. Code r. 335-2-1-.04. Copies of ADEM Admin. Code Div. 2, Environmental Management Commission regulations, can be viewed or downloaded from the Department's Webpage at <http://www.adem.state.al.us/alEnviroRegLaws/default.cnt> or may be obtained by submitting a request in writing to the ADEM Permits & Services Division.

Should you have any questions concerning this matter, please contact Mr. Lud Hoffmann by email at lh@adem.state.al.us or by phone at (334) 271-7879.

Sincerely,

Ronald W. Gore, Chief
Air Division

RWG/jsg



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:)

Ken Scroggin, d/b/a)

Eager Beavers Tree Service)

Madison, Madison County, Alabama)

Open Burning)

Toney, Madison County, Alabama)

ADMINISTRATIVE
ORDER NO.: 12-066-AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended, the Alabama Department of Environmental Management (hereinafter, the “Department” or “ADEM”) makes the following FINDINGS:

1. Ken Scroggin, d/b/a Eager Beavers Tree Service (hereinafter, “Eager Beavers”) operates a tree trimming/disposal service located in Madison, Madison County, Alabama.

2. 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.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to

administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

3. ADEM Admin Code r. 335-3-3-.01(2)(b)1 states that “the burning must take place on the property on which the combustible fuel originates.”

4. ADEM Admin. Code r. 335-3-1-.04(1) grants the Department the authority to request regulatory compliance information from sources of air pollution.

5. On February 18, 2011, the Department conducted a complaint investigation of open burning in Toney, Madison County, Alabama. The Department observed and documented Eager Beavers open burning imported vegetative waste, in violation of ADEM Admin. Code r. 335-3-3-.01(2)(b)1.

6. On March 6, 2011 the Department mailed a Notice of Violation (NOV) to Eager Beavers for the above violation, requesting a response by April 15, 2011.

7. The Department received an express envelope from Eager Beavers shortly after the NOV response due date, but the envelope was empty, except for a blank sheet of yellow paper.

8. The Department telephoned Eager Beavers and advised that no response was received. Eager Beavers replied that the response was in the envelope. The Department advised Eager Beavers to scan a copy of the response and e-mail it to the Department. The Department did not receive an e-mail containing the scanned NOV response.

9. Department personnel from the Decatur Field Office later telephoned Eager Beavers and asked him to send a copy of the NOV response to the Department’s Decatur and Montgomery offices. Eager Beavers indicated that it would do so, but again the Department received no response to the NOV.

10. Eager Beavers did not respond to the NOV as requested, in violation of ADEM Admin. Code r. 335-3-1-.04(1).

11. On July 14, 2011 the Department mailed a proposed Consent Order to Eager Beavers in an effort to resolve the NOV. A Certified U.S. Mail receipt indicated that the proposed Consent Order was received by Eager Beavers on July 18, 2011.

12. On July 22, 2011 Eager Beavers (Ken Scroggin) telephoned the Department and alleged the following:

A. Eager Beavers obtained a burn permit from the Alabama Forestry Commission (AFC) every time it open burned; therefore it was open burning legally.

B. Eager Beavers only open burned once or twice a year.

C. The response to the original NOV is on a computer at a different house and he will have his wife e-mail it to the Department.

D. He will not agree to pay anything to the Department.

13. On July 25, 2011 Eager Beavers e-mailed a note to the Department and alleged the following:

A. Referenced a "previous letter mailed prior to April 15, 2011".

B. Eager Beavers only burned once or twice a year and always obtained burning permits from the AFC before doing so.

C. Eager Beavers has no idea why it is in violation of any open burning regulations.

D. Eager Beavers has not open burned since being contacted by the Department.

E. Eager Beavers is working towards more recycling of waste wood.

14. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, 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 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 violation continues shall constitute a separate violation. In arriving at this civil penalty (see Attachment A, which is hereby incorporated into these Findings), the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The open burning by Eager Beavers appears to have been habitual over the course of many years and is considered to be serious.

B. THE STANDARD OF CARE: There appeared to be insufficient care taken by Eager Beavers to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Eager Beavers likely derived economic benefit by not engaging in the proper disposal of vegetative waste.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Eager Beavers to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Eager Beavers has no known prior violations of open burning regulations with the Department.

F. THE ABILITY TO PAY: Eager Beavers has not alleged an inability to pay the civil penalty.

ORDER

Based upon the foregoing FINDINGS and pursuant to Ala. Code §§22-22A-5(10), 22-22A-5(12), 22-22-5(18), and 22-28-18 (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Eager Beavers 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 Environment Management by certified or cashier's check and shall be submitted to:

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

B. That immediately upon receipt of this Order and continuing thereafter, Eager Beavers shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01.

C. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent

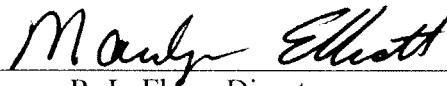
with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. Except as otherwise set forth herein, this 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 Eager Beavers of its obligations to comply in the future with any permit or other written direction from the Department.

E. That, issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Eager Beavers for the violations cited herein.

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

ORDERED and ISSUED this 8th day of February, 2012.



Lance R. LeFleur, Director
Alabama Department of Environmental
Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Ronald W. Gore, do hereby certify that I have served this Administrative Order upon the Person listed below by sending the same, postage paid, through the United States Postal Service as CERTIFIED MAIL NO 7004 1160 0006 6053 3521 with instructions to forward and return receipt, to:

Mr. Ken Scroggin
Eager Beavers Tree Service
106 Cavendish Circle
Madison, Alabama 35758-7437

DONE this the 8th day of Feb., 2012.



Ronald W. Gore
Chief, Air Division
Alabama Department of
Environmental Management

Attachment A

Penalty Calculation Worksheet

**Eager Beavers Tree Service
Madison, Madison County, Alabama**

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Open Burning	1	\$2,500.00	\$500.00	
Failure to Respond to Notice of Violation	1	\$1,500.00		
Totals		\$ 4,000.00	\$ 500.00	\$ -

Economic Benefit \$ 500.00

Mitigating Factors \$ -

Ability to Pay \$ -

Other Factors \$ -

Civil Penalty \$ 5,000.00

Footnotes

*See the "Findings" of the Order for a detailed description of each violation and penalty factors

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Track & Confirm

[GET EMAIL UPDATES](#)**YOUR LABEL NUMBER**

70041160000660533521

SERVICE

First-Class Mail ®

STATUS OF YOUR ITEM

Delivered

DATE & TIME

March 07, 2012, 3:45 pm

LOCATION

HARVEST, AL 35749

FEATURES**Expected Delivery By:**
February 10, 2012
Certified Mail ™
Return Receipt

Notice Left

February 18, 2012, 1:23 pm

HARVEST, AL 35749

Missent

February 16, 2012, 8:46 am

Processed through
USPS Sort Facility

February 16, 2012, 4:15 am

HUNTSVILLE, AL 35813

Forwarded

February 10, 2012, 8:51 am

MADISON, AL

Arrival at Unit

February 09, 2012, 8:50 am

MADISON, AL 35758

Depart USPS Sort
Facility

February 09, 2012

HUNTSVILLE, AL 35813

Processed at USPS
Origin Sort Facility

February 09, 2012, 4:14 am

HUNTSVILLE, AL 35813

Acceptance

February 08, 2012, 11:38 am

MONTGOMERY, AL 36109

Check on Another Item

What's your label (or receipt) number?

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