

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF  
VERNON CUMENS  
PO BOX 82  
HALEYVILLE, AL 35565

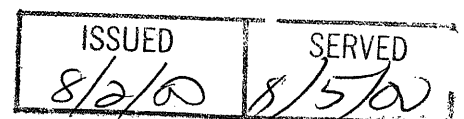
ADMINISTRATIVE  
ORDER NO. 00-171-SW

FINDINGS OF FACT

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 "ADEM" or "the Department") makes the following FINDINGS OF FACT:

1. §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. On December 15, 1999, January 31, 2000 and March 21, 2000 personnel from the Department observed that shingles, construction and demolition debris, furniture, appliances, wood pallets, tires, plastics, glass, and other miscellaneous solid waste had been disposed of on property owned and/or operated by Mr. Vernon Cumens (hereinafter "the Owner/Operator" or "Mr. Cumens") in Winston County, Alabama. Specifically this unauthorized dump (hereinafter "UAD") is located on property owned by Mr. Cumens on Highway 129 Haleyville, Alabama.



3. On December 21, 1999 and February 7, 2000 Notices of Violation (hereinafter "NOV(s)") were sent to Mr. Cumens for the violations at the aforementioned site. As of the date of this Administrative Order Mr. Cumens has not responded to either NOV.

4. Code of Alabama 1975, §22-27-5(c), as amended, requires all solid waste disposal sites to have a permit from the Department. To date, the Owner/Operator has neither applied for nor obtained a permit for the disposal site or properly closed said site in accordance with applicable regulations.

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

6. The Owner/Operator operates or has operated an unpermitted solid waste disposal site located on Highway 129 in Winston County, Haleyville, Alabama in violation of ADEM Admin. Code R. 335-13-5-.01.

7. 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 Code of Alabama 1975, § 22-22A-5(18), 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 Mr. Cumens;
- (c) The economic benefit, which delayed compliance, may confer upon Mr. Cumens;
- (d) The nature, extent and degree of success of Mr. Cumens' efforts to minimize or mitigate the effects of such violation upon the environment;
- (e) Mr. Cumens' history of previous violations;
- (f) Mr. Cumens' ability to pay the assessed penalty.

### **ORDER**

Based on the foregoing FINDINGS OF FACT and pursuant to Code of Alabama 1975 §§ 22-22A-1 to 22-22A-16, and 22-27-1 to 22-27-7, as amended, it is hereby ORDERED:

A. That within thirty (30) days from the receipt of notice of this Order, the Owner will pay to the Department a civil penalty in the amount of One Thousand Dollars (\$1000.00).

B. That the Owner/Operator will upon receipt of notice of this Order immediately and continuing thereafter cease and desist from the unpermitted disposal of solid wastes.

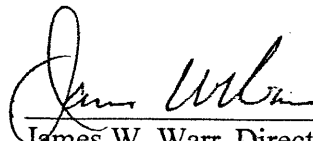
C. That within sixty (60) days from the receipt of notice of this Order, the Owner/Operator shall complete the removal of all unauthorized items at the above-referenced site by :

- 1) Removing all unauthorized waste disposed at this site to the Haleyville Regional Landfill, or
- 2) Close the unauthorized dump out on site in accordance with ADEM Administrative Code R. 335-13-1.13

D. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Owner/Operator for the violations cited herein.

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

ORDERED and ISSUED this 2<sup>nd</sup> day of August, 2000.



James W. Warr, Director  
Alabama Department of  
Environmental Management  
1400 Coliseum Blvd.  
Montgomery, AL 36110-2059  
(334) 271-7700

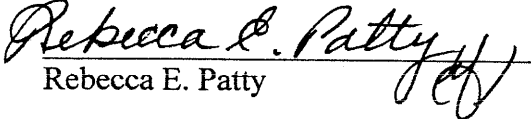
CERTIFICATE OF SERVICE

I, Rebecca E. Patty, hereby certify that I have served Administrative Order No. 00-171-SW upon Mr. Vernon Cumens by sending the same through the United States Mail, as Certified Mail, postage prepaid and addressed as follows:

CERTIFIED MAIL NO. 7099 3400 0002 5747 7068

Mr. Vernon Cumens  
P.O. Box 82  
Haleyville, AL 35565

DONE this 2<sup>nd</sup> day of August, 2000.

  
Rebecca E. Patty