

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



Guy Hunt
Governor

Leigh Pegues, Director

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May 3, 1988

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CERTIFIED MAIL (P 688-150-259)
RETURN RECEIPT REQUESTED

I. Ripon Britton, Jr., Esq.
London, Yancey & Elliott
1230 Park Place Tower
Birmingham, Alabama 35203

Dear Mr. Britton:

Enclosed please find Administrative Order No. 88-054-SW which requires Wright Brothers Construction Company to take certain actions with regard to the unauthorized dump created adjacent to the Eastwood Festival Shopping Center in Birmingham Alabama.

Please be advised that failure to comply with the terms of this Order can result in penalties of up to \$25,000 per day for each violation as well as possible criminal penalties.

If you have any questions, please feel free to contact this office at (205) 271-7855.

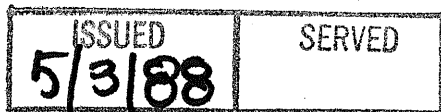
Yours very truly,

Ronald W. Farley
Associate General Counsel

RWF:saw

Enclosure

cc: Jack Honeycutt
Dan Cooper



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

WRIGHT BROTHERS CONSTRUCTION CO.
JEFFERSON COUNTY

ORDER NO. 88-054-SW

FINDINGS OF FACT

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 through 22-22A-16 (1984 & 1987 Cum. Supp.), and the Solid Waste Disposal Act, Code of Alabama 1975, §§ 22-27-1 to 22-27-7 (1984), the Alabama Department of Environmental Management (the "Department") makes the following FINDINGS OF FACT:

1. Commencing on or before April 13, 1988, Wright Brothers Construction Company ("Wright Brothers") arranged for the hauling of demolition debris from Mountain Top Apartments, Birmingham, Alabama.

2. Wright Brothers disposed of the debris by placing it on land nearby owned by Wright Brothers and adjacent to the southwest corner of Eastwood Festival Shopping Center in Birmingham.

3. The debris includes wood, furniture, glass, shingles and metal appliances, materials which constitute "rubbish" as that term is defined in the Alabama Solid Wastes Disposal Act ("the Act"), § 22-27-2, Code of Alabama 1975.

4. Rubbish is included in the definition of "Solid Wastes" as that term is defined in § 22-27-2 of the Act.

5. The term "Solid Wastes" as defined in § 22-27-2 of the Act includes "[a]ll putrescible and nonputrescible discarded materials "with certain exceptions not applicable here.

6. Section 22-27-5(b) of the Act provides that private individuals, corporations, partnerships and other agencies are subject to its terms. Subparagraph (c) of the same section

provides that all solid waste disposal sites except those having certificates of exception shall have a permit from the Department.

7. Wright Brothers did not obtain a permit or certificate of exception before disposing of solid wastes at the site. This disposal, therefore, constitutes a violation of the provisions of the Act.

8. Section 22-27-2 defines "unauthorized dump" to include "any collection of solid wastes either dumped or caused to be dumped or placed on any property" The definition also specifies that such unauthorized dumps shall include " . . . any solid waste disposal site which does not meet the regulatory provisions of this article."

9. Section 22-27-4(b) declares the formation of unauthorized dumps to be a public nuisance per se, a menace to public health and a violation of the article.

10. The disposal of solid wastes without a permit and the creation of an unauthorized dump are serious violations of the Act because such actions threaten to avoid the entire scheme of environmental protection created by the Act. Improper disposal may constitute a source of contamination to the environment. These actions avoid the permitting process which is intended to prevent creation of conditions which could cause long-term environmental damage.

11. The blatant violation of these specific provisions of the Act and the potential for environmental harm both constitute manifest indifference to the purposes of the Act. The effort to avoid proper disposal was also an economic benefit to Wright Brothers because the company thereby avoided the costs of disposal at a permitted disposal site. Wright Brothers has the capability of paying the penalties assessed herein.

ORDER

Based on the foregoing FINDINGS OF FACT and pursuant to Code of Alabama 1975, §§ 22-22A-5(10), 22-22A-5(12), and 22-27-1 through 22-27-7 it is hereby ORDERED:

A. That Wright Brothers shall cease dumping solid wastes at the site immediately upon receipt of this Order.

B. That not later than 30 days from the date of receipt of this Order, Wright Brothers shall either:

1. remove all waste from the site and dispose of the same at a solid waste disposal site permitted by the Department; or
2. submit to the Department evidence of the site's geology, and hydrology sufficient to allow the Department to determine that removal of the material should not be required. Such technical data shall be compiled and submitted with the certification of a Registered Professional Engineer and shall also include a narrative of the process of disposal, including volumes of dirt and other materials not classified as solid wastes which were mixed with the solid wastes prior to and during disposal.

In the event Wright Brothers chooses the alternative numbered "2" above and the Department determines that the evidence presented is not sufficient to assure protection of public health and the environment, Wright Brothers must, immediately upon receipt of notice of that determination, commence removal of the material as required in alternative "1" above.

C. That in the event Wright Brothers is required to remove the material from the site, not later than 45 days from commencement of removal, Wright Brothers shall return the site to its condition prior to use as a dump, specifically taking

precautions to prevent siltation or discharge into nearby water courses caused by Wright Brothers' activities at the site.

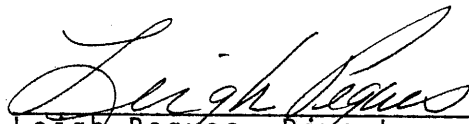
D. That not later than 30 days of receipt of notice of this Order, Wright Brothers shall pay civil penalties as follows:

1. For the formation of an unauthorized dump, a continuing nuisance per se dating from April 13, through April 15, a penalty in the amount of \$500.00 per day; and
2. For the creation of a solid waste disposal site without a permit, a fine of \$2,500.00.

E. That Wright Brothers' failure to comply fully with the terms of this Order shall constitute cause for the Department to pursue all legal remedies against him.

F. That issuance of this Order does not preclude the Department from seeking criminal fines, civil penalties or other appropriate sanctions or relief against Wright Brothers for the violations stated herein.

ORDERED and ISSUED this 3rd day of May, 1988.

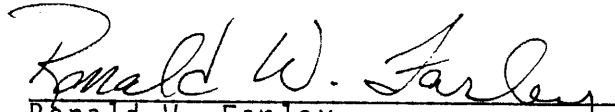

Leigh Pegues, Director
Alabama Department of
Environmental Management
1751 Federal Drive
Montgomery, Alabama 36130
(205) 271-7700

CERTIFICATE OF SERVICE

I, Ronald W. Farley, hereby certify that I served a copy of Order Number 88-054-SW upon Wright Brothers Construction Company by sending the same, postage paid, through U.S. Mail, as Certified Mail No. P-688-150-259 with instructions to forward and return receipt requested to:

I. Ripon Britton, Jr.
London, Yancey & Elliott
1230 Park Place Tower
Birmingham, Alabama 35203

DONE this 3rd day of May, 1988.



Ronald W. Farley
Associate General Counsel