

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
Regeneration, LLC)
1635 10th Place)
Alexander City, Tallapoosa County, Alabama)

****Proposed****
ADMINISTRATIVE
ORDER NO: 16-_____ 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.), the Alabama Department of Environmental Management (hereinafter, the "Department" and/or "ADEM") Administrative Code of Regulations (hereinafter, "ADEM Admin. Code R.") promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended, the Department makes the following FINDINGS:

- 1. Regeneration, LLC (hereinafter, "Regeneration") is a salvage material for sale company that operates in Alexander City, Tallapoosa 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.).

4. ADEM Admin. Code r. 335-3-3-.01(2)(b)4 states: "Only vegetation and untreated wood may be burned. It is unauthorized to open burn heavy oils, asphalt products, plastics, vinyl materials, insulation, paper, cardboard, natural or synthetic rubber, salvage or scrap materials, chemicals, garbage, treated or painted wood, or any trash;"

5. On January 9, 2016, the Department conducted an inspection of a demolition project being conducted on the Former Russell Campus located in Alexander City. Department personnel observed a large burn pile of demolition debris that included, but was not limited to: a tree, various types of finished and unfinished wood, bricks, metals, plastics, shingles, and insulation. The Department followed up on the inspection by contacting Roy Granger, Managing Member of Regeneration and requested that the illegal open burning of the construction material to cease immediately. He responded that Regeneration would cease illegal open burning of the debris.

7. On January 19, 2016, the Department issued a notice of violation (NOV) to Regeneration.

8. On February 17, 2016, the Department received a response to the NOV from Regeneration indicating the non-compliant open burning occurred at the site "...off and on for two years."

9. 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, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Regeneration has conducted illegal open burning of unapproved waste at the Former Russell Campus demolition site for two years. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Regeneration to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01(2)(b)4.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Regeneration likely derived economic benefit by not legally disposing of waste created in the normal operations of its business.

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

E. HISTORY OF PREVIOUS VIOLATIONS: Regeneration has admitted to violating the Alabama Open Burning Regulations at this site since 2014.

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

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty

herein is appropriate (*See* "Attachment A", which is hereby incorporated into these Findings.)

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, Regeneration 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, Regeneration shall ensure immediate and future compliance with this Order by ceasing to open burn unapproved material, in violation of ADEM Admin. Code r. 335-3-3-.01(2)(b)4.

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 Regeneration 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 Regeneration 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 Regeneration for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, 2016.

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

PROPOSED ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Ronald W. Gore, do hereby certify that I have served this Proposed Administrative Order upon the Person listed below by sending the same, postage paid, through the United States Mail 91 7199 9991 7030 3447 8042 with instructions to forward and return receipt, to:

Roy Granger, Managing Member
Regeneration, LLC
1635 10th Place
Alexander City, Alabama 35010

DONE this, the 30th day of March, 2016.



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

ATTACHMENT A

Regeneration, LLC
Alexander City, Tallapoosa County, Alabama

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Burning of Demolition Waste	1	\$1,500	\$1,500	\$500
				0
				0
				0
Totals		\$		

Economic Benefit \$1,500

Mitigating Factors

Ability to Pay

Other Factors

Civil Penalty \$5,000.00

** See the "Department's Findings" portion of the Order for a detailed description of each violation and the penalty factors.*