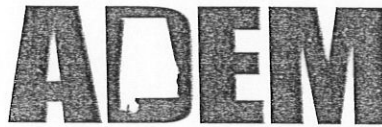


LANCE R. LEFLEUR  
DIRECTOR



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

June 9, 2016

**CERTIFIED MAIL NO. 91 7199 9991 7032 3112 5084**  
**RETURN RECEIPT REQUESTED**

Bob Dudley  
Dudley Hardwoods, LLC  
107 Jenkins Road  
Opelika, AL 36804

Dear Mr. Dudley:

**RE: Consent Order No. 16-062-CAP**  
**Facility No. 211-DHRD**

Please find enclosed ADEM Consent Order No. **16-062-CAP** which requires Dudley Hardwoods, LLC, to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of Dudley Hardwoods, LLC, and the Department. Please note that the assessed civil penalty is due within 45 days of the effective date of the Order.

If you have any questions concerning this matter, please contact Corey Ohme at (334) 271-7883 in Montgomery.

Sincerely,

Ronald W. Gore, Chief  
Air Division

Enclosure

RWG/RWB

cc: ADEM Office of General Counsel (w/ enclosure)

91 7199 9991 7032 3112 5084

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  
3664 Dauphin Street, Suite B  
Mobile, AL 36608  
(251) 304-1176  
(251) 304-1189 (FAX)

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

<hr/>	)	
	)	
<b>Dudley Hardwoods, LLC</b>	)	
Hatchechubbee, Russell County, Alabama	)	<b>CONSENT ORDER NO. <u>16-062-CAP</u></b>
	)	
<hr/>	)	

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” or “ADEM”) and Dudley Hardwoods, LLC, 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.

***STIPULATIONS***

1. Dudley Hardwoods, LLC (hereinafter, “Dudley”) owns and plans to operate a proposed hardwood sawmill (hereinafter, the “Facility”), which was formerly a wood preservation facility known as Walker-Williams Lumber Company, located at 687 Alabama Highway 26 near the Town of Hatchechubbee, Russell 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 requires that no person shall ignite, cause to be ignited, permitted to be ignited, or maintain any open fire at any time unless it is for one of several approved reasons listed in ADEM Admin. Code r. 335-3-3-.01.

5. 40 CFR §61.145 (a) requires that a subject building be thoroughly inspected for the presence of asbestos prior to demolition.

6. 40 CFR §61.145 (b) Requires that a written notification be submitted to ADEM ten working days prior to demolition.

7. ADEM Admin. Code r. 335-3-11-.01 incorporates by reference 40 CFR 61.

#### ***DEPARTMENT'S CONTENTIONS***

8. On February 3, 2016, the Department received a citizen complaint about fire and smoke originating from the Facility.

9. On February 4, 2016, the Department initiated an investigation of the complaint received on February 3, 2016 and during an inspection of the Facility the same day, Department personnel observed open burning of prohibited materials in progress. The prohibited materials consisted of wood residuals and construction materials that were actively burning and smoking. A Dudley representative onsite informed Department personnel that the burn pile contained debris from the former office building and other plywood buildings located at the Facility. The Department has yet to receive written notification from Dudley that these structures were inspected by an accredited inspector for the presence of asbestos before their destruction.

10. On February 10, 2016, the Department issued a Notice of Violation ("NOV") to Dudley Land & Timber Company, Inc., the entity listed as the current owner of the property at

the Russell County Tax Assessor's Office, for open burning of prohibited materials, failure to inspect the Facility for asbestos before destruction, and failure to notify the Department of the required inspection before destruction, in violation of ADEM Admin. Code rs. 335-3-3-.01 and 335-3-11-.01.

11. On February 17, 2016, the Department received a response to the February 17<sup>th</sup> NOV from a third party environmental consultant on behalf of Dudley. The response addressed the Department's listed concerns, which included a detailed summary about the future of the Facility that listed Bob Dudley of Dudley Hardwoods, LLC as the responsible official for the Facility.

12. 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:

(1) Open burning results in emissions of fine particulate matter (PM<sub>2.5</sub>). Open burning also results in emissions of volatile organic compounds (VOC) and nitrogen oxides

(NO<sub>x</sub>), which are precursors for the formation of ground-level ozone. The practice of open burning can affect an area's ability to comply with the National Ambient Air Quality Standard (NAAQS) for PM<sub>2.5</sub> and Ozone. Therefore, the Department considers this to be a serious violation.

(2) The Department considers Dudley's failure to have the Facility inspected for asbestos and failure to submit a written notification of demolition a serious violation because this requirement provides the Department the opportunity to inspect the property and verify the presence of asbestos and amount, if any.

B. THE STANDARD OF CARE: Dudley did not exhibit the required standard of care in that it allowed construction materials, possibly containing asbestos, to be ignited and did not exhibit the required standard of care to ensure that applicable procedures were followed.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any economic benefits as a result of the alleged violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any environmental effects to mitigate as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: Dudley has no enforcement history with the Department at this Facility.

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

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this

matter amicably, without incurring the unwarranted expense of litigation.

13. 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, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (*See* “Attachment A”, which is made a part of the Department’s contentions).

14. The Department neither admits nor denies Dudley Hardwoods, LLC’s contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### ***DUDLEY’S CONTENTIONS***

15. Dudley neither admits nor denies the Department’s contentions. Dudley consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

#### ***ORDER***

THEREFORE, Dudley, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six 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 determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the

Department and Dudley agree to enter into this ORDER with the following terms and conditions:

A. Dudley agrees to pay to the Department a civil penalty in the amount of \$5,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Dudley agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

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

C. Dudley agrees to remove and properly dispose of the ash and any unburned material associated with the burn pile within thirty days of the effective date of this Consent Order.

D. Dudley agrees that prior to the demolition of any additional structures at the Facility, an inspection of the structure(s) will be conducted by a qualified asbestos inspector in accordance with 40 CFR Part 61, Subpart M, upon the effective date of this Consent Order and continuing everyday thereafter.

E. Dudley agrees to comply with all requirements of ADEM Administrative Code div. 335-3 immediately upon the effective date of this Consent Order and continuing every day thereafter.

F. The parties agree that this Consent Order shall apply to and be binding upon both

parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

G. The parties agree that this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, is intended to operate as a full resolution of the violations which are cited in this Consent Order.

H. Dudley agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. For purposes of this Consent Order only, Dudley agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Dudley also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Dudley shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Dudley, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Dudley) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed



extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Dudley, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

J. The Department and Dudley agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Dudley shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

K. The Department and Dudley agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Dudley does hereby waive any hearing on the terms and conditions of same.

L. The Department and Dudley agree that this Order shall not affect Dudley's obligation to comply with any Federal, State, or local laws or regulations.

M. The Department and Dudley agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

N. The Department and Dudley agree 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.

O. The Department and Dudley agree that any modifications of this Order must be agreed to in writing signed by both parties.

P. The Department and Dudley agree that, 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 Dudley of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**DUDLEY HARDWOODS, LLC**

JR Dudley Jr  
(Signature of Authorized Representative)

JR Dudley Jr  
(Printed Name)

member manager  
(Printed Title)

4-15-16  
Date Signed

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

Lance R. LeFleur  
Lance R. LeFleur  
Director

06/09/2016  
Date Executed

**Attachment A**

**Dudley Hardwoods, LLC  
Hatchechubbee, Russell County**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>	
Open Burning	1	\$2,000	\$500		
Lack of Asbestos Inspection	1	\$1,000	\$250		
Lack of Notification of Demolition	1	\$1,000	\$250		
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$4,000</b>	<b>\$1,000</b>	<b>\$0</b>	<b>\$5,000</b>

<b>Adjustments to Amount of Initial Penalty</b>	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
<b>Total Adjustments (+/-) Enter at Right</b>	<b>\$0</b>

<b>Economic Benefit (+)</b>	
<b>Amount of Initial Penalty</b>	<b>\$5,000</b>
<b>Total Adjustments (+/-)</b>	<b>\$0</b>
<b>FINAL PENALTY</b>	<b>\$5,000</b>

Footnotes

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