

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

December 6, 2011

91 7108 2133 3935 0328 5573

**CERTIFIED MAIL NO.**  
**RETURN RECEIPT REQUESTED**

N.E. Nelson Properties LLC  
860 Brookstone Corner Parkway Suite B  
Columbus, Georgia 31904

Dear Property Owner:

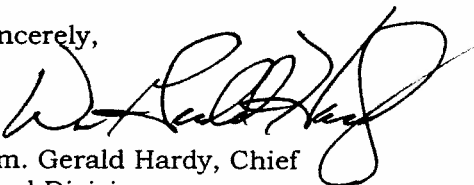
**RE: Order No. 12-033-SW**

Please find enclosed ADEM Order No. 12-033-SW which requires you to take certain actions in regard to alleged violations of the Solid Wastes and Recyclable Materials Management Act. This Order underwent a 30 day public notice and no comments were received by the Department. Please note that the assessed civil penalty is due within 45 days, and an abatement plan is due within 30 days of the issuance date of the Order.

Pursuant to Code of Alabama 1975, §22-22A-7(c)(1), as amended, this Order may be appealed by filing a request for a hearing before the Environmental Management Commission which should comply with the requirements of ADEM Admin. Code chap. 335-2-1.

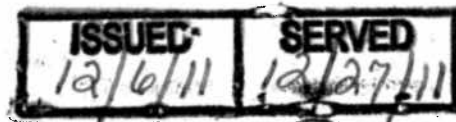
If you have any questions concerning this matter, please contact Hunter Mathews at (334) 274-4233 in Montgomery.

Sincerely,

  
Wm. Gerald Hardy, Chief  
Land Division

Enclosure

WGH/hwm



**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: )

Order No. 12 -033 -SW

N.E. Nelson Properties LLC )  
CR-4 )  
Seale, Alabama )  
Russell County )  
\_\_\_\_\_ )

FINDINGS OF FACTS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2010 Cum. Supp.), and the ADEM Administrative Code promulgated hereunder, the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) makes the following finding of facts:

1. N.E. Nelson Properties LLC is the owner of property located off of CR-4 in Seale, Russell County, Alabama, which is the subject of this administrative order.
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.) and Ala. Code § 22-27-9(a) (2006 Rplc. Vol. and 2010 Cum. Supp.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18 (2006 Rplc. Vol. and 2010 Cum. Supp.).

4. Ala. Code §22-27-2(36) (2006 Rplc. Vol. and 2010 Cum. Supp.) defines an “unauthorized dump” as “any collection of solid wastes either dumped or caused to be dumped or placed on any public or private property, whether or not regularly used, and not having a permit from the Department.”

5. Ala. Code § 22-27-4(b) (2006 Rplc. Vol. and 2010 Cum. Supp.) states the following: “The creation, contribution to, or operation of unauthorized dumps shall be prohibited, removed, enjoined...”

6. Ala. Code § 22-27-10(b) (2006 Rplc. Vol. and 2010 Cum. Supp.) states the following: “The creation, contribution to, or operation of an unauthorized dump is declared to be a public nuisance per se, a menace to public health, and a violation of this article.”

7. ADEM Admin. Code r. 335-13-1-.13 (1) (a) prohibits open or unauthorized dumps.

8. On January 19, 2011, Department personnel conducted an inspection and documented the existence of an unauthorized solid waste dump (hereinafter “UAD”) located on the property of N.E. Nelson Properties LLC off of CR-4, Seale, Russell County, Alabama. The UAD consisted of Construction/Demolition wastes. Property ownership was determined by a review of Russell County records.

9. On February 11, 2011, the Department issued a Notice of Deficiency (hereinafter “NOD”) to N.E. Nelson Properties LLC for an UAD.

10. The Department did not receive a response to the February 11, 2011 NOD.

11. On April 4, 2011, the Department issued a Notice of Violation (hereinafter "NOV") to N.E. Nelson Properties LLC requiring abatement and closure of the UAD and the submittal of associated documentation.

12. The Department has not received a response to the April 4, 2011 NOV.

13. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), 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 a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: N.E. Nelson Properties LLC did not comply with the requirements applicable to solid waste disposal. The Department is unaware of any irreparable harm to the environment, any immediate threat to human health, or the safety of the public as a result of these violations.

B. THE STANDARD OF CARE: N.E. Nelson Properties LLC failed to abide by the applicable solid waste requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if N.E. Nelson Properties LLC has realized a significant economic benefit as a result of the violations noted.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any attempts by N.E. Nelson Properties LLC to mitigate potential effects upon the environment and human health that may have been created as a result of the unauthorized solid waste dump..

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is unaware of previous violations of applicable solid waste requirements.

F. THE ABILITY TO PAY: N.E. Nelson Properties LLC 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 (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$5,000.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UAD, as follows (see attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Unauthorized Solid Waste Dump	\$0 - \$25,000

## **ORDER**

Based on the foregoing findings of fact and pursuant to Ala. Code, §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7, and 22-27-11 it is hereby ordered:

A. That, not later than forty-five days after issuance of this Order, N.E. Nelson Properties LLC shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations cited herein. The penalty 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

All checks shall reference N.E. Nelson Properties LLC's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon the issuance of this Order and continuing each and every day thereafter, N.E. Nelson Properties LLC shall cease and desist from operating an UAD.

C. That, within thirty days of the issuance of this Order, N.E. Nelson Properties LLC shall submit an abatement plan to the Department in accordance with ADEM Admin. Code div. 335-13. This plan shall include a schedule for abatement completion N.E. Nelson Properties LLC shall document abatement activities by submitting the following to the Department within thirty days of abatement completion:

1. Time period in which the abatement activities occurred.

2. Total volume of waste removed from the property.
3. Documentation that all regulated waste, to include both surface and subsurface waste, was removed from the property.
4. A copy of waste receipts documenting that all regulated waste was taken to a permitted landfill.
5. Photographs of the site, before, during, and after abatement.
6. Documentation that adequate sedimentation controls were employed to prevent erosion from disturbed areas resulting from the remediation activities.
7. Documentation that the site has been secured to prevent any future illegal dumping.

D. 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.

E. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against N.E. Nelson Properties LLC for the violations cited herein.

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

ORDERED and ISSUED this 6<sup>th</sup> day of December, 2011.

A handwritten signature in black ink, appearing to read "Lance R. LeFleur", written over a horizontal line.

Lance R. LeFleur  
Director



# ATTACHMENT A

## Penalty Synopsis

**N.E. Nelson Properties LLC**  
**CR-4**  
**Seale, Alabama**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation &amp; Base Penalty*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
ADEM Admin Code r. 335-13-1-.13 (1) (a) declares that open or unauthorized dumps are prohibited.	1	\$4,000	\$1,000	\$0
<b>Totals:</b>	1	\$4,000	\$1,000	\$0

Economic Benefit\*: \$0  
Mitigating Factors\*: \$0  
Ability to Pay\*: \$0  
Other Factors\*: \$0

**Total Civil Penalty: \$5,000**

### Footnotes

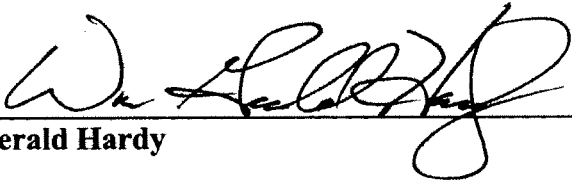
\* See the "Findings" of the Order for a detailed description of each violation and the penalty factors

**ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE**

**I, Wm. Gerald Hardy, hereby certify that I have this date served the foregoing Administrative Order upon the person listed below by regular United States Mail, properly addressed and postage prepaid to:**

**N.E. Nelson Properties LLC  
860 Brookstone Corner Parkway Suite B  
Columbus, Georgia 31904**

Done this 6<sup>th</sup> day of December, 2011.

  
\_\_\_\_\_  
Wm. Gerald Hardy

[English](#)[Customer Service](#)[USPS Mobile](#)[Register / Sign In](#)[Search USPS.com or Track Packages](#)[Quick Tools](#)[Ship a Package](#)[Send Mail](#)[Manage Your Mail](#)[Shop](#)[Business Solutions](#)

## Track & Confirm

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

9171082133393503285573

**SERVICE****STATUS OF YOUR ITEM****DATE & TIME****LOCATION****FEATURES**

Delivered

December 27, 2011, 1:41 pm

COLUMBUS, GA 31901

Certified Mail™  
Return Receipt  
Electronic

Notice Left

December 27, 2011, 7:28 am

COLUMBUS, GA 31902

Processed through  
USPS Sort Facility

December 23, 2011, 12:40 am

COLUMBUS, GA 31907

**Check on Another Item**

What's your label (or receipt) number?

**LEGAL**[Privacy Policy](#) ›  
[Terms of Use](#) ›  
[FOIA](#) ›  
[No FEAR Act EEO Data](#) ›**OTHER USPS SITES**[Business Customer Gateway](#) ›  
[Postal Inspectors](#) ›  
[Inspector General](#) ›  
[Postal Explorer](#) ›**ON USPS.COM**[Government Services](#) ›  
[Buy Stamps & Shop](#) ›  
[Print a Label with Postage](#) ›  
[Customer Service](#) ›  
[Site Index](#) ›**ON ABOUT.USPS.COM**[About USPS Home](#) ›  
[Newsroom](#) ›  
[Mail Service Updates](#) ›  
[Forms & Publications](#) ›  
[Careers](#) ›

Copyright© 2011 USPS. All Rights Reserved.




Date: 12/28/2011

VALERIE JACKSON:

The following is in response to your 12/28/2011 request for delivery information on your Certified Mail(TM) item number 7108 2133 3935 0328 5573. The delivery record shows that this item was delivered on 12/27/2011 at 01:41 PM in COLUMBUS, GA 31901. The scanned image of the recipient information is provided below.

Signature of Recipient:

  
Michael Eddings

Address of Recipient:

807

Thank you for selecting the Postal Service for your mailing needs. If you require additional assistance, please contact your local Post Office or postal representative.

Sincerely,

United States Postal Service