ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	
Russell Excavating LLC **0 Alabama Highway 79 UAD** **Scottsboro, AL 35769** **Scottsboro, Marshall County, Alabama**	Order No. XX-XXX-SW

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, *as amended*; the Solid Wastes and Recyclable Materials Management Act (SWRMMA), Ala. Code §§ 22-27-1 to 22-27-18, *as amended*; and the Alabama Department of Environmental Management's ("ADEM" or "Department") Administrative Code of Regulations ("ADEM Admin. Code r.") promulgated pursuant thereto, the Department makes the following FINDINGS:

1. Russell Excavating, LLC ("Russell Excavating") operates a demolition and excavation business and chert pit on the real property located off 0 Alabama Highway 79, which is further identified as Parcel ID Number 0608270002001001, in Scottsboro, Marshall County, Alabama ("the Site").

2. Pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, *as amended*, the Department is a duly constituted department of the State of Alabama.

3. Pursuant to Ala. Code § 22-22A-4(n), *as amended*, and Ala. Code § 22-27-9(a), *as amended*, the Department is the state agency authorized to administer and enforce the provisions of the SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, *as amended*.

4. Pursuant to Ala. Code § 22-27-2(38), *as amended*, and ADEM Admin. Code r. 335-13-1-.03(146), an unauthorized dump ("UAD") is defined 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. Pursuant to ADEM Admin. Code rs. 335-13-1-.13(1)(a) and (2),

unauthorized dumps are prohibited and must be closed in a manner determined to be necessary by the Department.

6. Pursuant to Ala. Code § 22-27-10(b), *as amended*, and ADEM Admin. Code r. 335-13-11-.03(2), the person or persons responsible for the creation, contribution to, and/or operation of an unauthorized dumpsite shall be responsible for the remediation of the site. If the responsible person or persons is not determined, the landowner shall be responsible for remediation of the site, unless the landowner qualifies as an innocent landowner as defined in ADEM Admin. Code r. 335-13-1-.03(75).

7. On February 27, 2025, in response to a complaint, the Department commenced an investigation that included a site inspection and a review of relevant records. During the investigation, the following was noted:

A. On February 27, 2025, approximately 200 cubic yards of regulated solid waste were discovered openly dumped at the Site. The waste consisted of construction/demolition waste.

B. The disposal area was not permitted as a land disposal facility by the Department, as required under ADEM Admin. Code ch. 335-13-5.

C. According to Marshall County property tax records, at the time of the inspection, Shane and Leanne Russell were the owners of the Site.

D. The disposal of the aforementioned regulated solid waste at the Site, without a valid solid waste disposal facility permit issued by the Department, constitutes the creation of an unauthorized dump, which violates rules 335-13-1-.13(1) and 335-13-1-.13(2), for which Russell Excavating is responsible.

8. On December 11, 2025, and again on December 17, 2025, Department personnel conducted two follow-up inspections at the Site and observed that the UAD was still present. During the second follow-up inspection, it was noted that the amount of regulated waste disposed of had been reduced to approximately 100 cubic yards.

9. On January 13, 2026, the Department issued Russell Excavating a Notice of Violation (NOV) by the United States Postal Service ("USPS") Certified Mail, requiring

complete remediation and closure of the UAD. According to the USPS online tracking system, the NOV was delivered on February 25, 2026.

10. On June 10, 2026, Department personnel conducted a site inspection and observed that the UAD remained and seemed to be unabated.

11. To date, the Department has not received a response to the NOV from Russell Excavating.

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 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed $250,000. 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: The creation, contribution to, or operation of a UAD is inherently a public nuisance, a threat to public health, and a threat to the environment. However, the Department is not aware of any irreparable harm to the environment, or any immediate threat to human health or the safety of the public due to the UAD's presence at the Site.

B. THE STANDARD OF CARE: Upon evaluating the standard of care demonstrated by Russell Excavating, the Department noted that the violations referred to herein were non-technical and easily avoidable. As a result, Russell Excavating has not demonstrated a standard of care that aligns with the relevant regulatory standards specified in ADEM Admin. Code div. 335-13 and the

Department's directives concerning the appropriate disposal of regulated solid waste.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that Russell Excavating has obtained a significant economic benefit by avoiding the expenses associated with disposing of the aforementioned regulated solid waste in an approved landfill unit. It is estimated that they have achieved an economic benefit of approximately $1,789 by not disposing of the regulated solid waste at the closest construction/demolition landfill.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of efforts by Russell Excavating to mitigate any potential adverse effects upon the environment, human health, or public safety that may have been caused as a result of the UAD.

E. HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Russell Excavating does not appear to have a documented history of violations of the applicable requirements of ADEM Admin. Code div. 335-13.

F. THE ABILITY TO PAY: The Department has no evidence indicating Russell Excavating's inability to pay the civil penalty assessed herein.

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 other factors, and has concluded that a civil penalty is appropriate for the violation cited herein (see Attachment A, which is made a part of the Department's FINDINGS).

ORDER

Based on the foregoing FINDINGS 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, *as amended*, it is hereby ORDERED:

A. That, no later than forty-five days of the receipt of this Order, Russell Excavating shall pay the Department a civil penalty of $19,789 for the violations cited herein. The penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment acceptable to the Department and shall be remitted to:

Office of General Counsel

Alabama Department of Environmental Management

P.O. Box 301463

Montgomery, Alabama 36130-1463

All payments shall reference Russell Excavating's name and address and the ADEM Administrative Order number of this action.

B. That, immediately upon receipt of this Order and continuing each and every day thereafter, Russell Excavating shall cease and desist from creating, operating, or contributing to any UADs.

C. That, within thirty days of receipt of this Order, Russell Excavating shall submit a site closure plan ("Plan") to the Department in accordance with ADEM Admin. Code r. 335-13-1-.13(2)(b)1. This Plan shall include a description of the actions Russell Excavating intends to take to remove all regulated solid waste from the Site and deposit it in an approved landfill unit or at a registered recycling facility. The Plan shall include a timeline for the completion of all remediation and closure actions. Unless otherwise directed by the Department, Russell Excavating shall implement the Plan as presented

and comply with all applicable requirements of Division 335-13 of the ADEM Admin. Code.

D. That, within fifteen days of completion of all remediation and closure actions, Russell Excavating shall provide the following information to the Department as proof that all remediation and closure actions have been completed:

1. The period during which the remediation and closure actions took place.

2. Total volume of regulated solid waste removed from the Site.

3. Documentation confirming that all regulated solid waste, including both surface and subsurface waste, was removed from the Site.

4. Copies of receipts showing that all regulated waste was taken to an approved landfill or registered recycling facility.

5. Photographs of the solid waste disposal area(s) at the Site taken before and after remediation.

6. Documentation confirming that the UAD was properly closed to prevent erosion on the Site, if applicable.

7. Documentation confirming that the Site has been secured to prevent any future illegal dumping, if applicable.

E. 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.

F. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Russell Excavating for the violations cited herein.

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

ORDERED and ISSUED this _____ day of _____, 2026.

_____

Edward F. Poolos

Director

Attachment A

Russell Excavating LLC

0 Alabama Highway 79

Scottsboro, Marshall County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Creation of an Unauthorized Dump	2	$10,000	$8,000	$0	Total of Three Factors
TOTAL PER FACTOR		$10,000	$8,000	$0	$18,000

Adjustments to Amount of Initial Penalty*	
Mitigating Factors (-)	$0
Ability to Pay (-)	$0
Other Factors (+/-)	$0
	$0

Economic Benefit (+) *	$1,789
Amount of Initial Penalty	$19,789
Total Adjustments (+/-)	$0
FINAL PENALTY	**$19,789**

Footnotes

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