

LANCE R. LEFLEUR
DIRECTOR



Alabama Department of Environmental Management
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(334) 271-7700 ■ FAX (334) 271-7950

BOB RILEY
GOVERNOR

January 4, 2011

CERTIFIED MAIL NO 91 7108 2133 3936 5740 3946
RETURN RECEIPT REQUESTED

Honorable Jack Bunn, Chairman
Chambers County Commission
2 LaFayette Street
LaFayette, AL 36862

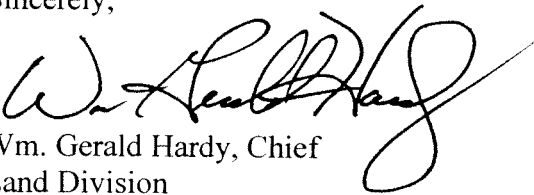
Dear Chairman Bunn:

RE: Consent Order No. 11-044-CSW

Please find enclosed ADEM Consent Order No. 11-044-CSW which requires you to take certain actions in regard to alleged violations of the Solid Wastes and Recyclable Materials Management Act. This Order has been issued with the consent of you and the Department. Please note that the assessed civil penalty is due within 180 days of the effective date of the Order.

If you have any questions concerning this matter, please contact David Hamilton at (334) 274-4249 or via e-mail at dhamilton@adem.state.al.us.

Sincerely,


Wm. Gerald Hardy, Chief
Land Division

Enclosure

WGH/dh

Filenet: 02692 09-02 017 201101004 ENFS Chambers County C/D LF Consent Order

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:)	
)	
Chambers County Commission)	Consent Order No. 11-044-CSW
Solid Waste Permit No. 09-02)	
2 LaFayette Street)	
LaFayette, Alabama 36862)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and Chambers County Commission (hereinafter “the Permittee”) 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 Act (SWRMMA), Ala. Code §§ 22-27-1 through 22-27-18 (2006 Rplc. Vol. and 2009 Cum. Supp.).

STIPULATIONS

1. 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.).

2. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.) and Ala. Code § 22-27-9(a) (2006 Rplc. Vol. and 2009 Cum Supp.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Act (SWRMMA), Ala. Code §§ 22-27-1 through 22-27-18 (2006 Rplc. Vol. and 2009 Cum. Supp.).

3. On December 4, 1995, the Department issued Solid Waste Disposal Permit Number 09-02 (hereinafter, "the Permit") to the Chambers County Commission (hereinafter, "the Permittee") for the operation of a construction/demolition landfill (hereinafter, the "landfill" or "facility") located at 7245 Veterans Memorial Parkway in Lanett, Alabama. A renewal permit was issued to the Permittee on the following dates: October 22, 2002 and February 24, 2009.

4. On October 25, 2006, Department personnel inspected the Permittee's landfill for compliance with the ADEM Administrative Code. During the inspection, the following violation was documented:

a. ADEM Admin. Code r. 335-13-4-.23(1)(a)1 requires that a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter, and scavenging. At the time of inspection, Department personnel documented that waste had not been covered weekly.

5. On October 30, 2006, the Department issued a Notice of Violation (hereinafter "NOV") to the Permittee for the violations documented during the October 25, 2006, inspection.

6. On November 20, 2006, the Department received a response to the October 30, 2006, NOV from the Permittee.

7. On October 19, 2007, Department personnel inspected the Permittee's landfill to determine compliance with the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin. Code r. 335-13-4-.17(3) requires that all facilities must design, construct and maintain onsite drainage structures. Run-off must be routed to a settling basin or other specifically designed sedimentation control structures to remove sediment prior to release onto adjacent properties or waters. At the time of

inspection, Department personnel documented that sediment was not being routed to a sedimentation control structure and was leaving the permitted site.

b. ADEM Admin. Code r. 335-13-4-.21(1)(b) requires that waste accepted at the facility shall be strictly controlled so as to allow only waste stipulated on the permit or otherwise as may be approved by the Department. At the time of inspection, Department personnel documented that the Permittee had disposed of industrial waste, which is not an approved waste stream for this landfill.

c. ADEM Admin. Code r. 335-13-4-.23(1)(a)1 requires that a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter, and scavenging. At the time of inspection, Department personnel documented that waste had not been covered weekly.

d. ADEM Admin. Code r. 335-13-4-.23(1)(c) requires that all waste shall be confined to a small an area as possible and placed onto an appropriate slope not to exceed 4 to 1 (25%) or as approved by the Department. At the time of inspection, Department personnel documented that waste was not confined to a small area.

e. ADEM Admin. Code r. 335-13-4-.23(2)(c) requires that all completed sites or portions of sites shall be properly closed as provided by this Division and approved facility plans. At the time of inspection, Department personnel documented significant erosion had occurred exposing waste on a completed area.

8. On October 29, 2007, the Department issued a NOV to the Permittee for the violations documented during the October 19, 2007, inspection.

9. The Department did not receive a response to the October 29, 2007, NOV from the Permittee.

10. On November 5, 2008, Department personnel inspected the Permittee's landfill to determine compliance with the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin. Code r. 335-13-4-.23(1)(a)1 requires a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter, and scavenging. At the time of inspection, Department personnel documented that waste had not been covered weekly.

b. ADEM Admin. Code r. 335-13-4-.23(1)(c) requires that all waste shall be confined to as small an area as possible and placed onto an appropriate slope not to exceed a 4 to 1 ratio or as approved by the Department. At the time of inspection, Department personnel documented that the working face slope exceeded a 4 to 1 ratio and that waste was not confined to one area.

c. ADEM Admin. Code r. 335-13-4-.21(1)(b) requires that waste accepted at the facility shall be strictly controlled so as to allow only waste stipulated on the permit or otherwise as may be approved by the Department. At the time of inspection, Department personnel documented that the Permittee had disposed of electronics waste and paint waste, which are not approved waste streams for this landfill.

d. ADEM Admin. Code r. 335-4-.23(2)(c) requires completed sites or portions of sites shall be properly closed as provided by this Division and approved facility plans. At the time of inspection, Department personnel documented that major erosion had occurred exposing waste on a completed cell.

11. On November 14, 2008, the Department issued a NOV to the Permittee for violations documented during the November 5, 2008 inspection.

12. On December 19, 2008, the Department received a response to the November 14, 2008 NOV from the Permittee.

13. On June 3, 2009, Department personnel inspected the Permittee's landfill to determine compliance with the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin. Code r. 335-13-4-.17(2) requires that that a run-off control system from the active and/or closed portions of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. At the time of inspection, Department personnel documented that the Permittee had failed employ adequate sedimentation control measures near the back side of the berm at the toe of the slope.

b. ADEM Admin. Code r. 335-4-.23(2)(c) requires completed sites or portions of sites shall be properly closed as provided by this Division and approved facility plans. At the time of inspection, Department personnel documented completed portions of the landfill had exposed waste.

14. On July 2, 2009, the Department issued a NOV to the Permittee for violations documented during the June 3, 2009, inspection.

15. On August 21, 2009, the Department issued a Failure to Respond letter to the Permittee requesting a response to the July 2, 2009, NOV.

16. On October 1, 2009, the Department received a response to the July 2, 2009NOV from the Permittee.

17. On September 3, 2009, Department personnel inspected the Permittee's landfill to determine compliance with the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin. Code r. 335-13-4-.17(2) requires that that a run-off control system from the active and/or closed portions of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. At the time of inspection, Department personnel documented that sediment was leaving the site.

b. ADEM Admin. Code r. 335-4-.23(2)(c) requires completed sites or portions of sites shall be properly closed as provided by this Division and approved facility plans. At the time of inspection, Department personnel documented that the completed portion were eroding and had exposed waste.

18. On December 4, 2009, Department personnel inspected the Permittee's landfill to determine compliance with the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin. Code r. 335-13-4-.17(2) requires that that a run-off control system from the active and / or closed portions of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm. At the time of inspection, Department personnel documented that sediment was leaving the site.

b. ADEM Admin. Code r. 335-13-4-.17(3) requires that all facilities must design, construct and maintain onsite drainage structures. Run-off must routed to a settling basin or other specifically designed sedimentation control structures to remove sediment prior to release onto adjacent properties or waters. At the time of inspection, Department personnel documented that the drainage ditches were full of sediment.

c. ADEM Admin. Code r. 335-13-4-.21(1)(b) requires that waste accepted at the facility shall be strictly controlled so as to allow only waste stipulated on the permit or otherwise as may be approved by the Department. At the time of inspection, Department personnel documented that the Permittee had disposed of scrap tires, which is not an approved waste stream for this landfill.

d. ADEM Admin. Code r. 335-13-4-.23(1)(d) requires that the facility shall be operated in accordance with approved plans and permits. At the time of the inspection, Department personnel documented that the Permittee had installed

sedimentation control ponds which are not on the approved plans for this landfill and is outside of the permitted area of this landfill.

e. ADEM Admin. Code r. 335-4-.23(2)(c) requires completed sites or portions of sites shall be properly closed as provided by this Division and approved facility plans. At the time of inspection, Department personnel documented that the completed portion next to the current operating cell had not been seeded and is eroding resulting in exposed waste.

19. On March 9, 2010, Department personnel inspected the Permittee's landfill to determine compliance with the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin. Code r. 335-13-4-.23(1)(d) requires that the facility shall be operated in accordance with approved plans and permits. At the time of the inspection, Department personnel documented that the Permittee had installed sedimentation control ponds which are not on the approved plans for this landfill and is outside of the permitted area of this landfill.

b. ADEM Admin. Code r. 335-4-.23(2)(c) requires completed sites or portions of sites shall be properly closed as provided by this Division and approved facility plans. At the time of inspection, Department personnel documented that the completed portion next to the current operating cell had not been properly vegetated.

20. On June 3, 2010, Department personnel inspected the Permittee's landfill to determine compliance with the ADEM Administrative Code. During the inspection, the following violations were documented:

a. ADEM Admin. Code r. 335-13-4-.23(1)(d) requires that the facility shall be operated in accordance with approved plans and permits. At the time of the inspection, Department personnel documented that the Permittee had installed

sedimentation control ponds which are not on the approved plans for this landfill and is outside of the permitted area of this landfill.

b. ADEM Admin. Code r. 335-13-12-.01(3) requires that all Public Solid Waste Management Facilities have at least one certified operator on site during the hours of operation. At the time of the inspection, Department personnel documented that there was not a certified operator onsite at the landfill.

c. ADEM Admin. Code r. 335-13-4-.23(1)(c) requires that all waste shall be confined to as small an area as possible and placed onto an appropriate slope not to exceed a 4 to 1 ratio or as approved by the Department. At the time of inspection, Department personnel documented that waste was spread over too large of an area.

CONTENTIONS

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 the Permittee; the economic benefit which delayed compliance may confer upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100.00 or 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: The Permittee did not comply with provisions of ADEM Admin. Code Chap. 335-13. The Department has no evidence of any irreparable harm to the environment or any threat to human health or the safety of the public as a result of these violations.

B. THE STANDARD OF CARE: The Permittee failed to operate in a manner commensurate with applicable solid waste requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if the Permittee has realized a significant economic benefit as a result of the violations noted. However, the Facility did not incur costs associated with operating in accordance with Division 13 Regulations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no observed environmental effects as a result of the violations noted; however, improper runoff control could result in adverse impacts to water quality in the receiving stream.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of similar violations.

F. THE ABILITY TO PAY: Based on information provided, the Department has determined that the permittee has the ability 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.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Permittee, along with the Department, desires to resolve and settle the alleged violations 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) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Order with the following terms and conditions:

A. Pursuant to Ala, Code § 22-22A-5(18)a.4. (2006 Rplc. Vol.) the Permittee agrees to pay to the Department a civil penalty in the amount of \$24,000.00 in monthly installments to be paid in full within 180 days from the execution date of this Order.

B. Payments of the penalty shall be by cashier or certified check made payable to the "Alabama Department of Environmental Management" and remitted to:

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

Any check submitted to the Department pursuant to this order shall reference the Permittee's name and address, and the ADEM Consent Order number of this action.

C. That immediately, upon the effective date of this Order, the Permittee shall comply with the requirements of ADEM Division 13 regulations.

D. That, within 30 days of the effective date of this Order, the Permittee shall submit documentation to the Department outlining the measures that have been or will be employed to ensure compliance with ADEM Division 13 regulations.

E. 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.

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

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

H. For purposes of this Consent Order only, the Permittee 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. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee 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 the Permittee, 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 the Permittee) 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 10 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 of and without the fault of the Permittee, 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.

I. The parties 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 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; the Permittee 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.

J. The parties 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 the Permittee does hereby waive any hearing on the terms and conditions of this Consent Order.

K. The parties agree that this Order shall not affect the Permittee's obligation to comply with any federal, State, or local laws or regulations.

L. The parties 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.

M. The parties 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.

N. The parties agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The parties 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 the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CHAMBERS COUNTY COMMISSION


ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

DEBBIE WOOD
(Printed Name)

VICE CHAIRMAN
(Printed Title)

11/10/10
(Date Signed)


Lance R. LeFleur
Director

1/4/11
(Date Signed)

Attachment A - Penalty Calculation Worksheet

Chambers County Commission (C/D Landfill 09-02)

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Waste not covered weekly with 6" soil	3	3000	750	3000
Failure to restrict waste streams	3	750	250	500
Waste not confined to small area and on 4 to 1 slope	3	3000	250	1000
Runoff control system in place	3	3000	750	2000
Failure to properly close completed portions	5	2500	1500	5000
Onsite drainage structure maintained	2	1000	250	500
Operation as stipulated on approved plans	3	3000	2500	3000
Failure to have certified operator onsite during operation hours	1	250		
Totals:	-	16,500	6,250	15,000

Economic Benefit: -

Mitigating Factors: -

Ability to Pay: -

Other Factors: - \$13,750-

Civil Penalty: **\$24,000-**

Footnotes

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

CERTIFICATE OF SERVICE

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

Chambers County Commission
2 South LaFayette Street
LaFayette, AL 36862

Done this 4th day of January, 2011.

Wm Gerald Hardy