

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Chemical Waste Management, Inc.  
Emelle, Sumter County, Alabama  
EPA Identification Number ALD000622464**

Consent Order No. 20-XXX-CHW

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department” or “ADEM”) and Chemical Waste Management, Inc. (hereinafter “CWM”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter “AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

**STIPULATIONS**

1. CWM operates a commercial hazardous waste treatment, storage, and disposal Facility (“facility”) under AHWMMA Hazardous Waste Facility Permit Number ALD000622464, located at 36964 Alabama Highway 17 North in Emelle, Sumter County, Alabama. CWM, as a result of its operations at the facility, was a hazardous waste treatment, storage, and disposal facility, as well as a large quantity generator, as those terms are defined in ADEM Admin. Code Div. 14, at all times relevant to this action.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended.

In addition, the Department is authorized to administer and enforce the provisions of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

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

4. Pursuant t to AHWMMMA Hazardous Waste Treatment, Storage, and Disposal Permit Condition II.L.2.b. and ADEM Admin. Code r. 335-14-9-.05, incorporating 40 CFR § 268.50, the Facility may store hazardous waste restricted from land disposal under subpart C of Part 268, for up to one (1) year.

5. On December 6, 2019, CWM submitted a notification to the Department that it had stored hazardous waste restricted from land disposal at the facility for longer than one year in violation of AHWMMMA Hazardous Waste Treatment, Storage, and Disposal Permit Condition II.L.2.b. and ADEM Admin. Code r. 335-14-9-.05. The waste was received at the facility on November 27, 2018, and remained in storage until it was transported off-site on December 2, 2019.

6. Pursuant to Ala. Code § 22-22A-5(18), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), 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(s) 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 VIOLATIONS:** In arriving at the civil penalty, the Department considered the general nature and magnitude of the violation along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

(b) **THE STANDARD OF CARE:** In considering the standard of care manifested by CWM, the Department noted that the violation described above was non-technical and easily avoidable. Consequently, CWM has failed to exhibit a standard of care commensurate with the applicable regulatory standards.

(c) **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has determined that there was no significant economic benefit gained by CWM as a result of the violations referenced herein.

(d) **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** There are no known environmental effects to mitigate as a result of the alleged violation.

(e) **HISTORY OF PREVIOUS VIOLATIONS:** Based on a review of Department records, CWM does not have a history of similar violations.

(f) **THE ABILITY TO PAY:** CWM 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 that is warranted in the spirit of cooperation and the desire to resolve this matter amicably without incurring the unwarranted expense of litigation (see Attachment A, which is made a part of the Department's Contentions).

7. The Department neither admits nor denies CWM's contentions, which are set forth below. The Department has agreed to the terms of this Special Order by Consent in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Special Order by Consent are in the best interest of the citizens of Alabama.

#### **FACILITY'S CONTENTIONS**

8. The waste at issue in this Consent Order was mercury contaminated soil stored in a

container in a permitted and secure storage location at the facility. The waste was placed into storage on November 27, 2018 awaiting future treatment at another permitted facility. The container remained in permitted storage the entire time it was at the facility. At no time was the container stored outside permitted storage. There were no spills or releases from the container, and the container did not present any threats to human health or the environment while stored at the facility.

9. In early November 2019, the container was scheduled for transport to another treatment facility no later than November 20, 2019, one week prior to the November 27, 2019 deadline. However, there were three named winter storms (Caleb, Dorothy, and Ezekiel) of increasing intensity during November 2019. All three storms impacted transportation networks in the central United States, including the Midwest where the treatment facility is located. To insure the safe transport, the waste was scheduled for transport once weather conditions improved and roads had cleared. The waste was transported to the treatment facility on December 2, 2019. CWM then self-reported to the Department that the waste had been stored at the facility for an extra 5 days past the deadline.

10. CWM neither admits nor denies the Department's contentions. CWM consents to abide by the terms of this Special Order by Consent and to pay the civil penalty herein. Nothing contained in this Consent Order, nor any action taken in furtherance of this Consent Order, shall constitute or be deemed or construed at any time for any purpose by any third party (including without limitation third parties who might bring claims in any legal, administrative, or other proceeding) as an admission of liability by CWM.

## ORDER

Therefore, without admitting that it has violated any statutes or regulations, CWM, 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)c. , as amended, as well as the need for timely and effective enforcement and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and CWM agree to enter into this Special Order by Consent with the following terms and conditions:

A. CWM agrees to pay to the Department a civil penalty in the amount of \$8,250 in settlement of the violations alleged herein within forty-five days of the effective date of this Special Order by Consent. 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. CWM agrees that all penalties due pursuant to this Special Order by Consent shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or other payment methods 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

Any payment submitted to the Department pursuant to this Special Order by Consent shall reference CWM's name and address, and the ADEM Administrative Order number of this action.

C. CWM agrees that, independent of this Special Order by Consent, CWM shall comply with all terms, conditions, and limitations of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. The Department and CWM (hereinafter the "parties") agree that this Special Order by Consent 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 Special Order by Consent certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Special Order by Consent, to execute the Special Order by Consent on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Special Order by Consent is intended to operate as a full resolution of the alleged violations cited herein.

F. CWM agrees that it is not relieved from any liability if it fails to comply with any provision of this Special Order by Consent.

G. For purposes of this Special Order by Consent only, CWM 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.

H. The parties agree that the sole purpose of this Special Order by Consent 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 Special Order by Consent, 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; CWM agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement action address new matters not raised in this Special Order by Consent.

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

J. The parties agree that this Special Order by Consent shall not affect CWM's obligation to comply with any federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Special Order by Consent 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.

L. The parties agree that, should any provision of this Special Order by Consent 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.

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

N. The parties agree that, except as otherwise set forth herein, this Special Order by Consent 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 CWM of its obligations to comply in the future with any permit.

**Executed in duplicate, with each part being an original.**

**Chemical Waste Management, Inc.**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

  
(Signature of Authorized Representative)

\_\_\_\_\_  
Lance R. LeFleur  
Director

Michael J. Davis  
(Printed Name)

Senior District Manager  
(Printed Title)

4-13-2020  
(Date Signed)

\_\_\_\_\_  
(Date Executed)

**Attachment A**

Chemical Waste Management, Inc.  
Emelle, Sumter County  
Facility ID No. ALD000622464

<b>Violation</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violation*</b>	
Storage of hazardous waste for greater than one year.	1	\$10,000	\$1,000	\$0	<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		\$10,000	\$1,000	\$0	\$11,000

**Adjustments to Amount of Initial Penalty**

Mitigating Factors (-)	\$0	Economic Benefit (+)	\$0
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$11,000
Other Factors (+/-)	-\$2,750	Total Adjustments (+/-)	-\$2,750
<b>Total Adjustments (+/-) Enter at Right</b>	<b>-\$2,750</b>	<b>FINAL PENALTY</b>	<b>\$8,250</b>

**Footnotes**

\* See the "DEPARTMENT'S CONTENTIONS" portion of the Order for a detailed description of each violation and the penalty factors.