

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

City of Hartselle Landfill
100 Lovelady Street
Hartselle, Morgan County, Alabama

PROPOSED CONSENT ORDER
NO. 21-XXX-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (the “Department” or “ADEM”) and City of Hartselle Landfill (the “Landfill”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-17, *as amended*, the Alabama Air Pollution Control Act (“AAPCA”), Ala. Code §§ 22-28-1 to 22-28-23, *as amended*, the ADEM Administrative Code of Regulations (“ADEM Admin. Code R.”) promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, *as amended*.

STIPULATIONS

1. The Landfill is a construction and demolition landfill operating on property located at 100 Lovelady Street NW in Hartselle, Morgan County, Alabama (“Site”).
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, *as amended*.

3. Pursuant to Ala. Code § 22-22A-4(n), *as amended*, 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, *as amended*.

4. ADEM Admin. Code r. 335-3-3-.01(2)(b)1 states that "...open burning must take place on the property on which the combustible fuel originates."

DEPARTMENT'S CONENTIONS

5. On February 16, 2021, the Department became aware, through a voicemail received from the Landfill, of a fire occurring at the Site.

6. On February 18, 2021, Department personnel conducted an investigation of the Site and observed a large smoldering pile of vegetation.

7. Between February 22, 2021 and March 8, 2021, the Department received numerous complaints regarding an on-going fire occurring at the Site.

8. On March 1, 2021, the Department received a press release from the Landfill stating the following: "Saturday, February 13 at approximately 8:00 pm it was discovered a brush pile had spontaneously combusted at the City of Hartselle Landfill. The brush pile consists of limbs, pieces of trees, small brush, etc., which is picked up from homes in the City of Hartselle or brought into the landfill by citizens of Hartselle."

9. On March 2, 2021, Department personnel conducted a follow-up investigation of the Site and observed continued smoldering of the large pile of vegetation.

10. The Landfill failed to prevent unauthorized open burning at the Site in violation of ADEM Admin. Code rs. 335-3-3-.01(2)(b)1.

9. 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 violations, 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: The Landfill failed to implement procedures to prevent unauthorized open burning at the landfill. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: There appeared to be inadequate care taken by the Landfill to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-3-.01(2)(b)1.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Landfill did not likely derive an economic benefit from the unauthorized open burning.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: At the time of the violation, there were limited efforts by the Landfill to mitigate possible effects of this violation upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Landfill does not have a history with the Department for violating the Open Burning Regulations.

F. THE ABILITY TO PAY: The Landfill 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.

12. 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).

13. The Department neither admits nor denies the Landfill’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.

LANDFILL'S CONTENTIONS

14. The Landfill neither admits nor denies the Department's Contentions. The Landfill consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Landfill, 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 the Landfill agree to enter into this ORDER with the following terms and conditions:

A. The Landfill agrees to pay to the Department a civil penalty in the amount of \$1,500.00 in settlement of the violations alleged herein. The penalty shall be paid to the Department within 45 days. Failure to pay the civil penalty in a timely manner may result in the Department filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

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

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

B. The Landfill agrees to comply with all requirements of ADEM Admin. Code rs. 335-3-3-.01(2)(b)1.

C. 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.

D. 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.

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

F. For purposes of this Consent Order only, the Landfill 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 Landfill also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Landfill 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 Landfill, 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 Landfill) 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 the Landfill, 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.

G. The Department and the Landfill 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 the Landfill 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.

H. The Department and the Landfill 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 Landfill does hereby waive any hearing on the terms and conditions of same.

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

J. The Department and the Landfill 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.

K. The Department and the Landfill 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.

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

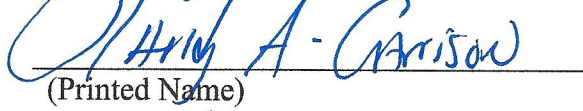
M. The Department and the Landfill agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Landfill of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

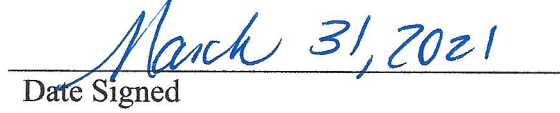
CITY OF HARTSELLE LANDFILL

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)


(Printed Name)


(Printed Title)


Date Signed

Lance R. LeFleur
Director

Date Executed

ATTACHMENT A

City of Hartselle Landfill Hartselle, Morgan County

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	1	\$1,000	\$500	\$0	
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$1,000</i>	<i>\$500</i>	<i>\$0</i>	<i>\$1,500</i>

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

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$1,500
Total Adjustments (+/-)	
FINAL PENALTY	\$1,500.00

Footnotes

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