

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**New Flyer of America, Inc.
Anniston, Calhoun County, Alabama
EPA Identification Number ALD982125213**

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 New Flyer of America, Inc. (hereinafter “New Flyer”) 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. New Flyer of America, Inc. (hereinafter “New Flyer”) operates a commercial and municipal bus manufacturing facility with EPA Identification Number ALD982125213, located at 106 National Drive in Anniston, Calhoun County, Alabama (hereinafter “the Site”). New Flyer, as a result of its operations at the facility, was a large quantity generator, as that term is 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 AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On October 11, 2019, a representative of the Department's Industrial Hazardous waste Branch conducted a compliance evaluation inspection (CEI) of New Flyer to determine compliance with all applicable requirements of Division 14 of the ADEM Administrative Code. The CEI and a review of New Flyer's compliance revealed the following:

- (a) ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in Chapter 335-14-2. ADEM Admin. Code r. 335-14-3-.01(7)(a) provides in pertinent part that a large quantity generator may accumulate hazardous waste onsite for no more than 90 days without a permit.

New Flyer stored 4 drums of ignitable hazardous waste (EPA hazardous waste number D001) in the central storage area for longer than 90 days without first obtaining an accumulation time limit extension or a hazardous waste storage permit.

- (b) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)5., a generator must mark or label its satellite accumulation containers with the words "Hazardous Waste" and an indication of the hazards of the contents.

New Flyer failed to properly label one hazardous waste satellite accumulation container in the B1 Paint Kitchen.

- (c) Pursuant to ADEM Admin. Code r. 335-14-3-.14(10)(b), a large quantity generator must submit a quick reference guide of the contingency plan to all local emergency responders.

New Flyer failed to submit a quick reference guide of the contingency plan to local emergency responders as required.

5. On November 7, 2019, the Department issued to New Flyer a Notice of Violation citing violations of the hazardous waste program regulations that were observed or existed at the time of the October 11, 2019, CEI.

6. On November 20, 2019, the Department received New Flyer's response to the aforementioned Notice of Violation.

7. 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(s) 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 New Flyer, the Department noted that the violations described above were non-technical and easily avoidable. Consequently New Flyer 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 New Flyer 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 violations referenced herein.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, New Flyer has no history of previous violations.

(f) THE ABILITY TO PAY: New Flyer 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).

8. The Department neither admits nor denies New Flyer'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

9. Hazardous waste was stored on-site with proper environmental controls, but was not shipped as required within 90 days. There are no known environmental effects to mitigate as a result of the violation.

10. Hazardous waste accumulation drum was missing hazardous waste label. There are no known environmental effects to mitigate as a result of the violation.

11. Emergency Contingency Plan was submitted and received by ADEM, Calhoun County EMA, Anniston Fire Department and Regional Medical Center without quick reference guide. There are no known effects to mitigate as a result of the violation.

12. New Flyer neither admits nor denies the Department's contentions. New Flyer consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, New Flyer, 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 New Flyer agree to enter into this Special Order by Consent with the following terms and conditions:

A. New Flyer agrees to pay to the Department a civil penalty in the amount of \$8,500 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. New Flyer 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 New Flyer's name and address, and the ADEM Administrative Order number of this action.

C. New Flyer agrees that, independent of this Special Order by Consent, New Flyer 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 New Flyer (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. New Flyer 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, New Flyer 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; New Flyer 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 New Flyer 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 New Flyer'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.

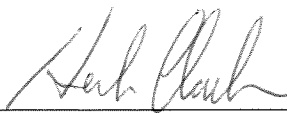
M. The parties agree that any modifications of this Special Order by Consent must be agreed to in writing signed by both parties.

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 New Flyer of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

FACILITY

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**


(Signature of Authorized Representative)

Herb Clark
(Printed Name)

Vice President, Human Resources
(Printed Title)

01/29/2020
(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A

New Flyer of America, Inc.
Anniston, Calhoun County
Facility ID No. ALD982125213

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Failure to obtain a permit prior to storing hazardous waste on-site for greater than 90 days.	1	\$10,000	\$1,000	\$0	
Failure to mark or label satellite accumulation containers with the words "Hazardous Waste"	1	\$100	\$50	\$0	
Failure to submit a quick reference guide of the contingency plan to all local emergency responders	1	\$100	\$50	\$0	Total of Three Factors
TOTAL PER FACTOR		\$10,200	\$1,100	\$0	\$11,300

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$11,300
Other Factors (+/-)	\$0	Total Adjustments (+/-)	(\$2,800)
Total Adjustments (+/-) Enter at Right	(\$2,800)	FINAL PENALTY	\$8,500

Footnotes

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