

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:
Gainestown Road Landfill, LLC
1312 Gainestown Road
Jackson, Clarke County, Alabama
Solid Waste Disposal Permit No. 13-07

PROPOSED CONSENT ORDER
NO. 21-XXX-CAP-CSW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (the "Department" or "ADEM") and Gainestown Road Landfill, LLC (the "Permittee") 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, and the Solid Wastes and Recyclable Materials Management Act ("SWRMMA"), Ala. Code §§ 22-27-1 to 22-27-18, 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. Permittee operates a construction and demolition landfill also known as the Jackson Landfill or Jackson C/D Landfill ("landfill") on property located at 1312 Gainestown Road in Jackson, Clarke 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."

5. ADEM Admin. Code r. 335-3-3-.01(2)(b)4 states that "Only vegetation and untreated wood may be burned. It is unauthorized to open burn heavy oils, asphalt products, plastics, vinyl materials, insulation, paper, cardboard, natural or synthetic rubber, salvage or scrap materials, chemicals, garbage, treated or painted wood, or any trash."

6. 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*.

7. On April 8, 2019, the Department modified Solid Waste Disposal Permit No. 13-07 ("Permit") for the operation of a construction and demolition solid waste landfill located at 1312 Gainstown Road, Jackson, Jackson County, Alabama.

8. Permit Proviso Section II, (B) prohibits open burning "...without prior written approval from the Department and other appropriate agencies."

DEPARTMENT'S CONENTIONS

9. On August 6, 2020, the Department was notified by the Clarke County Emergency Management Agency (EMA) of a large tire fire occurring at the landfill.

10. On August 10, 2020 the Department conducted an inspection of the landfill confirming the notification of the fire by the Clark County EMA.

11. On September 14, 2020, the Department issued a Letter of Inquiry to the Permittee requesting a written response on or before October 18, 2020.

12. On October 20, 2020, the Permittee responded to the Letter of Inquiry and explained that the fire likely ignited due to tree debris and yard clippings being turned over by equipment during daily activities. An estimated 15,000 tires were burned along with tree debris, wood mulch, and city trash.

13. The Permittee conducted unauthorized open burning at the landfill in violation of AAPCA, SWRMMA, ADEM Admin. Code rs. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)2, and the Permit.

14. 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 Permittee 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 Permittee to comply with the applicable requirements of the ADEM Admin. Code rs. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)2, and the Permit.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Permittee 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 Permittee to mitigate possible effects of this violation upon the environment.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Permittee does not have a history with the Department for violating the Open Burning Regulations; however, it has been issued a number of warning letters and notices of violation regarding operation of the landfill.

F. **THE ABILITY TO PAY:** The Permittee has 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.

15. 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).

16. The Department neither admits nor denies the Permittee'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.

PERMITTEE'S CONTENTIONS

17. Permittee contends that there was no intentional unauthorized open burning and that fire occurred as a result of poor conditions, spontaneous combustion, or otherwise an *Act of God*.

18. Permittee did not get pre-approval from ADEM to burn because the fire was not intentional but accidental.

19. Permittee followed ADEM's instructions regarding reducing the working face of the landfill and this led to the poor conditions that ignited the fire.

20. Permittee took drastic and extreme measures to mitigate the effects of the fire on the environment by working over forty-eight hours to contain the fire along with hired consultants and local volunteer fire departments to contain and extinguish the fire.

21. Permittee has no history of unauthorized open burning with ADEM and has always received good inspection reports from ADEM's inspectors.

22. Permittee has a difficult time financially due to the fire and the COVID Pandemic and paying a civil penalty creates a hardship.

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

ORDER

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

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$12,000.00 in settlement of the violations alleged herein. The penalty shall be paid in twelve equal installments of \$1,000.00, beginning the 15th day of the month after the effective date of this Consent Order and the 15th day of each succeeding month thereafter until the remaining balance is paid. Failure to pay the civil penalty monthly installments 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 Permittee 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 Permittee agrees to comply with all requirements of ADEM Admin. Code rs. 335-3-3-.01(2)(b)1, 335-3-3-.01(2)(b)2 and the Permit upon the effective date of this Consent Order and continuing every day thereafter.

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 Permittee 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 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 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 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.

G. The Department and the Permittee 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 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.

H. The Department and the Permittee 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 same.

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

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

M. The Department and the Permittee 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.

GAINESTOWN ROAD LANDFILL, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

LEWIS W. WALKER

(Printed Name)

MANAGING MEMBER

(Printed Title)

2/3/21

Date Signed

Lance R. LeFleur
Director

Date Executed

ATTACHMENT A

Gainestown Road Landfill, LLC Jackson, Clarke County

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	1	\$15,000	\$10,000	\$0	
					Total of Three Factors
TOTAL PER FACTOR		\$15,000	\$10,000	\$0	\$25,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$3,000.00
Ability to Pay (-)	\$10,000.00
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	- \$13,000.00

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$25,000
Total Adjustments (+/-)	- \$13,000
FINAL PENALTY	\$12,000.00

Footnotes

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