

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )  
 )  
JVL Laboratories, Inc. )  
3784 Opelika Road )  
Phenix City, Russell County, AL 36870 )  
 )  
**Unpermitted** )

Consent Order No. [ORDER NUMBER]

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and JVL Laboratories, Inc. pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (hereinafter “AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

***STIPULATIONS***

1. JVL Laboratories, Inc. (hereinafter “Operator”) operates a skin and hair care production facility, located at 3784 Opelika Road, Phenix City, Russell County, Alabama (hereinafter “Facility”).

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 § 22-22A-4(n), Ala. Code (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

4. Ala. Code § 22-22-9(i)(3) (2006 Rplc. Vol.) and ADEM Administrative Code r. 335-6-6-.03 require that no person shall discharge pollutants into waters of the state without first having obtained a valid National Pollutant Discharge Elimination System (hereinafter “NPDES”) permit or coverage under a valid General NPDES permit.

5. On June 5, 2013, the Department issued a Notice of Violation (hereinafter “NOV”) to the Operator for violating Ala. Code § 22-22-9(i)(3) (2006 Rplc. Vol.) and ADEM Administrative Code r. 335-6-6-.03 by discharging process wastewater from its industrial activities without an NPDES permit.

6. On June 17, 2013, the Operator responded to the NOV indicating that “the necessary improvements have been made to the facility to correct the discharge” and “repair to the damaged drain pipe has been implemented [...] to prevent future damage.”

7. ADEM Administrative Code r. 335-6-10-.06(b) regarding minimum conditions applicable to all State waters, at all places and at all times, indicates that “State waters shall be free from floating debris, oil, scum and other floating materials attributable to sewage, industrial wastes or wastes in amounts sufficient to be unsightly or interfere directly or indirectly with any classified water use.”

8. On March 26, 2018, the Department investigated a complaint received on March 12, 2018, concerning a discharge of foam from the Facility. During the March 26, 2018, inspection, the Department observed a cloudy white and foamy discharge running off the Facility’s property into drainage areas which discharge to waters of the state. Facility personnel indicated that a contractor had recently cleaned piping outside the Facility and the access ports had been left open. Facility personnel indicated that a contractor would be there that day to stop the flow, dam the area, and clean any residual product. The Department conducted a follow-up inspection on April 2, 2018, and verified that the unpermitted discharge had ceased and the area was cleaned. The discharge of pollutants to a water of the state without a permit is a violation of Ala. Code § 22-22-9(i)(3) (2006 Rplc. Vol.) and ADEM Administrative Code r. 335-6-6-.03. The discharge of floating debris and other floating

materials attributable to industrial wastes in amounts sufficient to be unsightly or interfere directly or indirectly with any classified water use is a violation of ADEM Administrative Code r. 335-6-10-.06(b).

9. On August 18, 2018, the Department received information from the Emergency Management Agency regarding their observation of extensive foaming in Mill Creek, a water of the state.

10. On August 23, 2018, the Department conducted an inspection of the Facility. Facility personnel stated that recent maintenance work had disturbed some exterior walls to the production area. Facility personnel further stated that the disturbance caused a buildup of product within the walls, which escaped to the exterior of the building, and onto an adjacent concrete pad. Department personnel noted product emanating from the building onto the concrete pad that was adjacent to the Facility. In addition, Department personnel observed condensate, from the Facility's boilers, running out of a pipe from the building into a nearby storm drain. Facility personnel indicated that there was possible spillage of product by the truck drivers, and that the residual product would be cleaned up. The discharge of pollutants to a water of the state without a permit is a violation of Ala. Code § 22-22-9(i)(3) (2006 Rplc. Vol.) and ADEM Administrative Code r. 335-6-6-.03. The discharge of floating debris and other floating materials attributable to industrial wastes in amounts sufficient to be unsightly or interfere directly or indirectly with any classified water use is a violation of ADEM Administrative Code r. 335-6-10-.06(b).

11. On January 28, 2019, the Department investigated a complaint received on January 10, 2019, concerning alleged discharges from the Facility resulting in soapy foam in drainage ditches and a creek. The Department did not note a presence of foam during the inspection; however, Facility personnel stated that between December 30, 2018, and January 2, 2019, a valve on a catch basin malfunctioned which resulted in a unknown amount of product being released. The discharge of pollutants to a water of the state without a permit is a violation of Ala. Code § 22-22-9(i)(3) (2006 Rplc. Vol.) and ADEM Administrative Code r. 335-

6-6-.03.

12. On February 15, 2019, the Department received information from the Emergency Management Agency and National Response Center regarding observations of extensive foaming in Mill Creek, a water of the state.

13. On February 15, 2019, the Department investigated the reports and confirmed extensive foaming in an unnamed tributary of Mill Creek and in Mill Creek until it reached the Chattahoochee River. Departmental personnel observed foam in a storm drain downhill from the Facility and in a storm drain located on the Facility's property. Departmental personnel also observed spilled product on the ground outside at the Facility and product was observed mixing with water from the condensation pipe going into the storm drain. Facility personnel indicated that sometime between Wednesday evening, February 13<sup>th</sup>, and Thursday morning, February 14<sup>th</sup>, a clamp detached from a product tank and an unknown amount of product was spilled. The discharge of pollutants to a water of the state without a permit is a violation of Ala. Code § 22-22-9(i)(3) (2006 Rplc. Vol.) and ADEM Administrative Code r. 335-6-6-.03. The discharge of floating debris and other floating materials attributable to industrial wastes in amounts sufficient to be unsightly or interfere directly or indirectly with any classified water use is a violation of ADEM Administrative Code r. 335-6-10-.06(b).

14. The Operator consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

15. The Department has agreed to the terms of the Consent Order in an effort to resolve the 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 the Consent Order are in the best interests of the citizens of Alabama.

#### **CONTENTIONS**

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 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 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 that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment #1), the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY: Based on information available to the Department, violations of ADEM Admin. Codes div. 335-6 and the AWPCA were noted. The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, the condition of the receiving waters, the violations' effects, if any, on the receiving waters, and any available evidence of irreparable harm to the environment or threat to the public.

B. THE STANDARD OF CARE: In consideration of the standard of care manifested by the Operator in discharging wastewater without an NPDES permit and the resulting water quality violations, the Department enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has considered that delayed compliance may have conferred an economic benefit upon the Operator but is unable to estimate the economic benefit associated with the violations cited above, as the costs for compliance are not available.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Operator has indicated it has made efforts to minimize or

mitigate the effects of the violations upon the environment; however, the Department has not adjusted the penalty.

E. HISTORY OF PREVIOUS VIOLATIONS: As noted herein, the Operator has a history of previous violations. In consideration of such history of previous violation, the Department has enhanced the penalty.

F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.

G. This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department believes is warranted in this matter in the spirit of cooperation and desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

H. The civil penalty is summarized in Attachment #1.

#### **ORDER**

THEREFORE, the Operator, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has 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 penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Operator (hereinafter collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Operator shall pay to the Department a civil penalty in the amount of Seventy-Two Thousand Five Hundred Dollars (\$72,500.00), payable in twelve monthly installments in settlement of the violations alleged herein. The first payment of \$6,500.00 shall be due on the first of the month following the effect date of the Order, with subsequent payment due on the first of each month thereafter. The subsequent payments will be eleven equal monthly installments of \$6,000.00. Failure to pay the civil penalty within forty-five days

after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. All penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

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

C. The Operator shall prepare and submit to the Department an Engineering Report that identifies the potential causes of noncompliance and summarizes an investigation of the changes necessary for the Operator to cease all future unpermitted discharges and achieve and maintain compliance with ADEM regulations, the AWPCA, and the Alabama Environmental Management Act. The Operator shall submit the Engineering Report so that it is received by the Department no later than sixty days after issuance of this Consent Order. The Engineering Report shall include a Compliance Plan with a schedule for implementation of necessary corrective actions and cost of such necessary corrective actions, if known. At a minimum, the Operator shall consider each of the following in making its investigation: the need for changes in maintenance, inspection, and operating procedures; the need for modification of existing treatment and collection system works; and the need for new or additional treatment and collection system works. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the Report is not sufficient to help the Operator accomplish compliance, then the Report shall be modified accordingly. The Operator shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after receipt of the Department's comments. The Operator shall complete implementation of the

recommendations made in the Engineering Report not later than 180 days after the issuance of this Consent Order.

D. The Operator agrees to submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Operator is in compliance with all requirements of this Consent Order. The certification shall be submitted so that it is received by the Department within 210 days after the issuance of this Consent Order.

E. The Operator agrees to cease all unpermitted discharges of pollutants to waters of the state. The Operator agrees to fully comply with the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act, Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and all applicable regulations within the ADEM Administrative Code immediately upon the effective date of this Consent Order.

F. After the issuance date of this Consent Order, the Operator shall pay stipulated penalties for each day it fails to meet any of the written submittal milestone dates or satisfy any of the requirement dates contained herein. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Operator fails to meet any milestone or any assigned date ninety days after the required dates found in Paragraphs C and D the Department reserves the right to file a new action against the Operator.

G. Should violations continue to occur after 180 days after the issuance of this Consent Order or as stipulated in Paragraph F. above, then the Department may issue an



additional order or file suit against the Operator in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

H. Payment of stipulated penalties for violations of milestone dates under this Consent Order are due no later than the 28<sup>th</sup> day of the month following the month a milestone date was not achieved. Notification to the Operator by the Department of the assessment of any stipulated penalty is not required.

I. 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.

J. Subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations cited in this Consent Order.

K. The Operator it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

L. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Operator 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 Operator, 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 Operator) 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 shall be accompanied by the reasons (including documentation) for each extension and the proposed extension time. The Operator shall submit this information so that it is received by 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 Operator, 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.

M. 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 other orders as may be issued by the Director, by litigation initiated by the Department, or by such other enforcement action as may be appropriate. The Operator shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

N. This Consent Order shall be considered final and effective immediately upon signature of all Parties. This Consent Order shall not be appealable, and the Operator does hereby waive any hearing on the terms and conditions of same.

O. This Consent Order shall not affect the Operator's obligation to comply with any Federal, State, or local laws or regulations.

P. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

Q. Should any provision of this Consent 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.

R. Any modification of this Consent Order shall be agreed to in writing and signed by both Parties.

S. Except as otherwise set forth herein, this Consent 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 Operator of its obligation to comply in the future with any permit.

Executed in duplicate, with each part being an original.

JVL Laboratories, Inc.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

EXECUTED AND ISSUED:

By:  \_\_\_\_\_

By: \_\_\_\_\_

Its: PRESIDENT \_\_\_\_\_

Its: \_\_\_\_\_

Date: 3/4/19 \_\_\_\_\_

Date: \_\_\_\_\_

Attachment 1: Penalty Synopsis

**Attachment 1**


**JVL Laboratories  
Phenix City, Russell County  
Unpermitted**

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Unpermitted Discharge	4	\$ 20,000.00	\$ 6,250.00	\$ 6,250.00
Water Quality Violations (Foam)	3	\$ 30,000.00	\$ 5,000.00	\$ 5,000.00
		\$50,000.00	\$11,250.00	\$11,250.00
		Total (A)	Total (B)	Total (C)
		<b>Base Penalty Total</b> [Total (A) + Total (B) + Total (C)]		\$72,500.00
		<b>Mitigating Factors (-)</b>		
		<b>Economic Benefit (+)</b>		
		<b>Ability to Pay (-)</b>		
		<b>Other Factors (+/-)</b>		
		<b>INITIAL PENALTY</b>		\$72,500.00
		<b>Total Adjustments (+/-)</b>		\$0.00
		<b>FINAL PENALTY</b>		\$72,500.00

**Additional Adjustments due to negotiations, receipt of additional information, or public comment**

<b>Mitigating Factors (-)</b>	
<b>Economic Benefit (+)</b>	
<b>Ability to Pay (-)</b>	
<b>Other Factors (+/-)</b>	
<b>Total Adjustments (+/-)</b>	



Footnotes

\*See the "Stipulations" and "Contentions" portion of the Order for a detailed description of each violation and the penalty factors