

ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	Order No. 21-XXX-CSW
Brownlee Landfill, LLC	)	
Henry Road Landfill	)	
Eight Mile, Mobile County, Alabama	)	
Solid Waste Disposal Permit No.49-22	)	

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and the Brownlee Landfill, LLC (hereinafter “Permittee”), a domestic limited liability company, pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, and the Solid Wastes and Recyclable Materials Management Act (hereinafter “SWRMMA”), Ala. Code §§ 22-27-1 to 22-27-18, as amended.

**STIPULATIONS**

1. The Permittee operates a construction and demolition landfill, known as the Brownlee Landfill, LLC (hereinafter “landfill”), in Eight Mile, Mobile County, Alabama, which is the subject of this Consent Order.
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, 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.

**DEPARTMENT’S CONTENTIONS**

4. On July 2, 2020, the Department issued renewal Solid Waste Disposal Permit Number 49-22 to the Permittee for the operation of a construction and demolition landfill located at 5237 Henry Road, Eight Mile, Mobile County, Alabama.

5. On May 18, 2020, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with Solid Waste Disposal Permit No. 49-22 and Division 13 of the ADEM Administrative Code. During the course of the inspection, Department personnel documented the following issues:

A. ADEM Admin. Code r. 335-13-4-.17(3) and Section VI. of the facility permit require that the owner must design, construct and maintain on-site drainage structures to carry incident precipitation from the disposal site so as to minimize the generation of leachate, erosion and sedimentation. Furthermore, run-off from the active and/or closed portions of the landfill unit must be handled and routed to a settling basin or other sedimentation control structure to remove sediment prior to release onto adjacent properties or waters. Accumulated stormwater was documented at the bottom of the slope of the active disposal area.

B. ADEM Admin. Code r. 335-13-4-.21(1)(b) states that waste accepted by the facility shall be strictly controlled so as to allow only waste stipulated in the permit or otherwise as may be approved by the Department. The inspector noted household waste scattered among the piles of debris on the working face. Household waste is not included in the list of acceptable waste streams in Section III.B. of the facility permit and the landfill has not been otherwise approved by the Department to accept this waste stream.

C. ADEM Admin. Code r. 335-13-4-.23(1)(a)1. and Section III.D. of the facility permit state that a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation to control disease vectors, fires, odors, blown litter and scavenging. The working face was not covered at the close of the previous week's operation, which resulted in a large working face.

D. ADEM Admin. Code r. 335-13-4-.23(1)(b) and Section III.D. of the facility permit state that all waste shall be thoroughly spread in layers two feet or less in thickness and thoroughly compacted weekly with landfill equipment prior to placing additional waste or weekly cover. The waste had not been spread to the required thickness nor compacted at the conclusion of the previous week's operation.

E. ADEM Admin. Code r. 335-13-4-.23(1)(c) and Section III.D. of the facility permit state that all waste shall be confined to as small an area as possible. Due to a lack of cover, the active face of the landfill was not confined to a small area.

F. ADEM Admin. Code r. 335-13-4-.23(2)(b) and Section III.Q. of the facility permit state that litter shall be controlled within the permitted facility. Litter was observed scattered throughout the landfill.

6. On June 5, 2020, the Department issued a Warning Letter (hereinafter "WL") addressing the issues noted above.

7. The Department received a partial response to the WL in an email dated July 27, 2020, from the Permittee. As a result, on the same date, the Department requested, via email, additional information to be submitted to fully address the issues identified in the WL. No response was received to the Department's July 27, 2020, email request for additional information.

8. On August 20, 2020, Department personnel conducted a follow-up site visit of the Permittee's landfill to verify details of the WL response, dated July 27, 2020. During the site visit, Department personnel documented the following violations:

A. ADEM Admin. Code r. 335-13-4-.15(2) states that any proposal to use alternate cover systems shall be submitted to and approved by the Department prior to implementation. Facility personnel stated that landfill was applying a 50/50 mixture of mulch and dirt to cover waste at the landfill. The facility permit does not grant a variance for use of an alternate daily cover at the landfill.

B. ADEM Admin. Code r. 335-13-4-.17(3) and Section VI. of the facility permit require the owner to design, construct and maintain on-site drainage structures to carry incident precipitation from the disposal site so as to minimize the generation of leachate, erosion and sedimentation. Furthermore, run-off from the active and/or closed portions of the landfill unit must be handled and routed to a settling basin or other sedimentation control structure to remove sediment prior to release onto adjacent properties or waters. Drainage structures (ditches) were not observed around the perimeter of the landfill. In addition, erosion rills were noted along the western slope of the landfill.

C. ADEM Admin. Code r. 335-13-4-.23(1)(a)1. and Section III.D. of the facility permit state that a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation to control disease vectors, fires, odors, blown litter and scavenging. The working face was not covered at the close of the previous week's operation.

D. ADEM Admin. Code r. 335-13-4-.23(1)(b) and Section III.D. of the facility permit state that all waste shall be thoroughly spread in layers two feet or less in thickness and thoroughly compacted weekly with landfill equipment prior to placing additional waste or weekly cover. The waste had not been spread to the required thickness nor compacted at the conclusion of the previous week's operation.

E. ADEM Admin. Code r. 335-13-4-.23(1)(c) and Section III.D. of the facility permit state that all waste shall be confined to as small an area as possible. Due to a lack of cover, the active face of the landfill was not confined to a small area.

F. ADEM Admin. Code r. 335-13-4-.23(2)(b) and Section III.Q. of the facility permit state that litter shall be controlled within the permitted facility. Litter was observed along the entrance road into the landfill.

9. On August 31, 2020, the Department issued a Notice of Violation (hereinafter "NOV") addressing the violations noted above.

10. The Department received a partial response to the NOV in an email dated September 10, 2020, from the Permittee. Because the response did not fully address all of the violations noted in the NOV, the Department asked for further clarification via email on September 17, 2020. On September 28, 2020, the Permittee emailed additional information regarding the violations noted in the NOV.

11. On October 15, 2020, Department personnel conducted a follow-up site visit of the Permittee's landfill to verify details of the NOV response, dated September 10, 2020. During the site visit, Department personnel documented the following violations:

A. ADEM Admin. Code r. 335-13-4-.17(3) and Section VI. of the facility permit require the owner to design, construct and maintain on-site drainage structures to carry incident precipitation from the disposal site so as to minimize the generation of leachate, erosion and sedimentation. Furthermore, run-off from the active and/or closed portions of the

landfill unit must be handled and routed to a settling basin or other sedimentation control structure to remove sediment prior to release onto adjacent properties or waters. Drainage structures (ditches) were not observed around the perimeter of the landfill. In addition, erosion rills were noted along the western slope of the landfill.

B. ADEM Admin. Code r. 335-13-4-.23(1)(a)1. and Section III.D. of the facility permit state that a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation to control disease vectors, fires, odors, blown litter and scavenging. The working face was not covered at the close of the previous week's operation.

C. ADEM Admin. Code r. 335-13-4-.23(1)(b) and Section III.D. of the facility permit state that all waste shall be thoroughly spread in layers two feet or less in thickness and thoroughly compacted weekly with landfill equipment prior to placing additional waste or weekly cover. The waste had not been spread to the required thickness nor compacted at the conclusion of the previous week's operation.

D. ADEM Admin. Code r. 335-13-4-.23(1)(c) and Section III.D. of the facility permit state that all waste shall be confined to as small an area as possible. Due to a lack of cover, the active face of the landfill was not confined to a small area.

E. ADEM Admin. Code r. 335-13-4-.23(2)(b) and Section III.Q. of the facility permit state that litter shall be controlled within the permitted facility. Litter was observed along the entrance road into the landfill.

12. On October 19, 2020, the Permittee emailed pictures to document that previously uncovered waste had been covered.

13. On October 27, 2020, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with the Solid Waste Disposal Permit and Division 13 of the ADEM Administrative Code. Department personnel documented the following violations:

A. ADEM Admin. Code r. 335-13-4-.17(3) and Section VI. of the facility permit require the owner to design, construct and maintain on-site drainage structures to carry incident precipitation from the disposal site so as to minimize the generation of leachate, erosion and sedimentation. Furthermore, run-off from the active and/or closed portions of the

landfill unit must be handled and routed to a settling basin or other sedimentation control structure to remove sediment prior to release onto adjacent properties or waters. Drainage structures (ditches) were not observed around the perimeter of the landfill.

B. ADEM Admin. Code r. 335-13-4-.21(1)g. states that deep rooted vegetation is prohibited as vegetative cover. Deep rooted vegetation was noted along the slopes of the landfill.

C. ADEM Admin. Code r. 335-13-4-.23(1)(a)1. and Section III.D. of the facility permit state that a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation to control disease vectors, fires, odors, blown litter and scavenging. The working face was not fully covered at the close of the previous week's operation.

D. ADEM Admin. Code r. 335-13-4-.23(1)(b) and Section III.D. of the facility permit state that all waste shall be thoroughly spread in layers two feet or less in thickness and thoroughly compacted weekly with landfill equipment prior to placing additional waste or weekly cover. The waste had not been spread to the required thickness nor compacted at the conclusion of the previous week's operation.

E. ADEM Admin. Code r. 335-13-4-.23(1)(c) and Section III.D. of the facility permit state that all waste shall be confined to as small an area as possible. The active face of the landfill was not confined to a small area.

14. The Department requested via email on November 20, 2020, a corrective action plan for the implementation of actions needed to bring the landfill back into compliance in order to avoid further enforcement action. On January 25, 2021, Goodwyn Mills & Cawood (hereinafter as "GMC"), on behalf of the Permittee, spoke to the Department to discuss the submittal of the corrective action plan. On January 26, 2021, GMC submitted, via email, a corrective action plan for addressing the violations at the landfill. After reviewing the corrective action plan, the Department determined that the plan was inadequate and on January 28, 2021, Department personnel responded to the submitted plan by providing clarification on Departmental expectations for the facility to return to compliance.

15. On February 26, 2021, GMC submitted pictures of the removal of some of the deep rooted vegetation from the slopes of the landfill.

16. On March 31, 2021, Department personnel conducted a site visit of the landfill to assess the progress of corrective measures proposed by the Permittee to bring the landfill back into compliance with the Solid Waste Disposal Permit and Division 13 of the ADEM Administrative Code. Department personnel documented the following violations:

A. ADEM Admin. Code r. 335-13-4-.17(3) and Section VI. of the facility permit require the owner to design, construct and maintain on-site drainage structures to carry incident precipitation from the disposal site so as to minimize the generation of leachate, erosion and sedimentation. Furthermore, run-off from the active and/or closed portions of the landfill unit must be handled and routed to a settling basin or other sedimentation control structure to remove sediment prior to release onto adjacent properties or waters. Standing stormwater was observed on the road and at the base of the landfill slope as a result of water not being properly diverted to the sediment pond. In addition, the area near the drainage culvert was filled with sediment. Erosion rills were also noted along the western slope of the landfill.

B. ADEM Admin. Code r. 335-13-4-.21(1)g. states that deep rooted vegetation is prohibited as vegetative cover. Although much of the deep rooted vegetation had been removed from the landfill slopes, small pockets of remaining vegetation still needs to be removed.

C. ADEM Admin. Code r. 335-13-4-.23(1)(a)1. and Section III.D. of the facility permit state that a minimum of six inches of compacted earth shall be added at the conclusion of each week's operation to control disease vectors, fires, odors, blown litter and scavenging. The working face was not covered at the close of the previous week's operation. In addition, flagging waste was visible on slopes that had previously been covered by the facility.

D. ADEM Admin. Code r. 335-13-4-.23(1)(b) and Section III.D. of the facility permit state that all waste shall be thoroughly spread in layers two feet or less in thickness and thoroughly compacted weekly with landfill equipment prior to placing additional waste or weekly cover. The waste had not been spread to the required thickness nor compacted at the conclusion of the previous week's operation.

E. ADEM Admin. Code r. 335-13-4-.23(1)(c) and Section III.D. of the facility permit state that all waste shall be confined to as small an area as possible. Due to a lack of cover, the active face of the landfill was not confined to a small area.

F. ADEM Admin. Code r. 335-13-4-.23(2)(b) and Section III.Q. of the facility permit state that litter shall be controlled within the permitted facility. Litter was observed scattered throughout the landfill.

17. 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 the Permittee; the economic benefit which delayed compliance may confer upon the Permittee; the nature, extent and degree of success of the Permittee's efforts to minimize or mitigate the effects of such violation upon the environment; the Permittee's history of previous violations; and the ability of the Permittee 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 comply with certain provisions of ADEM Admin. Code div. 335-13 and Solid Waste Disposal Permit No. 49-22 regarding landfill operations.

B. **THE STANDARD OF CARE:** The Permittee failed to employ an appropriate standard of care to ensure compliance with certain solid waste disposal requirements.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has been unable to ascertain if the Permittee has realized an economic benefit as a result of the violations noted.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Department is unaware of any efforts employed by the



Permittee to mitigate potential effects upon the environment that may have been created as a result of the violations listed.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee does not have a history of similar violations.

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

G. OTHER FACTORS: It should be noted that this Consent Order is a negotiated settlement and, therefore, the Department has determined 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.

18. 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***

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

#### ***ORDER***

THEREFORE, without admitting that it has violated any statutes or regulations, the Permittee, 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) (2006 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. That, not later than **three hundred sixty-five days** after issuance of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$16,080.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified check or cashier's check in four quarterly payments of \$4,020.00 and shall be remitted to:

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

All checks shall reference the Permittee's name and address and the ADEM Consent Order number of this action.

B. That immediately, upon the issuance of this Order and continuing each and every day thereafter, the Permittee shall comply with all applicable provisions of ADEM Admin Code div. 335-13 and Solid Waste Disposal Permit Number 49-22.

C. That the Permittee shall submit a Corrective Action Plan to the Department no later than **thirty days** following the issuance of this Order. The Corrective Action Plan shall address:

1. The installation of disposal area boundary markers to ensure a 100 foot boundary around the disposal area and to prevent future disposal of waste in the buffer zone;

2. The construction of drainage ditches around the perimeter of the landfill to divert stormwater to the sediment pond located on the northeastern portion of the facility;

3. A detailed explanation of the engineering controls to be employed to prohibit sediment from leaving the facility; and

4. A schedule for implementation of recommended actions to address the deficiencies outlined in this Order.

5. If the Department determines through its review of the submitted Corrective Action Plan that it is not sufficient to accomplish compliance with applicable Federal, State laws, or Departmental regulations, or with ADEM-issued permits, then the Permittee shall submit a revised Corrective Action Plan, addressing the Department's concerns, to the

Department no later than **thirty days** after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations made in the Corrective Action Plan pursuant to the schedule set forth in the approved plan.

D. 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.

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

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

G. 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.

H. The parties 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 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; 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.

I. The parties 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 this Consent Order.

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

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

L. The parties agree that, 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.

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

N. The parties agree that, 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 Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

BROWNLEE LANDFILL, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

  
(Signature of Authorized Representative)

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

Wyatt Crawford  
(Printed Name)

Owner  
(Printed Title)

\_\_\_\_\_  
(Date Signed)

9-15-21  
(Date Signed)

Attachment A  
Brownlee Landfill  
Eight Mile, Mobile County

Solid Waste Disposal Permit No. 49-22

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to cover waste weekly (5/18/20, 8/20/20, 10/15/20, 10/27/20, 3/31/21)	5	\$2,500	\$1,250	\$0	
Failure to compact waste weekly (5/18/20, 8/20/20, 10/15/20, 10/27/20, 3/31/21)	5	\$2,500	\$1,250	\$0	
Failure to confine waste (5/18/20, 8/20/20, 10/15/20, 10/27/20, 3/31/21)	5	\$2,500	\$1,250	\$0	
Failure to control litter (5/18/20, 8/20/20, 10/15/20, 3/31/21)	4	\$1,000	\$400	\$0	
Failure to strictly control waste streams (5/18/20)	1	\$1,000	\$500	\$0	
Failure to properly maintain sediment control structures (5/18/20, 8/20/20, 10/15/20, 10/27/20, 3/31/21)	5	\$2,500	\$1,250	\$0	
Failure to use approved cover (8/20/20)	1	\$1,000	\$500	\$0	
Failure to remove deep rooted vegetation (10/27/20, 3/31/21)	2	\$500	\$200	\$0	
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		\$13,500	\$6,600	\$0	\$20,100

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
Total Adjustments (+/-) <i>Enter at Right</i>	-\$4,020

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$20,100
Total Adjustments (+/-)	(\$4,020)
<b>FINAL PENALTY</b>	<b>\$16,080</b>

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