

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
WCA of Alabama, LLC)	
)	
1130 County Line Road)	PROPOSED CONSENT ORDER
Trafford, Blount County, Alabama)	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 WCA of Alabama, LLC (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 1130 County Line Road in Trafford, Blount 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.”

DEPARTMENT'S CONTENTIONS

6. On May 8, 2021, the State EMA received notification of a large tire fire occurring at the Site. Blount County EMA and volunteer fire departments responded to the fire.

7. On May 10, 2021, the Department received a letter from the Landfill in response to the fire stating that the cause of the fire was unknown and that the fire was extinguished on May 9, 2021.

8. 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 and 335-3-3-.01(2)(b)4.

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 some care taken by the Landfill to comply with the applicable requirements of the ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)4.

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.

10. 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).

11. 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

12. 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. The Landfill’s agreement to abide by the terms of this Consent Order and to pay the civil penalty assessed herein are not intended as, and shall not be construed to be, an admission of any liability or breach of any duty.

13. The Landfill exercised an appropriate standard of care. The Landfill strictly adheres to its Operations Plan and maintains and operates the Site in a manner to minimize the possibility of a fire.

14. To the Landfill's knowledge, a fire began at the Site on Saturday, May 8, 2021 – outside of normal operating hours. No Landfill staff were onsite when the fire began.

15. The Landfill took swift and appropriate measures to control and extinguish the fire and to mitigate any possible effects. As reported to the Department, Landfill personnel became aware of the fire at 4:54pm on Saturday, May 8, 2021 and were at the Site by approximately 5:30pm. Immediately following directive conversations with the Blount County EMA and the Locust Fork Fire Department, Landfill personnel began hauling dirt from a future cell area to use to smother the fire. The Landfill did not receive physical assistance from the Locust Fork Fire Department, but instead used facility personnel and equipment, with assistance from a third-party contractor, to contain and extinguish the fire. The Landfill completed coverage of the fire area by approximately 10:00am on Sunday, May 9, 2021 – around seventeen hours after receiving initial notification of the fire.

16. On May 9, 2021, the Landfill contacted the Department to formally report the fire and to advise that the fire had been contained and extinguished. Throughout that afternoon and evening, the Landfill continued to check the Site to ensure there were no flare-ups or issues. On Monday, May 10, 2021, three hot spots were identified, and the Landfill placed additional dirt on those areas. The Site received 2.5 inches of rainfall during the evening of May 9, 2021 and the morning of May 10, 2021.

17. On May 10, 2021, the Landfill moved the workface and operations to a different area of the Site to avoid any potential issues with the fire area.

18. Also on May 10, 2021, the Landfill's consultant, LaBella Associates, notified the ADEM Air Division that the fire had been extinguished.

19. Over the following days, the Landfill continued to monitor the fire area for evidence of hot spots or issues.

20. On May 10, 2021, the Landfill forwarded a Fire Incident Response Report to the ADEM Land Division. The Landfill forwarded a copy of the same Report to the ADEM Air Division on May 21, 2021.

21. In addition to the aforementioned response activities, the Landfill has also implemented various proactive measures for the Site. For example, the Landfill will no longer accept large, whole off-road tires for disposal. Any such tires received will be cut prior to disposal. Also, although the current solid waste disposal Permit (No. 05-08) authorizes the utilization of a mixture of 50% soil by volume with 50% tire chips by volume as alternate weekly cover, the Landfill will no longer use tire chips in a mixture for alternate weekly cover.

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 \$7,000.00 in settlement of the violations alleged herein. The penalty shall be paid to the

Department within forty-five (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

C. The Landfill agrees to comply with all requirements of ADEM Admin. Code rs. 335-3-3-.01(2)(b)1 and 335-3-3-.01(2)(b)(4).

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 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.

F. The Landfill 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 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.

H. 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.

I. 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.

J. 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.

L. 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 (30) days within which to comment on the Order.

M. 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.

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

O. 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.

WCA OF ALABAMA, LLC


(Signature of Authorized Representative)

Rodney ROSEBROUGH
(Printed Name)

AREA VICE PRESIDENT
(Printed Title)

9/22/2021
(Date Signed)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Lance LeFleur
Director

(Date Executed)

ATTACHMENT A

WCA of Alabama, LLC
Trafford, Blount County, Alabama

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized open burning	1	\$7,000	\$0	\$0	
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$7,000</i>	<i>\$0</i>	<i>\$0</i>	<i>\$7,000.00</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	\$7,000.00
Total Adjustments (+/-)	
FINAL PENALTY	\$7,000.00

Footnotes:

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