

ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
Wilcox County Commission)	Consent Order No. 21-XXX-SW
Wilcox County Landfill)	
Highway 41 North)	
Camden, Wilcox County, Alabama)	
Solid Waste Disposal Permit No. 66-03)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Wilcox County Commission (hereinafter "Permittee") 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 Wilcox County Landfill, (hereinafter "landfill") in Camden, Wilcox 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.

DEPARTMENT'S CONTENTIONS

4. On August 14, 2014, the Department issued renewal Solid Waste Disposal Permit Number 66-03 to the Permittee for the operation of the landfill located on Highway 41 North, Camden, Wilcox County, Alabama.

5. The renewal application for Solid Waste Disposal Permit Number 66-03 was due on or before October 30, 2018. On October 29, 2018, Department personnel sent an email to the facility contact indicating that the renewal application was due and specifying what was required for the renewal application. On October 30, 2018, the Wilcox County Commission submitted ADEM Form 305 (permit renewal application) and the appropriate fee. On December 20, 2018, Department personnel sent an email to the facility contact requesting that additional information be provided as part of the renewal application. Subsequent emails were sent to the facility contact on February 19, 2019, February 25, 2019, and October 9, 2019.

6. On September 2, 2020, Department personnel conducted a compliance inspection of the above referenced facility to determine compliance with ADEM Solid Waste Regulations contained in Division 335-13 of the ADEM Admin. Code. During the course of the inspection, the following violations were noted:

A. ADEM Admin. Code r. 335-13-.23(1)(a)1. and Section III.D of the facility permit state that all waste shall be covered with a minimum of six inches of compacted earth or other approved cover material at the conclusion of each week's operation. Three disposal areas, with uncovered waste, were noted during the inspection.

B. 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. Furthermore, ADEM Admin. Code r. 335-13-4-.23(1)(d) states the facility shall be operated in accordance with approved plans and the facility permit. Three separate disposal areas were noted during the inspection. The facility has not been granted approval to operate more than one working face.

C. ADEM Admin. Code r. 335-13-4-.23(1)(a)2. states that in the event that erosion develops on previously covered disposal areas, or when covered waste otherwise becomes exposed, cover must be re-applied to comply with the minimum cover requirements. Inadequately covered waste and erosion rills with exposed waste were observed on the side slopes.

D. ADEM Admin. Code r. 335-13-4-.21(1)(b) states that waste accepted at the facility shall be strictly controlled so as to allow only waste stipulated on the permit or otherwise as may

be approved by the Department. Approved waste streams for the facility include non-putrescible and non-hazardous construction and demolition waste, discarded tires, asbestos and rubbish. Department personnel noted household waste dispersed throughout the waste mass.

E. ADEM Admin. Code r. 335-13-4-.23(1)(i) states that adequate equipment shall be provided to ensure continued operation in accordance with the facility permit and applicable regulations. Equipment used to perform daily operations at the landfill had been relocated for use at another county project.

F. ADEM Admin. Code r. 335-13-4-.23(1)(f) and Section III.P of the facility permit state that if the site is available to the public or commercial haulers, a sign shall be posted at the landfill stating the name of the permittee, the owner and/or operator, name of landfill, days and hours of operation, waste types accepted and disposal fees for use of the landfill. Signage for the facility was heavily covered with vegetation, resulting in poor visibility of required information pertaining to the site.

7. On October 9, 2020, the Department issued a Notice of Violation for the violations noted during the September 2, 2020, compliance inspection. On November 13, 2020 the Department received, via email, a partial response to the NOV on November 13, 2020. The partial response failed to address all noted violations, as it only addressed the failure to cover the waste mass.

8. On November 2, 2020, the Wilcox County Commission submitted supplemental information as previously requested by the Department for the renewal of Solid Waste Permit Number 66-03. After review, it was determined that the submitted material was insufficient.

9. On December 10, 2020, Department personnel conducted a site visit in an effort to address pending enforcement and permitting issues and discuss inadequacies of the facility's November 13, 2020, NOV response and the permit renewal application.

10. On January 5, 2021, the Department received a revised response to the Notice of Violation issued on October 9, 2020, indicating that the violations had been addressed or the facility was in the process of addressing them.

11. On February 23, 2021, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with the facility permit and Division 13 of the ADEM Administrative Code. During the inspection, the following violations were noted:

A. ADEM Admin Code r. 335-13-4-.23(1)(a)2. states that in the event that erosion develops on previously covered disposal areas, or when covered waste otherwise becomes exposed, cover must be re-applied to comply with the minimum cover requirements. At the time of the inspection, Department personnel noted inadequately covered waste and erosion rills with exposed waste on the side slopes.

B. ADEM Admin. Code r. 335-13-.23(1)(a)1. and Section III.D of the facility permit state that all waste shall be covered with a minimum of six inches of compacted earth or other approved cover material at the conclusion of each week's operation. Facility personnel indicated that the waste mass had not been covered in approximately two weeks.

C. 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 in the drainage ditches near the old sanitary landfill.

D. ADEM Admin Code r. 335-13-4-.29(1)(c)1. states that the owner or operator of a C/D landfill unit must record and retain in an operating record at the facility the gas monitoring reports. Furthermore, Section I.H.3. of the facility permit requires that explosive gas monitoring be conducted on an annual basis and the reports shall be submitted to the Department and placed in the operating record within 30 days of the monitoring event. Although some information was in the operating record, there were no gas monitoring reports for the past four years (2017-2020).

12. 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 d. 335-13 and Solid Waste Disposal Permit No. 66-03 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 has a history of similar violations (see Attachment A). Numerous violations noted above were also noted during previous inspections/site visits on November 28, 2018, and January 2, 2019. A Notice of Violation was issued to the Wilcox County Landfill on January 29, 2019, addressing the violations noted during these two site visits. Additional violations were also noted during inspections on February 26, 2019, and May 26, 2019.

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.

13. 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

14. 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. After considering the facts available to it and 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 **forty-five days** after issuance of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$9,400.00 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 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 Administrative 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 d. 335-13 and Solid Waste Disposal Permit Number 66-03.

C. That, the Permittee shall submit a Corrective Action Plan within **sixty days** of the issuance of this Order to the Department for review and approval. The plan should include steps (including preventative maintenance measures) that have been or will be taken to ensure the noted violations do not recur. If the Department determines through its review of the submitted Corrective Action Plan that it is not sufficient to accomplish compliance with all applicable provisions of ADEM Admin. Code div. 335-13 and Solid Waste Disposal Permit 66-03, then the Permittee shall submit a revised Corrective Action Plan, addressing the Department's concerns, no later than **thirty days** after receipt of the Department's comments. The Permittee shall complete implementation of the corrective actions made in the Corrective Action Plan pursuant to the schedule, as is to be included in the plan.

D. That, within **sixty days** of the issuance of this Order, the Permittee shall submit annual gas monitoring reports for 2017, 2018, 2019 and 2020 to the Department for review and approval. If the sampling events did not occur for those years, the Permittee shall document such to the Department and provide a plan to resume explosive gas monitoring.

E. That, within **ninety days** of the issuance of this Order, the Permittee shall submit a complete permit renewal application for Solid Waste Disposal Permit 66-03. The submittal shall include:

1. Updated drawings, certified by a professional engineer (PE), of the facility depicting the disposal area boundaries, the 100' buffer zone, the permitted facility boundary, methane gas monitoring well locations and the sedimentation pond(s) for the facility.

2. A revised operations plan that depicts the current design and operation of the landfill. This should include a discussion on waste screening procedures.

3. Detailed calculations for the sediment pond(s) demonstrating that the pond(s) can handle the water volume from a 24-hour/25 year storm event.

F. 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.

G. 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.

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

I. 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.

J. 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.

K. 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 not hereby waive any hearing on the terms and conditions of this Consent Order.

L. 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.

M. 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.

N. The parties 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.

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

P. 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.

WILCOX COUNTY LANDFILL

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

William W. Albrighton
(Signature of Authorized Representative)

Lance R. LeFleur, Director

William W. Albrighton
(Printed Name)

Chairman
(Printed Title)

(Date Signed)

8/26/2021
(Date Signed)

Attachment A
 Wilcox County Landfill
 Camden, Wilcox County
 Solid Waste Disposal Permit No. 66-03

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to control litter (2/23/2021)	1	\$250	\$150	\$0	
Failure to properly maintain cover on landfill (9/2/2020 and 2/23/2021)	2	\$2,000	\$300	\$1,000	
Failure to confine waste (9/2/2020)	1	\$1000	\$250	\$500	
Failure to maintain adequate equipment for daily use (9/2/2020)	1	\$500	\$250	\$1,000	
Failure to repair erosion (9/2/2020 and 2/23/2021)	2	\$1,000	\$500	\$0	
Failure to submit gas monitoring reports (2017, 2018, 2019, 2020)	4	\$1,500	\$600	\$0	
Inadequate facility sign (9/2/2020)	1	\$250	\$100	\$0	
Accepting unapproved waste (9/2/2020)	1	\$500	\$100	\$0	Total of Factors
TOTAL PER FACTOR		\$7,000	\$2,250	\$2,500	\$11,750

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
Total Adjustments (+/-)	\$0
Enter at Right	(\$2,350)

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$11,750
Total Adjustments (+/-)	-\$2,350
FINAL PENALTY	\$9,400

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