

ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	Order No. 23-XXX-CSW
EcoSouth Services of Mobile, LLC)	
Axis Industrial Landfill)	
Axis, Mobile County, Alabama)	
Solid Waste Disposal Permit No.49-21)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department” or “ADEM”) and EcoSouth Services of Mobile, 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 municipal solid waste landfill, known as the Axis Industrial Landfill, (hereinafter “landfill”) in Axis, 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 December 1, 2021, the Department issued renewal Solid Waste Disposal Permit Number 49-21 to the Permittee for the operation of the landfill located at 12945 Highway 43, Axis, Mobile County, Alabama.

5. On April 25, 2022, Department personnel conducted a site visit of the Permittee's landfill. The purpose of this site visit was to investigate a complaint (complaint number 8V-007RB3R53) submitted to the Department. During the course of the site visit, Department personnel documented the following violations:

A. ADEM Admin. Code r. 335-13-4-.22(1)(a)1. and Section III.H. of Solid Waste Permit No. 49-21 state that a minimum of six inches of compacted earth shall be added at the conclusion of each day's operation to control disease vectors, fires, odors, blown litter and scavenging. The site visit was conducted early on a Monday morning. It was apparent by the amount of exposed waste that cover had not been applied at the close of the previous workday (at the end of the previous week). Furthermore, when asked, site personnel stated that cover was applied in some areas, but the facility was unable to complete cover activities.

B. ADEM Admin. Code r. 335-13-4-.22(1)(b) and Section III.J. of Solid Waste Permit No. 49-21 state that all waste shall be confined to as small an area as possible. Due to a lack of cover, the active disposal area was not confined to a small area.

C. ADEM Admin. Code r. 335-13-4-.22(1)(d) requires that the landfill unit shall be operated in accordance with approved plans and permits. Section I.F. of Solid Waste Permit No. 49-21 requires that the facility be operated to minimize the possibility of an unplanned sudden or nonsudden release of contaminants (including leachate) to air, soil, groundwater, or surface water. Pooled leachate was observed in the active disposal area of the Phase II cell. In addition, leachate seeps were documented along the slopes of both the Phase I and Phase II cells.

D. ADEM Admin. Code r. 335-13-12-.01(3) and Section II.G. of Solid Waste Permit No. 49-21 state that by no later than April 15, 2010, all public solid waste management facilities in the State must have at least one certified operator on-site during hours of operation. Department personnel arrived onsite in the early morning hours to conduct the site visit. Upon arrival, Department personnel was unable to locate landfill employees and/or a certified operator; however, hauling trucks were observed entering the landfill and unloading solidification media in the solidification area.

6. On May 10, 2022, the Department issued a Notice of Violation (hereinafter "NOV") addressing the violations noted above.

7. On June 7, 2022, the Department received an incomplete response to the NOV from LaBella Associates, D.P.C. (hereinafter "LaBella") on behalf of the Permittee. As a result, the Department requested additional information in a letter dated June 15, 2022. LaBella submitted the additional information in a response letter dated June 30, 2022. The responses addressed all of the noted violations included in the NOV.

8. On June 9, 2022, Department personnel conducted a site visit of the landfill. The purpose of the visit was to assess site conditions following the May 10, 2022, NOV. During the site visit, Department personnel documented the following violation:

A. ADEM Admin. Code r. 335-13-4-.22(1)(d) requires that the landfill unit shall be operated in accordance with approved plans and permits. Section I.F. of Solid Waste Permit No. 49-21 requires that the facility be operated to minimize the possibility of an unplanned sudden or nonsudden release of contaminants (including leachate) to air, soil, groundwater, or surface water. Pooled leachate was noted in the newly constructed but yet to be certified cell, Cell 11B. Seeps were also noted along

the edge of the waste located within the current cell, which was leading to the pooled leachate in the newly constructed cell.

9. On July 12, 2022, Department personnel conducted a site visit of the Permittee's landfill. The purpose of the site visit was to determine compliance with Division 13 of the ADEM Administrative Code. The site visit was conducted during the early morning hours in an attempt to determine if the landfill was applying daily cover at the end of the workday. During the course of the site visit, Department personnel documented the following violations:

A. ADEM Admin. Code r. 335-13-4-.22(1)(d) requires that the landfill unit shall be operated in accordance with approved plans and permits. Section I.F. of Solid Waste Permit No. 49-21 requires that the facility be operated to minimize the possibility of an unplanned sudden or nonsudden release of contaminants (including leachate) to air, soil, groundwater, or surface water. Due to recent rain events, the newly constructed but yet to be certified cell, Cell 11B, which is located adjacent to the current working face, had accumulated both stormwater and leachate. Leachate pop outs originating from the active disposal area were observed seeping into Cell 11B. In addition, pooled leachate was observed at the base of the working face on the northeastern slope of the Phase II area. A large leachate seep was also noted along the side slope on the north/northeastern portion of the landfill.

B. ADEM Admin. Code r. 335-13-12-.01(3) and Section II.G. of Solid Waste Permit No. 49-21 state that by no later than April 15, 2010, all public solid waste management facilities in the State must have at least one certified operator on-site during hours of operation. Department personnel arrived onsite in the early morning hours to conduct the site visit. Upon arrival, Department personnel observed a leachate collection truck loading leachate from the frac tanks. There was no certified operator onsite during this landfill operation.

C. ADEM Admin. Code r. 335-13-4-.22(1)(d) requires that the landfill unit shall be operated in accordance with approved plans and permits. Section X. of Solid Waste Permit No. 49-21 grants the landfill permission to stage solidification operations within the Phase II permitted footprint as described in the permit application submitted to the Department on September 29, 2020. The Non-hazardous Waste Solidification Plan, which was submitted as part of the permit application, requires that paint filter tests be performed on solidified loads at least once daily. During the site visit, Department personnel requested documentation of the paint filter testing. The requested documentation was not available for review.

10. 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. 49-21 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.

11. 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

12. Recent storm events (9.7 inches recorded in April and 1.2 inches occurred during week of April 25, 2022, inspection) contributed to the standing water and leachate issues alleged during the April 25, 2022 ADEM inspection. A severe storm the night before ADEM's July 12, 2022, inspection contributed to the standing water and leachate issues alleged. Leachate observed during ADEM's April 25, 2022, and July 12, 2022, inspections were controlled by the Permittee and pumped into the leachate collection system or absorbed into the landfill and collected by the leachate collection system. The leachate collection system was operating as designed during ADEM's April 25, 2022, and July 12, 2022, inspections. The Permittee is not aware of any alleged leachate noted in this Consent Order reaching onsite sedimentation ponds or entering a Water of the State.

13. Cell 11A and Cell 11B was constructed per ADEM approved design plans prepared by an Alabama Professional Engineer. Contact water which allegedly drained into Cell 11B noted during ADEM's June 9, 2022 and July 12, 2022, inspections was pumped to or collected by the site's leachate collection system.

14. ADEM approved alternative daily cover was in place to control disease vectors, fire, blowing litter, and scavenging at the end of the day prior to ADEM's April 25, 2022, inspection. Earthen cover was applied at the area of alleged uncovered waste following ADEM's April 25, 2022 inspection. The Permittee has retrained facility personnel regarding the proper application of earthen weekly cover as well as the importance of applying cover to the landfill.

15. A Certified Operator joined the ADEM inspector during ADEM's April 25, 2022, and July 12, 2022 inspections.

16. The Permittee has updated policies and procedures to specifically address the alleged violations in this Consent Order.

17 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), as amended, 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 \$18,000.00 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 div. 335-13 and Solid Waste Disposal Permit Number 49-21.

C. That, not later than **sixty days** from the issuance of this Order, the Permittee shall submit a Corrective Action Plan to the Department, for review and approval. The Corrective Action Plan shall include:

1. A complete assessment of the site to determine what, if any, operational practices, or deficiencies thereof, may have led to or contributed to the violations noted above;

2. A detailed description of measures that have or will be taken to address the violations noted in this Order, including but not limited to the prevention and remediation of leachate seeps, ponding of leachate and/or stormwater, and cover practices (including any changes to current practices). This should also include any corrective measures that are necessary as a result of the site assessment detailed above;

3. A contingency plan for how landfill operations will be conducted during severe weather events (those which produce dangerous operation conditions); and

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

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 No. 49-21, 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 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.

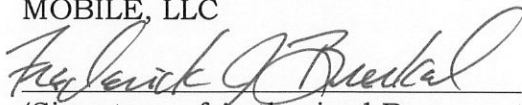
L. The parties agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

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.

ECOSOUTH SERVICES OF
MOBILE, LLC


(Signature of Authorized Representative)

Frederick J Burkell
(Printed Name)

CEO
(Printed Title)

3/31/2023
(Date Signed)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur
Director

(Date Signed)

Attachment A
Axis Industrial Landfill
Axis, Mobile County

Solid Waste Disposal Permit No. 49-21

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to operate in accordance with approved plans and permits (ponding of leachate and leachate seeps) (4/25/22, 6/9/22 and 7/12/22)	3	\$6,000	\$3,000	\$0	
Failure to cover waste daily/weekly (4/25/22)	1	\$3,000	\$2,000	\$0	
Failure to confine waste mass to a small area (4/25/22)	1	\$1,000	\$500	\$0	
Failure to have a certified operator onsite (4/25/22 and 7/12/22)	2	\$3,000	\$1,000	\$0	
Failure to operate in accordance with approved plans and permits (paint filter test not conducted according to Solidification Plan) (7/12/22)	1	\$2,000	\$1,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$15,000	\$7,500	\$0	\$22,500

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$4,500
Total Adjustments (+/-) Enter at Right	\$4,500

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$22,500
Total Adjustments (+/-)	\$4,500
FINAL PENALTY	\$18,000

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