

ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
Ashberry Landfill, LLC	)	
Ashberry C/D Landfill and Tire Recycling Facility	)	Order No. 24-XXX-CSW/ST
24961 Wages Road	)	
Opp, Covington County, Alabama	)	
Solid Waste Disposal Facility Permit No. 20-10	)	
Scrap Tire Receiver Registration No. SC10000-019560	)	
Scrap Tire Transporter Permit No. STT0000-019560	)	
Scrap Tire Processor Permit No. STP0000-019560	)	

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and the Ashberry 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/demolition landfill, known as the Ashberry C/D Landfill and Tire Recycling Facility, (hereinafter “landfill”) in Opp, Covington 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 September 25, 2019, the Department issued renewal Solid Waste Disposal Facility Permit Number 20-10 to the Permittee for the operation of the landfill located at 24961 Wages Road, Opp, Covington County, Alabama.

5. On November 12, 2004, the Department issued the Facility's original Scrap Tire Transporter Permit, STT0000-019560. The Facility has continuously renewed the Scrap Tire Transporter Permit and is currently operating under a Scrap Tire Transporter Permit that was issued on January 24, 2020.

6. On May 17, 2006, the Department issued a Class One Scrap Tire Receiver registration, SC10000-019560, to the Facility.

7. On September 1, 2010, the Department issued the facility's original Class One Scrap Tire Processor Permit, STP0000-019560. The Facility has continuously renewed the Class One Scrap Tire Processor Permit and is currently operating under a Class One Scrap Tire Processor Permit that was issued on September 1, 2020.

8. On February 14, 2022, the Department issued Administrative Order No. 22-050 SW/ST (hereinafter "Initial Order") addressing the violations of the solid waste and scrap tire regulations previously noted in compliance inspections dated April 20, 2021, June 28, 2021, August 24, 2021, November 23, 2021, and December 13, 2021 which were cited by the Department in Notices of Violation dated May 10, 2021, July 19, 2021 and in the Initial Order, all of which are incorporated herein by reference. The Initial Order required that the Permittee immediately take certain actions to address the noted violations.

9. On March 1, 2022, the Department received a response to the Initial Order from the Permittee. The response detailed actions that had already been taken by the facility as well as a timeline for completion and submittal of a compliance plan to address the violations outlined in the Initial Order. Based on the proposed schedule, a Final Report/Compliance Plan was to be submitted in April 2022. A Final Report/Compliance Plan was not received.

10. On May 23, 2022, Department personnel conducted a site visit at 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. 335-13-4-.23(1)(a)1. and Section III. D of Solid Waste Disposal Permit No. 20-10 state that all waste shall be covered with a minimum of six inches of compacted earth or other alternative cover, as approved by the Department, at the conclusion

of each week's operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter and scavenging. There was an extremely large number of exposed tires encompassing most of the facility. Cover material had been applied to areas of Cell 6; however, based on the average volume of tires received and the number of exposed tires, it was evident that the entire waste mass was left uncovered for an extensive amount of time in excess of a week.

B. ADEM Admin. Code r. 335-13-4-.23(1)(c) and Section III. D of the solid waste disposal permit state all waste shall be confined to as small an area as possible and placed onto an appropriate slope not to exceed 4 to 1 (25%) or as approved by the Department. Due to a lack of cover, as detailed above, the working face was not confined to as small an area as possible. In addition, the slopes of the working face appeared to exceed the 4 to 1 (25%) slope.

C. ADEM Admin. Code r. 335-13-4-.23(1)(b) and Section III. D of the solid waste disposal permit state that all waste shall be thoroughly spread in layers two feet or less in thickness and thoroughly compacted weekly with adequate landfill equipment prior to placing additional layers of waste or placing the weekly cover, unless otherwise approved by the Department. Waste, such as construction/demolition waste and other types of waste, which cannot be managed by landfill equipment in this manner shall be managed in a manner approved by the Department. The waste mass exceeded two feet layers in thickness and had not been compacted.

D. Section III.A.2 of the solid waste disposal permit states that the total permitted area for the Permittee is 70.03 acres, with 27.71 acres approved for disposal. The facility layout, which includes maps depicting the facility and permitted boundary as well as the disposal cells, is included as part of the permit application. During the site visit, tire material was noted along the eastern border of Cells 3 and 4. A survey of the facility, provided as part of the draft compliance plan dated June 21, 2022, confirmed that waste material has been placed to the east of Cells 3 and 4 and to the west of Cell 7. As a result of the site visit, and a review of aerial photography submitted as part of the survey, the Department was able to determine that waste (tire material) has been placed outside the permitted disposal area.

11. On August 1, 2022, 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. 335-13-4-.23(1)(a)1. and Section III. D of the solid waste disposal permit state that all waste shall be covered with a minimum of six inches of compacted earth or other alternative cover, as approved by the Department, at the conclusion of each week's operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter and scavenging. There was an extremely large number of exposed tires encompassing most of the facility. Cover material had been applied to some areas of the active cells; however, based on the average volume of tires received and the number of exposed tires, it was evident that the entire waste mass has been left uncovered for an extensive amount of time in excess of a week.

B. ADEM Admin. Code r. 335-13-4-.23(1)(c) and Section III. D of the solid waste disposal permit state all waste shall be confined to as small an area as possible and placed onto an appropriate slope not to exceed 4 to 1 (25%) or as approved by the Department. Due to a lack of cover, as detailed above, the working face was not confined to as small an area as possible. In addition, the slopes of the working face appeared to exceed the 4 to 1 (25%) slope.

C. ADEM Admin. Code r. 335-13-4-.23(1)(b) and Section III. D of the solid waste disposal permit state that all waste shall be thoroughly spread in layers two feet or less in thickness and thoroughly compacted weekly with adequate landfill equipment prior to placing additional layers of waste or placing the weekly cover, unless otherwise approved by the Department. Waste, such as construction/demolition waste and other types of waste, which cannot be managed by landfill equipment in this manner shall be managed in a manner approved by the Department. The waste mass exceeded two feet layers in thickness and had not been compacted.

12. On November 21, 2022, 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, it was noted that minimal progress had been made to comply with the requirements of Scrap Tire Processor Permit STP0000-019560, Solid Waste Disposal Permit No. 20-10 and Administrative Order No. 22-050 SW/ST. In addition, the following violations were noted:

A. ADEM Admin. Code r. 335-13-4-.23(1)(a)1. and Section III. D of the solid waste disposal permit state that all waste shall be covered with a minimum of six inches of compacted earth or other alternative cover, as approved by the Department, at the conclusion of each week's operation or as otherwise specified by the Department to control disease vectors, fires, odors, blown litter and scavenging. There was an extremely large number of exposed tires encompassing most of the facility. Cover material had been applied to some areas of the active cells; however, based on the average volume of tires received and the number of exposed tires, it was evident that the entire waste mass had been left uncovered for an extensive amount of time in excess of a week.

B. ADEM Admin. Code r. 335-13-4-.23(1)(c) and Section III. D of the solid waste disposal permit state all waste shall be confined to as small an area as possible and placed onto an appropriate slope not to exceed 4 to 1 (25%) or as approved by the Department. Due to a lack of cover, as detailed above, the working face was not confined to as small an area as possible. In addition, the slopes of the working face appeared to exceed the 4 to 1 (25%) slope.

C. ADEM Admin. Code r. 335-13-4-.23(1)(b) and Section III. D of the solid waste disposal permit state that all waste shall be thoroughly spread in layers two feet or less in thickness and thoroughly compacted weekly with adequate landfill equipment prior to placing additional layers of waste or placing the weekly cover, unless otherwise approved by the Department. Waste, such as construction/demolition waste and other types of waste, which cannot be managed by landfill equipment in this manner shall be managed in a manner approved by the Department. The waste mass exceeded two feet layers in thickness and had not been compacted.

13. 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 Facility Permit No. 20-10 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 Facility has a history of similar violations at this site. On February 14, 2022, the Department issued Administrative Order No. 22-050 SW/ST addressing violations of the solid waste and scrap tire regulations, as noted in compliance inspections dated April 20, 2021, June 28, 2021, August 24, 2021, November 23, 2021, and December 13, 2021. On February 1, 2023, the Department issued Order No. 23-032-SW/ST,

which required the Permittee to cease and desist from the operation of accepting waste until approved in writing by the Department. Additionally, on February 14, 2023, the Department issued Order No. 23-035-SW/ST, which replaced Order No. 23-032-SW/ST. Both orders issued in February of 2023 address violations noted in compliance inspections dated February 15, 2022, February 28, 2022, August 1, 2022, and November 21, 2022.

F. THE ABILITY TO PAY: The Permittee has alleged an inability to pay the civil penalty. However, after a review of available information, the Department has determined that a reduction in penalty is not warranted in this case, based on inability to pay.

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.

14. 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***

15. 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 **365 days** after issuance of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$121,560.00 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 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 Facility Permit Number 20-10.

C. That, immediately upon the issuance of this Order, the Permittee shall begin implementation of the following corrective actions:

1. The Permittee shall begin the phased diversion of all incoming tire loads to other facilities for processing or disposal. Prior to the initiation of diversion activities, Ashberry shall confirm prior to diversion of tires that the contracted facilities are properly permitted to receive the tires. Under this phased approach, one hundred percent (100%) diversion of incoming tire loads shall be complete by February 29, 2024. The purpose of tire diversion is to ensure that the receipt of additional tire materials does not impede compliance with this Order, Division 13 regulations or Solid Waste Disposal Permit No. 20-10.

2. The Permittee shall comply with permitted cover requirements for all incoming future loads to be disposed of in the currently certified cell, identified as Cell 9A, ensuring that the entire waste mass is covered at the conclusion of each week. In addition, the Permittee shall continue accelerated cover activities of existing tires located in the other cells. To achieve site-wide compliance, the Permittee shall continue efforts to certify existing cells. Disposal and cover activities shall proceed in a manner so as to prevent disposal outside of a certified cell



and minimize and prevent the creation of landfill slopes that exceed 4:1 (25%). Remedial cover applications shall be completed within 6 months of the date of order.

3. Mining of existing tires may commence, as outlined in Solid Waste Disposal Permit No. 20-10. However, mining shall not interfere with cover operations. Mining of existing tires yet to be covered should be given highest priority. For the purposes of maintaining compliance in Cell 9A, mining shall not commence in this cell until all other cells have been mined to the fullest extent.

4. Tire staging, for the purposes of ultimate diversion from the landfill, may not conflict with the requirements of Solid Waste Disposal Permit No. 20-10. Any staged tires that remain at the conclusion of the week, shall be relocated to Cell 9A for proper disposal and cover. Tire staging will not take place in Cell 9A, which shall be reserved for disposal practices only.

5. The Permittee shall submit biweekly (every two weeks) Compliance Progress Updates, which shall include a narrative summary of ongoing activities at the site. At a minimum the updates should:

a) Identify the cells where cover activities were conducted and include only those cells where progress was made. The overall percentage of cover progress shall be reported on a quarterly basis.

b) Detail the total number of trailers or truckloads of tires received, in addition to the number of truckloads diverted from the landfill. Any truckloads of existing tires that are mined from the landfill unit shall be recorded separately, so that the updates clearly convey what activities took place in what areas of the landfill.

c) Photograph logs provided in the updates should be large enough to provide sufficient detail (it is recommended that only one picture is presented per page).

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.

ASHBERRY LANDFILL, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

  
\_\_\_\_\_  
(Signature of Authorized Representative)

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

*T. Ashberry*  
\_\_\_\_\_  
(Printed Name)

*Owner*  
\_\_\_\_\_  
(Printed Title)

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

*12-15-23*  
\_\_\_\_\_  
(Date Signed)

Attachment A  
Ashberry Landfill, LLC  
Opp, Covington County  
Solid Waste Disposal Permit No. 20-10  
Scrap Tire Registration No. SC10000-019560  
Scrap Tire Processor Permit No. STP0000-019560  
Scrap Tire Transporter Permit No. STT0000-019560

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Scrap tires stored outside longer than 30 days (4/20/21, 6/28/21 and 12/13/21)	3	\$11,250	\$6,000	\$0	
Exceedance of 1500 tires storage limit (6/28/21 and 12/13/21)	2	\$4,000	\$2,000	\$0	
Exceedance of maximum dimensions of tire materials pile (4/20/21, 6/28/21 and 12/13/21)	3	\$9,000	\$6,000	\$0	
Failure to maintain fire lane (4/20/21, 6/28/21 and 12/13/21)	3	\$9,000	\$6,000	\$0	
Failure to store used tires in a rack or stack (12/13/21)	1	\$1,000	\$500	\$0	
Failure to cover waste weekly (6/28/21, 8/24/21, 11/23/21, 12/13/21, 5/23/22, 8/1/22 and 11/21/22)	7	\$21,000	\$14,000	\$0	
Failure to confine waste mass to a small area (6/28/21, 8/24/21, 11/23/21, 12/13/21, 5/23/22, 8/1/22 and 11/21/22)	7	\$7,000	\$3,500	\$0	
Failure to compact waste mass (6/28/21, 8/24/21, 11/23/21, 12/13/21, 5/23/22, 8/1/22 and 11/21/22)	7	\$7,000	\$3,500	\$0	
Failure to maintain 4 to 1 slope (6/28/21, 8/24/21, 11/23/21, 12/13/21, 5/23/22, 8/1/22 and 11/21/22)	7	\$3,500	\$700	\$0	
Failure to provide boundary markers (12/13/21)	1	\$500	\$500	\$0	
Failure to maintain sediment pond (12/13/21)	1	\$1,000	\$500	\$0	
Failure to maintain drainage ditches (12/13/21)	1	\$1,000	\$500	\$0	
Failure to comply with Administrative Order No. 22-050-SW/ST (2/14/22)	1	\$10,000	\$5,000	\$0	
Disposal in uncertified cells (12/13/21)	1	\$10,000	\$5,000	\$0	
Disposal outside permitted disposal area (5/23/22)	1	\$2,000	\$1,000	\$0	
					<b>Total of Three Factors</b>

<b>TOTAL PER FACTOR</b>	<b>\$97,250</b>	<b>\$54,700</b>	<b>\$0</b>	<b>\$151,950</b>
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<b>Adjustments to Amount of Initial Penalty</b>	
<b>Mitigating Factors (-)</b>	<b>\$0</b>
<b>Ability to Pay (-)</b>	<b>\$0</b>
<b>Other Factors (+/-)</b>	<b>-\$30,390</b>
<b>Total Adjustments (+/-)</b> <i>Enter at Right</i>	<b>-\$30,390</b>

<b>Economic Benefit (+)</b>	<b>\$0</b>
<b>Amount of Initial Penalty</b>	<b>\$151,950</b>
<b>Total Adjustments (+/-)</b>	<b>-\$30,390</b>
<b>FINAL PENALTY</b>	<b>\$121,560</b>

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