

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Action Environmental, LLC
Hanceville, Cullman County, Alabama
EPA Identification Number ALR000056689**

Consent Order No. 20-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and Action Environmental, LLC (“Action Environmental”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (“AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Action Environmental, LLC (Action Environmental) operates a hazardous waste transporter and transfer facility (“Facility”) with EPA Identification Number ALR000056689, located at 14830 AL Highway 91 in Hanceville, Cullman County, Alabama. Action Environmental, as a result of its operations at the facility, was a large quantity generator of hazardous waste, a transporter, a transfer facility, and a used oil generator, as those terms are defined in ADEM Admin. Code Div. 14, at all times relevant to this action.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended.

In addition, the Department is authorized to administer and enforce the provisions of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On March 11, 2020, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection ("CEI") of Action Environmental. The CEI and a review of Action Environmental's compliance showed the following:

- (a) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a), a large quantity generator may accumulate hazardous waste on site without a permit or interim status provided the hazardous waste is on site for no more than 90 days. ADEM Admin. Code r. 335-14-8-.01(1)(c) AHWMMMA requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in Chapter 335-14-2.

Action Environmental accumulated four 55-gallon containers of site-generated hazardous waste for greater than 90 days without first obtaining an accumulation time limit extension or a hazardous waste storage permit.

- (b) Pursuant to ADEM Admin. Code r. 335-14-4-.05(3), a hazardous waste transporter may hold hazardous waste at a transfer facility for no longer than 10 days during the normal course of transportation. ADEM Admin. Code r. 335-14-8-.01(1)(c) AHWMMMA requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in Chapter 335-14-2.

Action Environmental held four 55-gallon drums of off-site generated hazardous waste in its transfer facility longer than 10 days without first obtaining a hazardous waste storage permit.

- (c) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)1.(v) at least weekly, the large quantity generator must inspect central accumulation areas. The large quantity

generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. The large quantity generator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions.

Action Environmental failed to conduct or document weekly inspections of its hazardous waste storage area.

- (d) Pursuant to pertinent provisions of ADEM Admin. Code r. 335-14-3-.01(7)(a)10.(ii), a large quantity generator must post a sign with the legend, "Danger--Unauthorized Personnel Keep Out", at each entrance to the central accumulation area, and at other locations, in sufficient numbers to be seen from any approach.

Action Environmental failed to post the required warning signs at the entrance to the hazardous waste storage area

5. On April 22, 2020, the Department issued a Notice of Violation to Action Environmental, which cited violations of the hazardous waste regulations that were discovered during the CEI.

6. On May 12, 2020, the Department received Action Environmental's response to the aforementioned Notice of Violation.

7. Pursuant to Ala. Code § 22-22A-5(18), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), 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(s) 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 a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

(a) SERIOUSNESS OF THE VIOLATIONS: In arriving at the civil penalty, the Department considered the general nature and magnitude of the violation(s) along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

(b) THE STANDARD OF CARE: In considering the standard of care manifested by Action Environmental, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Action Environmental has failed to exhibit a standard of care commensurate with the applicable regulatory standards.

(c) ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that there was no significant economic benefit gained by Action Environmental as a result of the violations referenced herein.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects to mitigate as a result of the alleged violations.

(e) HISTORY OF PREVIOUS VIOLATIONS: Action Environmental has no history of similar violations.

(f) THE ABILITY TO PAY: Action Environmental 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 that is warranted in the spirit of cooperation and the desire to resolve this matter amicably without incurring the unwarranted expense of litigation (see Attachment A, which is made a part of the Department's Contentions).

8. The Department neither admits nor denies Action Environmental's contentions,

which are set forth below. The Department has agreed to the terms of this Special Order by Consent in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Special Order by Consent are in the best interest of the citizens of Alabama.

FACILITY'S CONTENTIONS

9. Action Environmental (Action) neither admits nor denies the Department's contentions. Since its inception in 1995, Action has been recognized as a leader in the industry providing planned remedial services, emergency spill response, industrial cleaning and transportation services. Action is committed to compliance with all applicable laws and regulations concerning the environment, the health and safety of its employees and to continuous improvement and sustainability.

10. Without admission of the Department's contentions, Action agrees to the entry of this Special Order by Consent in the interest of resolving this matter without delay and expense of litigation. Action consents to abide by the terms of the Special Order by Consent and to pay the civil penalty assessed herein.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, Action Environmental, 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)c. , as amended, as well as the need for timely and effective enforcement and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Action Environmental agree to enter into this Special Order by Consent with the following terms and conditions:

A. Action Environmental agrees to pay to the Department a civil penalty in the amount of \$13,000 in settlement of the violations alleged herein within three hundred sixty-five days of the effective date of this Special Order by Consent. Failure to pay the civil penalty within three hundred sixty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Action Environmental agrees that all penalties due pursuant to this Special Order by Consent shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or other payment methods acceptable to the Department and shall be remitted to:

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

Any payment submitted to the Department pursuant to this Special Order by Consent shall reference Action Environmental's name and address, and the ADEM Administrative Order number of this action.

C. Action Environmental agrees that, independent of this Special Order by Consent, Action Environmental shall comply with all terms, conditions, and limitations of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. The Department and Action Environmental ("parties") agree that this Special Order by Consent 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 Special Order by Consent certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Special Order by Consent, to execute the Special Order by Consent 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 Special Order by Consent is intended to operate as a full resolution of the alleged violations cited herein.

F. Action Environmental agrees that it is not relieved from any liability if it fails to comply with any provision of this Special Order by Consent.

G. For purposes of this Special Order by Consent only, Action Environmental 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 Special Order by Consent 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 Special Order by Consent, 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; Action Environmental agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement action address new matters not raised in this Special Order by Consent.

I. The parties agree that this Special Order by Consent shall be considered final and effective immediately upon signature of all parties. This Special Order by Consent shall not be appealable, and Action Environmental does hereby waive any hearing on the terms and conditions of this Special Order by Consent.

J. The parties agree that this Special Order by Consent shall not affect Action Environmental's obligation to comply with any federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Special Order by Consent 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 Special Order by Consent 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 Special Order by Consent must be agreed to in writing signed by both parties.

N. The parties agree that, except as otherwise set forth herein, this Special Order by Consent 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 Action Environmental of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Action Environmental, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

Luke A. Frantz

(Printed Name)

President & General Manager

(Printed Title)

09/18/2020

(Date Signed)

(Date Executed)

Attachment A

Action Environmental, LLC
Hanceville, Cullman County
Facility ID No. ALR000056689

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Storage of hazardous waste without a permit.	1	\$10,000	\$5,000	\$0	
Failure to conduct or document weekly inspections of the hazardous waste storage area.	1	\$1,000	\$100	\$0	
Failure to post the required warning sign at each approach to the hazardous waste storage area.	1	\$200	\$100	\$0	Total of Three Factors
TOTAL PER FACTOR		\$11,200	\$5,200	\$0	\$16,400

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	\$0
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$16,400
Other Factors (+/-)	(-\$3,400)	Total Adjustments (+/-)	(-\$3,400)
Total Adjustments (+/-) Enter at Right	(-\$3,400)	FINAL PENALTY	\$13,000

Footnotes

* See the "DEPARTMENT'S CONTENTIONS" portion of the Order for a detailed description of each violation and the penalty factors.