

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Chemical Waste Management, Inc.
Emelle, Sumter County, Alabama
USEPA Identification Number ALD000622464

Consent Order No. 23-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 Chemical Waste Management, Inc. (“CWM”) pursuant to the provisions of the Alabama Environmental Management Act (“AEMA”), Ala. Code § 22-22A-1 to 22-22A-17, 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. Chemical Waste Management, Inc. operates a commercial hazardous waste treatment, storage, and disposal Facility under AHWMMA Hazardous Waste Facility Permit Number ALD000622464 (“Facility Permit”), located at 36964 Alabama Highway 17 North in Emelle, Sumter County, Alabama. CWM, as a result of its operations at the Facility, was a hazardous waste treatment, storage, and disposal facility, as well as a large quantity 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-17, 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. Between February 7 and February 9, 2023, the Department conducted a compliance evaluation inspection ("CEI") of CWM and noted the following the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-3-.01(2), a person who generates a solid waste, as defined in 335-14-2-.01(2), must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable AHWMMMA regulations.

CWM failed to make a waste determination on three 5-gallon containers of paint waste located in Building 602.

(b) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)4., a satellite accumulation container holding hazardous waste must be closed at all times during accumulation, except when adding, removing, or consolidating waste; or temporary venting is required.

CWM failed to keep closed one 55-gallon satellite accumulation container of hazardous waste located in Building 300.

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)5.(ii), a generator must mark or label its satellite accumulation containers with an indication of the hazards of the contents.

CWM failed to mark or label five 55-gallon satellite accumulation containers of hazardous waste located in Buildings 300 and 401 with an indication of the hazards of the contents.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(ii)b., a large quantity generator accumulating hazardous waste in tanks must mark or label its tanks with an indication of the hazards of the contents.

CWM failed to mark or label one hazardous waste storage tank located in Building 19A with an indication of the hazards of the contents.

(e) Pursuant to Facility Permit Condition II.L.2.b., the storage of hazardous waste restricted from land disposal under ADEM Admin. Code r. 335-14-9 is prohibited unless the requirements of ADEM Admin. Code r. 335-14-9-.05 are met.

CWM stored three 30-gallon containers of hazardous waste (accumulation start date 12/21/2021) located in Building 600 and one 30-gallon container of hazardous waste (accumulation start date 9/9/21) located in Building 603 greater than one year, which is prohibited by ADEM Admin. Code r. 335-14-9-.05.

(f) Pursuant to Facility Permit Condition II.L.2.b., the storage of hazardous waste restricted from land disposal under ADEM Admin. Code r. 335-14-9 is prohibited unless the requirements of ADEM Admin. Code r. 335-14-9-.05 are met. ADEM Admin. Code r. 335-14-9-.05(1), incorporates by reference 40 CFR Part 268 Subpart E (Prohibitions on Storage). 40 CFR § 268.50(a)(2)(i)(C) requires that each container be clearly marked to identify an indication of the hazards of the contents.

CWM failed to mark ninety containers of hazardous wastes located in Buildings 406, 600, 604, 700, 702, 1200A, 2000, 2001 and 2200 with an indication of the hazards of their contents.

(g) Pursuant to Facility Permit Condition III.C.4., the sampling and staging of drums shall not exceed 72 hours. All containers that are to be fingerprinted or are awaiting analysis shall be segregated from other containers in the container storage area. Each container shall be marked with the date of receipt.

CWM failed to mark nine hazardous waste containers located in Buildings 600, 700 and 702 with acceptance labels or accumulation start dates.

(h) Pursuant to Facility Permit Condition III.E., if a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, upon discovery the Permittee shall immediately transfer the hazardous waste from such container to a container that is in good condition or otherwise manage the waste in compliance with the conditions of ADEM Admin. Code r. 335-14-5-.09(2).

CWM failed to transfer the contents from twenty-eight hazardous waste containers located in Buildings 600, 603, 604, 700 and 702 that were not in good condition (due to severe rusting or other structural defects) into containers that were in good condition.

(i) Pursuant to Facility Permit Condition III.G.3., a container holding hazardous waste must not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

CWM failed to manage containers holding hazardous waste in a manner that prevents them from rupturing or leaking. Sixteen hazardous waste containers located in Buildings 600 and 604 were leaking.

(j) Pursuant to Facility Permit Condition III.G.4., adequate aisle space will be maintained, as shown in Section D-1-1a(15) of the storage permit application, and as necessary to provide adequate access for emergency equipment and inspection.

CWM failed to maintain adequate aisle space between the rows of hazardous waste containers in the permitted storage areas located in Buildings 600, 604, 700 and 702.

(k) Pursuant to Facility Permit Condition III.H.2., the Permittee shall maintain an impervious coating that is free of cracks, gaps, or other deterioration on all containment system surfaces that may be exposed to hazardous wastes or hazardous constituents (or releases of hazardous wastes or hazardous constituents).

CWM failed to maintain an impervious coating on the secondary containment floor in Building 600. The concrete floor was cracked.

(l) Pursuant to Facility Permit Condition IV.I., the Permittee shall comply with the requirements of ADEM Admin. Code r. 335-14-5-.10(7). ADEM Admin. Code r. 335-14-5-.10(7)(b)2. states that a tank system or secondary containment system from which there has been a leak or spill, or which is unfit for use, must be removed from service immediately, and the owner or operator must remove any material that was released to a secondary containment system within 24 hours or in as timely a manner as is possible to prevent harm to human health and the environment.

CWM failed to remove a spill of hazardous waste from the secondary containment of Building 1703 within 24 hours of its discovery.

(m) Pursuant to Facility Permit Condition XI.B.1.a.i., all groundwater monitoring wells shall be maintained in accordance with the plans and specifications presented in Section E, Appendix E-5 (Eutaw wells), and Appendix E-9 (Selma Chalk wells) of the permit application and/or CMI Plan and in accordance with ADEM Admin. Code r. 335-14-5-.06. ADEM Admin. Code r. 335-14-5-.06(8)(c) states all monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater. Monitoring wells must be operated and maintained in a manner to prevent soil, surface water, and/or groundwater contamination. This requirement includes the installation of protective barriers around monitoring wells where necessary to prevent damage to the well from traffic or other causes or as required on a case-by-case basis by the Department. All monitoring wells must have functional key or combination locks on the wellhead covers to prevent unauthorized access. All monitoring wells must be assigned an identifying number by the facility, and such numbers must be permanently affixed to the outer casing of each monitoring well.

CWM failed to lock or secure monitoring wells SM-05B, SM-08A, SM-02 and CM 1-2 to prevent unauthorized access.

5. On March 29, 2023, the Department issued a Notice of Violation to CWM, which cited violations of the Facility Permit and hazardous waste regulations that were discovered during the CEI.

6. On April 28, 2023, the Department received CWM's response to the March 29, 2023 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 VIOLATION(S):** In determining the seriousness of the violations, the Department considered the general nature and magnitude of the violations along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

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

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

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

(e) **HISTORY OF PREVIOUS VIOLATIONS:** Based on a review of Department records, CWM has a history of similar violations at the Facility and the penalty reflects that history.

(f) **ABILITY TO PAY:** The Department is not aware that CWM is unable 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 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 CWM'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 alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interest of the citizens of Alabama.

CWM'S CONTENTIONS

9. CWM promptly corrected the following items noted in the Department's contentions during or shortly after the Department's inspection:

a. The containers of paint waste were confirmed by CWM to be nonhazardous and properly disposed (Department Contention 4(a)).

b. A lid was placed on the 55-gallon satellite accumulation container of oil filters (Department Contention 4.(b));

c. Labels with accumulation start dates were placed on any containers that were missing such information (Department Contention 4(g));

d. The aisle space issues were corrected (Department Contention 4(j));

e. A small crack in the one-quarter inch thick coating on top of the solid concrete floor in Building 600 was patched (Department Contention 4(k)); and

f. CWM replaced missing locks on all monitoring wells, all of which are located within the fenced and guarded confines of the Facility (Department Contention 4(m)).

10. Prior to the Department's inspection, CWM was using a labeling system that it contends sufficiently communicates the hazards of the contents of containers in accordance with applicable regulations. In light of the Department's contentions regarding container labeling (Department Contentions 4(c), 4(d) and 4(f)), CWM has updated its labeling system to include additional hazard information as instructed by the Department.

11. Due to a nationwide backlog for waste destined for incineration, CWM has been providing the Department each month with a list of containers required to be stored for more than one year. CWM failed to include four containers in its monthly report to the Department that are the subject of Department Contention 4(e). CWM is now conducting an additional cross-check of its inventory prior to submitting reports to the Department.

12. CWM respectfully disagrees with the Department's contentions that there were any drums at the Facility that were not in good condition (Department Contention 4(h)) or that were leaking (Department Contention 4(i)). CWM inspected all containers at the Facility after the Department's inspection and did not observe any containers that were structurally compromised or leaking. CWM observed condensate on some containers associated with changes in outdoor humidity/temperature fluctuations. All containers are stored indoors and within secondary containment and there was no release to the environment. CWM will ensure that container inspection procedures are performed as per the approved permit plans and if any damaged or leaking drums are discovered in the future, they will be addressed in accordance with the approved permit plans.

13. CWM respectfully disagrees with the Department's contention that it failed to timely remove a spill in Building 1700 C regarding tank 1703 (Department Contention 4(l)). CWM cleaned up the spill within 24 hours in August 2022. Rust observed by the Department during the inspection was related to condensate (from outdoor humidity/temperature fluctuations) that was dripping from metal components. The rust was cleaned up shortly after the inspection. CWM will ensure that containment structure inspection procedures are performed as per the approved permit plans and any issues identified will be addressed in accordance with the approved permit plans.

14. CWM neither admits nor denies the Department's Contentions. CWM consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. Nothing contained in this Consent Order, nor any action taken in furtherance of this Consent Order, shall constitute or be deemed or construed at any time for any purpose by any third party (including without limitation third parties who might bring claims in any legal, administrative, or other

proceeding) as an admission of liability by CWM.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, CWM, 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. The Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and CWM agree to enter into this Consent Order with the following terms and conditions:

A. CWM agrees to pay to the Department a civil penalty in the amount of \$32,680.00 in settlement of the violations alleged herein within forty-five days of the effective date of this Consent Order. Failure to pay the civil penalty within forty-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. CWM agrees that all penalties due pursuant to this Consent Order 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 Consent Order shall reference CWM's name and address, and the ADEM Administrative Order Number of this action.

C. CWM agrees to comply with all terms, conditions, and limitations of the Facility Permit, the AHWMMA, the AEMA, and the regulations promulgated pursuant thereto immediately upon the effective date of this Order and continuing every day thereafter.

D. The Department and CWM ("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 alleged violations cited herein.

F. CWM 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 CWM 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. CWM also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, CWM 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 CWM, 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 CWM) 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 CWM, 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 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 actions as may be appropriate. CWM agrees not to object to such future orders, litigation, or enforcement actions based on the issuance of this Consent Order if future orders, litigation, or other enforcement actions 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 shall not be appealable, and CWM 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 CWM'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 CWM of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being and original.

CHEMICAL WASTE MANAGEMENT, INC.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

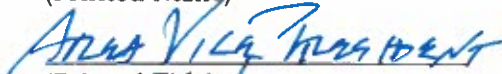


(Signature of Authorized Representative)


Lance R. LeFleur
Director



(Printed Name)



(Printed Title)



(Date Signed)

(Date Executed)

Attachment A

Chemical Waste Management, Inc.
Emelle, Sumter County
Facility ID No. ALD000622464

| Violation | Number of Violations* | Seriousness of Violation* | Standard of Care* | History of Previous Violation* |
|---|------------------------------|----------------------------------|--------------------------|---------------------------------------|
| Failure to perform a hazardous waste determination on waste generated at the Facility | 1 | \$2,500 | \$250 | \$0 |
| Failure to keep satellite accumulation containers closed | 1 | \$200 | \$100 | \$0 |
| Failure to mark or label satellite accumulation containers with an indication of the hazards | 1 | \$500 | \$100 | \$0 |
| Failure to mark or label hazardous waste storage tanks | 1 | \$400 | \$100 | \$0 |
| Storage of hazardous waste for greater than one year | 1 | \$10,000 | \$2,000 | \$2,000 |
| Failure to mark hazardous waste containers with an indication of the hazards | 1 | \$2,500 | \$250 | \$0 |
| Failure to mark containers of hazardous waste with appropriate labels or accumulation start dates | 1 | \$500 | \$250 | \$0 |
| Managing hazardous waste in containers not in good condition | 1 | \$1,500 | \$150 | \$0 |

| | | | | | |
|--|---|----------|---------|---------|-------------------------------|
| Managing hazardous waste in containers that were leaking | 1 | \$2,500 | \$250 | \$0 | |
| Failure to maintain adequate aisle space in permitted storage areas | 1 | \$8,000 | \$2,000 | \$1,000 | |
| Failure to maintain an impervious coating on containment system surfaces | 1 | \$1,000 | \$500 | \$500 | |
| Failure to remove spills of hazardous waste from tank secondary containment in a timely manner | 1 | \$1,000 | \$500 | \$0 | |
| Failure to lock or secure groundwater monitoring wells | 1 | \$200 | \$100 | \$0 | Total of Three Factors |
| TOTAL PER FACTOR | | \$30,800 | \$6,550 | \$3,500 | \$40,850 |

Adjustments to Amount of Initial Penalty

| | |
|------------------------|----------|
| Economic Benefit (+) | \$0 |
| Mitigating Factors (-) | \$0 |
| Ability to Pay (-) | \$0 |
| Other Factors (+/-) | -\$8,170 |

| | |
|---------------------------|----------|
| Amount of Initial Penalty | \$40,850 |
| Total Adjustments (+/-) | -\$8,170 |
| FINAL PENALTY | \$32,680 |

Footnotes

* See the "FINDINGS" portion of the Order for a detailed description of each violation and the penalty factors.