

ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	Consent Order No. 22-XXX-SW
City of Decatur)	
City of Decatur-Morgan County Sanitary Landfill)	
Decatur, Morgan County, Alabama)	
Solid Waste Disposal Permit No. 52-03)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and City of Decatur-Morgan County Sanitary Landfill (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 City of Decatur (hereinafter “Permittee”) operates a municipal solid waste landfill, known as the City of Decatur-Morgan County Sanitary Landfill (hereinafter “landfill”) in Decatur, Morgan 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 13, 2018, the Department issued renewal Solid Waste Disposal Permit Number 52-03 to the Permittee for the operation of the landfill located at 500 Landfill Drive in Decatur, Morgan County, Alabama.

5. On July 23, 2021, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with Division 13 of the ADEM Administrative Code. Department personnel documented the following violations:

A. ADEM Admin Code r. 335-13-4-.22(1)(a)1. and Section III.H. of the facility permit require that a minimum of six inches of compacted earth or other Department approved alternative cover material shall be added at the conclusion of each day's operation. Inadequately covered (flagging) waste was observed along the edge of the previous disposal area, indicating that the required six inches of cover material was not applied or had washed away.

B. ADEM Admin Code r. 335-13-4-.21(1)(d) and Section II.D. of the facility permit require that the facility be operated in such a manner that there will be no water pollution or unauthorized discharge. Section I.F. of the facility permit states that the permittee shall maintain and operate the facility to minimize the possibility of a fire, explosion, or an unplanned sudden or nonsudden release of the contaminants (including leachate and explosive gases) to air, soil, groundwater, or surface water, which could threaten human health or the environment. Leachate seeps were observed on the outside slope of the active municipal solid waste (MSW) cell, which is located adjacent to Trinity Branch. This leachate was also observed flowing into Trinity Branch.

6. On August 16, 2021, the Department sent a Notice of Violation to the Permittee addressing the violations noted above.

7. On September 10, 2021, the Department received a response from the Permittee indicating that the issues documented during the July 23, 2021, inspection had been corrected.

8. On March 29, 2022, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with Division 13 of the ADEM Administrative Code. Department personnel documented the following violations:

A. ADEM Admin. Code r. 335-13-4-.21(1)(a) states that the landfill unit must be operated as stipulated in the permit. Section I.F. of the facility permit states that the facility shall be maintained and operated to minimize the possibility of a sudden or non-sudden

release of contaminants (including leachate) to air, soil, groundwater or surface water. A large volume of leachate had been retained in a stormwater ditch at the toe of the eastern slope of the active MSW disposal area. The drainage ditch was plugged to prevent leachate from flowing into Trinity Branch. Storage of leachate, especially large quantities, presents a considerable risk of a sudden or non-sudden release of leachate to the environment.

B. ADEM Admin Code r. 335-13-4-.22(1)(a) and Section III.H. of the facility permit require that a minimum of six inches of compacted earth or other Department approved alternative cover material shall be added at the conclusion of each day's operation. Section III.H. of the facility permit further states that at the end of each week's activities, the working face and all exposed waste shall be covered with earthen cover (soil). An area of uncovered waste was observed in an area near, but not a part of, the active MSW working face. Facility personnel stated that the area was last covered on March 24, 2022, which indicates that earthen cover had not been applied at the end of the previous week's activities nor had alternate cover been applied at the end of the previous day.

C. ADEM Admin Code r. 335-13-4-.22(2)(b) and Section III.X of the facility permit require that litter shall be controlled within the permitted facility. Litter was observed in the MSW portion of the landfill along the eastern and western outside slopes adjacent to the working face. Litter fencing was documented near the top of the eastern outside slope, however, it was inadequate to control litter on the eastern side of the landfill.

D. ADEM Admin Code r. 335-13-4-.21(1)(a) states that the facility shall be operated as stipulated in the permit. A large amount of construction and demolition (C/D) waste mixed with green waste was observed on the recycling pad. Because the green waste, which is unregulated, was mixed with C/D waste, which is a regulated waste stream, the entire pile would be considered regulated waste unless the C/D waste was removed. Storing the C/D material on the recycling pad does not constitute proper disposal.

9. On April 29, 2022, the Department issued a Notice of Violation to the Permittee addressing the violations noted above.

10. On May 16, 2022, the Department received a response from the Permittee indicating that the issues documented during the March 29, 2022, inspection had been corrected.

11. On June 10, 2022, Department personnel conducted a site visit at the landfill. The purpose of the visit was to assess site conditions following the April 29, 2022, Notice of Violation. During the course of the site visit, Department personnel documented the following violations:

A. ADEM Admin. Code r. 335-13-4-.21(1)(a) states that the landfill unit must be operated as stipulated in the permit. Section I.F. of the facility permit states that the facility shall be maintained and operated to minimize the possibility of a sudden or non-sudden release of contaminants (including leachate) to air, soil, groundwater or surface water. A significant volume of leachate had been retained in a stormwater ditch at the toe of the eastern slope of the active MSW disposal area. The drainage ditch was plugged to prevent leachate from flowing into Trinity Branch.

B. ADEM Admin Code r. 335-13-4-.22(1)(a)1. and Section III.H. of the facility permit state that a minimum of six inches of compacted earth or alternative cover material shall be added at the conclusion of each day's operation to control disease vectors, fires, odors, blown litter and scavenging. The rear area of the MSW disposal area was compacted but flagging was observed throughout this area; indicating that a minimum of six inches of cover material was not applied to this area.

C. ADEM Admin. Code r. 335-13-4-.22(2)(b) and Section III.X. of the facility permit require that litter shall be controlled within the permitted facility. A large quantity of blown litter, in the form of plastic strips, was observed in the MSW portion of the landfill.

D. ADEM Admin Code r. 335-13-4-.21(1)(a) states that the facility shall be operated as stipulated in the permit. A large amount of C/D waste mixed with green waste was observed on the recycling pad. Because the green waste, which is unregulated, was mixed with C/D waste, which is a regulated waste stream, the entire pile would be considered regulated waste unless the C/D waste was removed. Storing the C/D material on the recycling pad does not constitute proper disposal.

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 div. 335-13 and Solid Waste Disposal Permit No. 52-03 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 does have a history of similar violations (see Attachment A). Consent Order 19-112-CSW was issued to the facility on September 20, 2019, for violations related to an unauthorized discharge of leachate to Trinity Branch, failure to adequately cover and confine the working face, and failure to control litter.

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.

15. The "flagging" of waste that was observed during the July 23, 2021 compliance inspection was located on the west slope of Cell 15. During the previous weekend and during the week of July 18, 2021, the Landfill received over 5 inches of rainfall, which resulted in some unfavorable conditions. "Flagging" of waste in some areas of the cell was one of those issues that occurred. Access to dirt to cover the areas was not available, because of the wet weather. However, on a daily basis, the landfill ensures that the working face is covered. Poshi-shell is used on a daily basis as cover.

16. The leachate seep that was observed out of the toe of the slope on July 23, 2021 was immediately addressed and the operators undertook significant efforts to control and manage the seeps by moving large barrels and other waste from the slope and installing a perimeter berm. Photos of the disposal area were taken and sent to ADEM on July 27, 2021. In addition, to ensure compliance and consistency in our practices, on August 20, 2021, Nathan Tomberlin, P.E./Pugh Wright McAnally visited the site and provided professional guidance. The

landfill excavated the area, removed waste, and allowed the leachate to drain into the leachate collection system before adding rock, geo textile fabric liner, and then dirt to stabilize the areas. Continuous monitoring of this area is being performed.

17. In response to the inspector noting a stormwater ditch at the toe of the eastern slope on March 29, 2022. EDL Energy is the firm that manages the landfill's gas collection system. They had recently installed methane wells on cells 14 and 15. After they installed one of the wells on Cell 15, the landfill noticed a seep forming from the well. Before the seep was repaired, we plugged the area below Cell 15 to prevent contamination from getting into Trinity Branch. Landfill personnel made the repair to the seep, and excavated the area to remove any contaminated soil. However, since rain was in the forecast, landfill personnel kept the area plugged and opened the sewer manhole. The residual water was pumped into the sewer system. The landfill contends that leachate was not being stored. Landfill personnel were monitoring the area that had just been repaired to prevent any sudden release of leachate or contamination into Trinity Branch.

18. In regards to the area on cell that remained uncovered on March 29, 2022 was the result of an accident that struck a well. The well was not stationary. Landfill personnel were told by EDL Energy that they would repair the area before leaving the site. However, the repair was delayed when EDL contracted the work out to Carlson Environmental Consultants and they determined it was too wet to make repairs. Landfill personnel covered the area with dirt except for the area around the damaged well. The landfill understands, no matter what well needs to be repaired, that the disposal area must be completely closed out with dirt prior to moving to a new lift. Staff did cover that area with Posi-shell adequately. The landfill will strive to keep the open face as small as feasible.

19. In regards to the litter observed on March 29, 2022, the day of the inspection and days following were rather windy days. Litter was collected and disposed of properly. Fencing was replaced after the recent high wind events. Labor from the Department of Corrections returned on April 4, 2022, which helped in maintaining the litter. Photos were sent to ADEM immediately after the litter was collected.

20. Regarding the June 10, 2022 site visit, it is the landfill's contention that there was groundwater in the stormwater ditch and not leachate. The drainage ditch was not plugged but rather ponding occurred. Landfill personnel diligently monitor to prevent leachate from flowing into Trinity Branch.

21. As relates to the June 10, 2022 flagging observed, it is the landfill's belief that adequate or required cover was applied with Posi-shell and dirt but some flagging is possible with the traffic in the area.

22. The wind-blown litter observed on that June 10, 2022 date was the result of a very recent load of plastic strips and the heavy winds dispersed before landfill personnel could contain the materials. Personnel promptly cleaned up the litter.

23. In response to the observation of mixing C/D Waste and other waste on March 29, 2022, the facility did allow some storage of C/D waste at the staging area temporarily in order to accommodate customers in wet weather. However, the landfill did not mix the waste but rather separated the green waste from the other waste for disposal. The Landfill has taken steps to prevent the storage of C/D waste on the recycling pad and ensure proper disposal.

24. It is the Landfill's goal to take the necessary steps to operate properly with the guidance of the Alabama Department of Environmental Management. Landfill personnel diligently monitor operations at the landfill to assure that occurs. The Landfill gains no economic benefit by delaying any response to unfavorable conditions.

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(1), 22-22A-5(10), 22-22A-5(18), 22-27-4(b), 22-27-7 and 22-27-11, 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 \$30,400.00 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, 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 Permit Number 52-03.

C. That the Permittee shall submit a Corrective Action Plan to the Department no later than **thirty days** following the issuance of this Order. The Corrective Action Plan shall address:

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. During this assessment, special attention should be given to leachate management.

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, cover practices (including any changes to current practices), and prevention of litter. This should also include any corrective measures that are necessary as a result of the site assessment detailed above, and;

3. A schedule for implementation of recommended actions to address the violations outlined in this Order.

4. If the Department determines through its review of the submitted Corrective Action Plan that it is not sufficient to accomplish compliance with applicable State laws or Departmental regulations, or with the facility permit, then the Permittee shall submit a revised Corrective Action Plan, addressing the Department's concerns, to the Department no later than

thirty days after receipt of the 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 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 not 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 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.

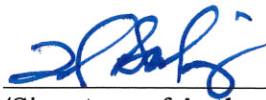
M. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

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.

**CITY OF DECATUR-MORGAN COUNTY
SANITARY LANDFILL**

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**



(Signature of Authorized Representative)

Lance R. LeFleur, Director



(Printed Name)



(Printed Title)

(Date Signed)



(Date Signed)

Attachment A
Decatur Morgan County Sanitary Landfill
Decatur, Morgan County
Solid Waste Disposal Permit No. 52-03

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to prevent unauthorized discharge or water pollution (7/23/21)	1	\$10,000	\$5,000	\$5,000	
Failure to operate as stipulated in permit (prevent release/leachate seep) (3/29/22 and 6/10/22)	2	\$2,000	\$1,000	\$0	
Failure to operate as stipulated in permit (C/D waste on recycling pad) (3/29/22 and 6/10/22)	2	\$1,000	\$500	\$0	
Failure to properly maintain cover on landfill (flagging) (7/23/21 and 6/10/22)	2	\$3,000	\$1,500	\$1,500	
Failure to cover waste daily/weekly (3/29/22)	1	\$3,000	\$2,000	\$0	
Failure to control litter (3/29/22 and 6/10/22)	2	\$1,500	\$500	\$500	
					Total of Three Factors
TOTAL PER FACTOR		\$20,500	\$10,500	\$7,000	\$38,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$0
Total Adjustments (+/-) <i>Enter at Right</i>	-\$7,600

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$38,000
Total Adjustments (+/-)	-\$7,600
FINAL PENALTY	\$30,400

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