

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)
)
Advanced Disposal Services Eagle Bluff Landfill, Inc.) Consent Order No. 18-XXX-CWP
4701 12th Street NE)
Holt, Alabama, Tuscaloosa County)
)
General NPDES Permit ALG160090)
Solid Waste Disposal Permit No. 63-16)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Advanced Disposal Services Eagle Bluff Landfill, Inc. (hereinafter "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), the Solid Wastes and Recyclable Materials Management Act (hereinafter "SWRMMA"), Ala. Code §§ 22-27-1 to 22-27-18, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee operates a construction and demolition landfill (hereinafter "the Facility"), known as Eagle Bluff C & D Landfill located at 4701 12th Street NE in Holt, Tuscaloosa County, Alabama. The Permittee discharges pollutants from a point source into Hurricane Creek and into an Unnamed Tributary to Hurricane Creek.

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.

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3. Pursuant to § 22-22A-4(n) Ala. Code (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1388. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA.

4. 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.

5. On January 23, 2017, the Department issued a renewal of National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit No. ALG160090 (hereinafter "the Permit") with an effective date of February 1, 2017, establishing limitations on the discharges of pollutants from such point sources, designated therein as outfall numbers DSN001-1, DSN001-2, DSN001-3, and DSN003-1, into an Unnamed Tributary to Hurricane Creek, a water of the state, and outfall number DSN001-4 into Hurricane Creek, a water of the state. The Permit requires that the Permittee monitor its discharges and submit Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee maintain documentation and implementation of a Best Management Practices (hereinafter "BMP") Plan. The Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the conditions of the permit.

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6. On March 31, 2017, the Department issued a renewal of Solid Waste Disposal Permit No. 63-16 (hereinafter "SW Permit") to the Permittee for the operation of a construction/demolition landfill.

7. NPDES Permit Condition I.C.1.a. requires the Permittee to submit semiannual DMRs so that they are received by the Department no later than the 28th day of July and the 28th day of January and each submittal shall report results of all testing performed during the six month period preceding the reporting month. The DMRs for Outfalls DSN001-2 and DSN001-3 for the first and second six months of 2017 (including the 2017 fourth quarter, quarterly DMRs DSN012Q and DSN013Q) were coded *E, for "analysis not conducted."

8. NPDES Permit Condition IV.A.1. of the Permit requires that if there is a qualifying rain event that results in a discharge at any time during the six month monitoring period of January through June and July through December, then the Permittee would be responsible for monitoring in accordance with the conditions of the Permit. The DMR for the first six months of 2017 for outfall DSN001-1, and the DMRs for the second six months of 2017 for outfalls DSN001-1 and DSN001-4 were marked "no discharge." The DMR for the first six months of 2017 for outfall DSN001-4 was coded *F, for "insufficient flow." In correspondence dated May 25, 2018, the Permittee confirmed that it faced challenges preventing it from properly sampling and reporting. The Permittee submitted a Noncompliance Form for failure to monitor up-stream turbidity, down-stream turbidity, and settleable solids for DSN001-1, DSN001-2, DSN001-3, and DSN001-4 for the first quarter of 2018 due to the lack of ability to meet ADEM's criteria of no rain in the past 72 hours and/or collection within 30 minutes. The Permittee also submitted a

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Noncompliance Form for failure to monitor up-stream turbidity and down-stream turbidity for DSN001-4 for the second quarter of 2018. At the time of the April 3, 2018 CEI, outfalls DSN001-1, DSN003-1, DSN001-2, and DSN001-3 were overgrown and not readily accessible for sampling and inspections. In addition, it was noted that access to outfalls DSN001-1, DSN003-1, DSN001-2, and DSN001-3 had to be obtained from a private landowner. In order to comply with Permit Condition IV.A.1, the Permittee should ensure the outfall areas are properly maintained and are readily accessible to conduct required sampling, as well as to allow access for inspections by the Department.

9. NPDES Permit Condition II.B.2.b. states that the Permittee shall prepare, implement, and maintain a Spill Prevention, Control, and Countermeasures (hereinafter "SPCC") Plan in accordance with 40 CFR Part 112 if required thereby. On April 3, 2018, the Department conducted a Compliance Evaluation Inspection (hereinafter "CEI") and observed two 1,000-gallon fuel storage tanks onsite. One tank was doubled-walled and the other was single-walled without secondary containment. The Facility's SPCC Plan listed only the double-walled tank. On April 2, 2018, the Permittee indicated that the single-walled fuel tank had been replaced and, in later correspondence dated April 19, 2018, the Permittee indicated that the single-walled tank had been removed from the site by the fuel company that owned the tank. However, at the time of the May 16, 2018, CEI and the May 17, 2018, Compliance Sampling Inspection (hereinafter "CSI"), the Department observed that the tanks were still onsite and only one double-walled tank was listed in the SPCC Plan. The Permittee failed to properly implement and maintain an SPCC Plan in accordance with the Permit.

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10. Ala. Code § 22-22-9(i)(3) (2006 Repl. Vol.) states that every person, prior to discharging any new or increased pollution into waters of this state, shall apply for and obtain a permit before discharging such pollution.

11. NPDES Permit Condition II.F.2.a. states that the Permittee shall give notice to the Director at least 180 days in advance of any facility expansion, production increase, process change, or other action that could result in, *inter alia*, an additional discharge point. During the April 3, 2018, CEI, the Department observed that the silt fence at the “new face” was not properly installed and, at the base of this area, an approximately 20-foot section of the silt fence was buried beneath the soil. Based upon the topography and the migration of sediment past the improperly installed silt fence, it appeared that storm water could discharge directly to Hurricane Creek. Also, during the May 17, 2018, CSI, the Department observed that BMPs were not adequate to prevent storm water run-off and off-site sedimentation at the entrance to the Facility. Storm water run-off from the entrance of the Facility and discharges from the “new face” are not covered under the NPDES Permit in violation of Permit Condition II.F.2.a. and Ala. Code § 22-22-9(i)(3).

12. NPDES Permit Condition IV.A.1.c. states that “[d]uring the sampling storm event, rainfall must be reported. As allowed by the Permit, rainfall amounts may be measured using a rain gauge. Rainfall data must be recorded as part of the sampling procedure and records retained according to Part I.B.4.b. of the Permit.” NPDES Permit Condition I.B.4.b. states that “[a]ll records required to be kept [...] shall be kept at the permitted facility or an [approved] alternate location [...] and shall be available for inspection.” At the time of the April 3, 2018, CEI, rainfall data was not available for inspection.

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13. NPDES Permit Condition IV.B.5.b. requires that a log of the twice per week inspections required under the terms of the Permit and provided for in the BMP Plan “shall be maintained at the Facility and shall be available for inspection by representatives of the Department. The log shall contain records of all inspections performed and any corrective actions taken for the last three years and each entry shall be signed by the person performing the inspection.” At the time of the April 3, 2018, CEI, the inspection log for the month of March 2018 was not available, in violation of Permit Condition IV.B.5.b.

14. The United States Environmental Protection Agency’s (hereinafter “EPA”) final Total Maximum Daily Load (hereinafter “TMDL”) for the Hurricane Creek Watershed for metals (aluminum and iron), pathogens, and turbidity was established in 2004. NPDES Permit Condition IV.C.2.e. states that if a TMDL contains requirements for control of pollutants from the Facility’s discharges, then “the BMP plan must include BMPs specifically targeted to achieve the allocations prescribed by the TMDL. A monitoring plan to assess the effectiveness of the BMPs in achieving the allocations must also be included in the BMP Plan. Implementation of the monitoring plan in accordance with Part IV.C.2 of the Permit will determine whether the controls are adequate to meet the TMDL allocations.” As observed by the Department during inspections of the Facility on April 3, May 16, and May 17, 2018, and according to Permittee correspondence subsequently submitted to the Department, the Permittee failed to conduct monitoring of turbidity, aluminum, and iron during the fourth quarter of 2016, all quarters during 2017, and the first quarter of 2018 as set forth in the Impaired Water Sampling Requirements of the Permittee’s BMP Plan and in violation of the Permit as indicated.

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15. During the April 3, 2018, CEI, the Department observed that storm water from the "new face" area was diverted to an onsite excavation pit ("Future Cell #2") filled with ponded water, storm debris, and construction and demolition waste. The NPDES Permit does not authorize the discharge of storm water that has been in contact with these materials. On June 6, 2018, the Department's Land Division/Solid Waste Branch conducted a CEI of the Facility. At the time of inspection, evidence of run-off was observed traveling to the "Future Cell #2" area via a ditch.

16. NPDES Permit Condition IV.B.1 requires preparation and implementation of a BMP plan which meets certain requirements. Section 4.2 of the Facility's BMP Plan states that part of good housekeeping is to control off-site tracking at the facility. Several measures listed to control off-site tracking are: regular cleaning of the facility entrance, routing all storm water run-off to one of the two onsite sediment basins away from the facility entrance, and using a vacuum style sweeper truck at the facility entrance and on 12th Street. At the time of the April 3, 2018, CEI, the Department observed tracking of gravel and dust offsite at the entrance of the Facility. During the May 16, 2018, CEI, the Department observed that the dirt from tracking had been swept to the opposite side of the road and not removed. Also, during the May 17, 2018, CSI, the Department observed that BMPs were not adequate to prevent stormwater run-off and off-site sedimentation at the entrance to the Facility. Section 4.2 of the Facility's BMP Plan states that as part of good housekeeping measures the onsite sediment ponds would be cleaned. However, on June 6, 2018, during an inspection by the Department's Land Division, it was noted that the rock check dam located at the northeast corner of the Facility was compromised. Also, a berm had been compromised in a small area on the north side of the Facility, and in the

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area near the inlet pipe for Outfall DSN001-2, the Department noted significant sedimentation. The prepared BMP Plan and its implementation were not effective as evidenced by the off-site tracking and sedimentation. Also, the off-site sweeping activity is not a preventive BMP measure but a reactive measure.

17. During inspections conducted on March 27, 2014, and April 3, 2018, the Department observed seepage material on the southeastern face of an earthen wall along the railroad tracks near Hurricane Creek.

18. The Department issued a Notice of Violation (hereinafter "NOV") to the Permittee on April 25, 2018. The NOV required the Permittee to submit a progress report, prepared by an Alabama-registered engineer, of the corrective actions taken or being taken to address the referenced violations. In particular, the NOV required that the report address the runoff from the "new face" area, the status of the diversion berms, how the contents of the excavation pit (future cell #2) would be managed, and the inaccessibility of the permitted outfalls/sampling points. The NOV reminded the Permittee it was required to monitor in accordance with the conditions listed in its BMP Plan regarding Impaired Water Sampling Requirements. The May 25, 2018, Progress Report did not bear certification by an Alabama-registered engineer as required by the NOV.

19. On December 4, 2017, the Department inspected the Permittee's Facility to determine compliance with Division 13 of the ADEM Administrative Code. Department personnel documented the following violations:

a. The Permittee failed to cover at the end of the work week as required by ADEM Admin Code r. 335-13-4-.23(1)(a)1. There was no cover over the weekend due to an equipment problem.

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b. The Permittee failed to confine waste to a small area as required by ADEM Admin Code r. 335-13-4-.23(1)(c). Due to a lack of cover, the working face was not confined to a small area.

c. The Permittee failed to control litter as required by ADEM Admin Code r. 335-13-4-.23(2)(b). The Department observed windblown litter located on the slopes of the active cell and litter in the low area between the active cell and the soil stockpile area.

20. On December 19, 2017, the Department issued a Warning Letter to the Permittee citing the findings of the December 4, 2017, inspection.

21. On January 16, 2018, the Department received a response to the December 19, 2017, Warning Letter.

22. On February 5, 2018, Department personnel inspected the Permittee's Facility to determine compliance with Division 13 of the ADEM Administrative Code requirements. Department personnel documented the following violation:

a. The Permittee failed to control litter as required by ADEM Admin Code r. 335-13-4-.23(2)(b). The Department observed flagging waste and windblown litter located on the slopes.

23. On March 22, 2018, the Department conducted a site visit at the Facility to determine compliance with Division 13 of the ADEM Administrative Code requirements. Department personnel documented the following violations:

a. The Permittee failed to properly cover all waste at the end of the work week as required by ADEM Admin. Code r. 335-13-4-.23(1)(a)1. Department personnel noted flagging waste along the active cell and along the slopes of the inactive cells of the landfill.

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b. The Permittee failed to adequately provide an on-site drainage structure to carry incident precipitation from the disposal site as required by ADEM Admin. Code r. 335-13-4-.17(3). The Permittee also failed to properly route run-off from the active face and/or closed portions of the landfill unit to a sediment pond to remove sediment prior to release onto adjacent properties or waters. Poned water was noted in an excavation pit located in the area of Future Cell #2. Further investigation and the review of site maps and drawings indicate that storm water from a portion of the site was being diverted into the excavation pit.

24. On April 10, 2018, the Department issued a NOV to the Permittee citing the findings of the March 22, 2018, inspection.

25. On April 30, 2018, Department personnel inspected the Permittee's Facility to determine compliance with Division 13 of the ADEM Administrative Code requirements and to assess the progress made on remedial activities at the site following the issuance of the April 10, 2018, NOV. Department personnel documented the following violations:

a. The Permittee failed to properly cover all waste at the end of the workweek as required by ADEM Admin Code r. 335-13-4-.23(1)(a)1.

b. The Permittee failed to properly compact the waste as required by ADEM Admin Code r. 335-13-4-.23(1)(b).

c. The Permittee failed to strictly control waste accepted at the Facility as required by ADEM Admin Code r. 335-13-4-.21(1)(b). Department personnel noted household garbage in the waste mass.

26. On May 9, 2018, the Department received a response to the April 10, 2018, NOV.

27. On June 26, 2018, Department personnel inspected the Permittee's Facility to determine compliance with Division 13 of the ADEM Administrative Code requirements. Department personnel documented the following violations:

a. The Permittee failed to properly compact the waste as required by ADEM Admin Code r. 335-13-4-.23(1)(b) due to the compactor being inoperable.

b. The Permittee failed to confine waste to a small area as required by ADEM Admin Code r. 335-13-4-.23(1)(c). Due to equipment failure, the working face was not confined to a small area.

c. The Permittee failed to control litter as required by ADEM Admin Code r. 335-13-4-.23(2)(b). The Department observed flagging waste and windblown litter located on the slopes.

d. The Permittee failed to maintain proper cover material along temporarily closed/completed areas of the site as required by ADEM Admin. Code r. 335-13-4-.23(1)(a)1. Erosion, with exposed waste, was noted on temporarily closed slopes.

28. The Permittee failed to properly accept waste as required by ADEM Admin. Code r. 335-13-4-.21(1)(b). On September 13, 2018, the Department received notification from Advanced Disposal Services that the Eagle Bluff Landfill had received and disposed of unapproved waste from the Merichem Company. On September 14, 2018, Advanced Disposal verified to the Department that the Eagle Bluff Landfill had accepted unapproved waste, including contaminated raw materials/empty bags, cobalt catalyst waste, and non-hazardous sandblast media, and disposed of it in the current working face on August 29, 2018. Advanced Disposal subsequently updated the Department on September 21, 2018, that they had identified the area where the waste had been disposed in the cell and were

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in the process of excavating as much of the unapproved waste as possible.

29. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

30. The Department has agreed to the terms of the Consent Order in an effort to resolve the 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 the Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

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 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 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 that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment I), the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Based on information available to the Department, violations of the NPDES Permit, ADEM Admin.

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Code chap. 335-6-6, and the AWPCA were noted. The Department considered the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharged, the condition of the receiving waters, the violations' effects, if any, on the receiving waters, and any available evidence of irreparable harm to the environment or threat to the public. Additionally, the Permittee failed to comply with certain provisions of ADEM Admin. Code div. 335-13 and Solid Waste Disposal Permit No. 63-16.

B. THE STANDARD OF CARE: The Permittee failed to monitor, failed to maintain records, and failed to implement the BMP Plan. The Permittee had an unpermitted discharge due to its failure to notify the Department of an additional discharge point ("new face"). The Permittee also caused or allowed the unpermitted discharge of storm water at the entrance of the Facility. Additionally, the Permittee failed to comply with certain provisions of ADEM Admin. Code div. 335-13 and Solid Waste Disposal Permit No. 63-16. The Department considers these violations to be easily avoidable. In consideration of the standard of care manifested by the Permittee, the Department enhanced the penalty.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Based on available information, the Department considered the economic benefit which delayed compliance may have conferred, as reflected in the penalty synopsis.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: As indicated in correspondence to the Department and the Permittee Contentions, the Permittee has taken actions at the Facility, including, but not

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limited to, rerouting stormwater drainage; however, the Department has not adjusted the penalty as a result of these actions.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has a history of previous violations, e.g., inadequate BMPs and failure to monitor. The Department previously issued enforcement actions to the Permittee for similar violations. In consideration of such history of previous violations, the Department has enhanced the penalty.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. The Department has carefully considered the statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement, and has concluded that a civil penalty is appropriate given the violations, and in keeping with a penalty range imposed by the Department for similar violations at other permitted facilities. The civil penalty is summarized in Attachment I.

RESPONSIVE CONTENTIONS OF ADVANCED DISPOSAL SERVICES

31. The Permittee acquired the landfill from a prior operator in November, 2012.

32. At the time of acquisition, the landfill had existing operational issues associated with discharge and internal stormwater management.

33. The Permittee has spent over \$500,000 in modifications to the site to assure that stormwater discharge is properly collected and managed so that discharges only occur from four designated outfalls.

34. The internal detention ponds at the landfill have been designed so that they are sufficient to retain a 100 year/ 24 hour storm event, and, thus, the facility often does not discharge stormwaters from the designated outfalls even during heavy rain events.

35. Terrain around some of the discharge points makes it difficult to sample the designated outfalls during non-daylight hours when specified rainfall events occur.

36. None of the designated outfalls discharge directly to a receiving water body, and the discharge from DSN001-4 passes in sheetflow over property that is not owned or controlled by the Permittee before reaching a receiving stream.

37. The two streams which ultimately receive discharge waters from the facility also receive discharges from other facilities and activities nearby and, in some instances, co-mingle with the Permittee's discharge waters before reaching the receiving streams. Taken together, these conditions do not allow a definitive determination of the Permittee's impact on the receiving streams by virtue of sampling within those streams. Only the sampling of water discharging at each outfall is reflective of the actual discharge from the facility.

38. Discharges of stormwater from the entrance to the facility are historically limited to waters that do not come in contact with disposed waste. No waters from the active disposal footprint were ever directed out the front gate; over time, the road maintenance changed the direction of flow to outside the gate, but this water did not come into contact with waste material or industrial operations. Nonetheless, the facility entrance has been redesigned so that stormwaters falling in this area are generally channeled to an internal retention pond.

39. The various alleged failures to monitor discharges were primarily the result of a lack of discharge from outfalls during regulated rain events, or in a limited case, the inability to access discharge points during nighttime hours when access is impractical or dangerous. Additionally, as to Total Settleable Solids and up and downstream turbidity monitoring, the permit specifies in footnote 5 that such monitoring is to occur only when land disturbance activities are occurring, which is described by the permit as being during the opening and closing of cells. The only digging of cover soil/land disturbance (other than weekly cover applications) has been in DSN001-1 drainage area or Future Cell 2 location. Thus, the only quarterly "Missed Monitoring" would be for DSN001-1. As for other outfalls which were reported on the Discharge Monitoring Reports as permit condition *E, these should actually have been reported as *9 for Conditional/Not Required.

40. Observations associated within an internal silt fence alleged to have been improperly maintained do not reflect a violation of the Permittee's BMP Plan nor do they reflect a new outfall or discharge. In this instance, the silt fence was used primarily for purposes of demarcation of the edge of a 3-1 slope which was appropriate for work associated with placing a new lift of waste in an existing permitted area to allow the use of previously permitted air space above existing waste materials. In addition, the silt fence was a secondary BMP measure that was to retain sediment at the toe of the slope before any potential sediment would drain to the rock filter dam in downstream of that point. The rock filter dam was the primary BMP in that area and, at the time of the inspection, was the designated discharge point. Once the waste fill was completed in that area, the area was to be stabilized and the temporary silt fence was to be removed. That has now

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occurred, and stormwaters from this area are now channeled to a detention pond in accordance with the Permittee's BMP Plan.

41. Although an inspection revealed two fuel tanks on the site, this did not constitute a violation of the Permittee's BMP Plan because, while one of the tanks was a single-walled tank which had been erroneously provided by the Permittee's fuel distributor, the distributor had replaced that tank with a double-walled tank and removed all fuel from the single-walled tank. While the single-walled tank should have been removed at that time, the distributor did not do so. Nonetheless, permanent closed tanks do not necessitate an SPCC update if they are empty, as was the case here, and have no affixed piping, as was also the case. Thus, this did not constitute a violation of the BMP Plan and no modification of the Plan was necessary or required.

42. The Permittee disagrees with the assertion that the creation of an additional disposal area in air space above existing disposed material (referenced as the "new face") requires a modification to the NPDES permit. While such a modification is required if a new discharge point is created, the Permittee has provided substantial evidence in the form of topographic data and engineering design plans which, taken together, demonstrate that stormwater from this area ultimately discharges to existing discharge point DSN001-4. The additional disposal did not alter the existing discharge pattern, and thus, the Permittee believes that no modification was or is required.

43. The water in "future cell #2" was allowed to evaporate or otherwise percolate into the soils, and some was used for dust suppression. This water was not allowed to runoff to stormwater drainage systems as described in the Permittee's response to the April 25, 2018 NOV.

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44. Regarding the operation of the landfill itself under the applicable Solid Waste Landfill Permit, the Permittee does regularly apply cover. The adequacy of this cover is the point of contention.

45. Regarding the Department's contentions in Paragraph 19, subparagraphs a. and b., it is the Permittee's understanding that, if the waste is adequately covered in all areas, the waste is likely to be considered to be adequately confined.

46. The Permittee has replaced one operator at the facility and has counseled remaining personnel with respect to issues identified in terms of the compaction and cover of waste and also the control of waste allowed to enter the site for disposal to prevent the inadvertent disposal of unpermitted waste material.

47. The Permittee has provided additional description of onsite drainage and channeling structures clarifying the manner and methodology of management of stormwater throughout the site.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues 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 penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee (hereinafter collectively "Parties") agree to enter into this CONSENT ORDER with the following terms and conditions:

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A. The Permittee shall pay to the Department a civil penalty in the amount of fifty four thousand nine hundred dollars (\$54,900.00) in settlement of the violations alleged herein within **forty-five** days after issuance of this Consent Order. Failure to pay the civil penalty within **forty-five** days after issuance may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. 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 and shall be remitted to:

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

C. The Permittee shall prepare and submit to the Department's Water Division, not later than **ninety days** after issuance of this Consent Order, an Engineering Report that addresses the corrective actions taken or to be taken to address the violations cited within this Order. The Engineering Report shall address, but may not be limited to, the following issues: the runoff from the "new face" area and the status of the berms and silt fencing; how the contents of the excavation pit (Future Cell #2) will be managed; offsite tracking of gravel and dust ; sediment runoff; an evaluation of the effectiveness of the BMP Plan, and, if necessary, updates to the Plan, with an emphasis on outfalls discharging to impaired waters; and any groundwater seeps originating from the landfill. The Engineering Report shall include an assessment of the entire Facility to determine if all outfalls are permitted and that all outfalls are being maintained, and shall include corrective actions to ensure that all unpermitted outfalls are eliminated, e.g., through permit modification, and address the inaccessibility of permitted outfall locations. The

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Report shall include corrective actions to determine if basins, berms, and/or pipes are being maintained and a plan to ensure proper maintenance and repair is conducted in the future. The Report shall also include procedures to ensure all required monitoring is conducted, including monitoring in accordance to the conditions as set forth in its BMP Plan regarding Impaired Water Sampling Requirements. The Permittee shall include a Compliance Plan with a schedule for implementation of necessary corrective actions. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the Report is not sufficient to help the Permittee accomplish compliance with the Permit, then the Report shall be modified accordingly. The Permittee shall submit modifications to the Engineering Report, if required, so that they are received by the Department no later than thirty days after receipt of the Department's comments. The Permittee shall complete implementation of the recommendations made in the Engineering Report within **180 days** after issuance of this Consent Order.

D. Within **sixty days** after issuance of this Consent Order, the Permittee shall identify and propose corrective measures to address all current and historical areas, within the permitted property boundary, where erosion rills have formed. The proposal shall include a schedule for the completion of the proposed corrective measures and shall be submitted to the Department's Land Division for review and approval. A report shall be submitted to the Department's Land Division no later than **thirty days** after completion of remedial actions documenting those efforts that were made to correct the erosion rills.

E. Within **sixty days** after issuance of this Consent Order, the Permittee shall submit a report detailing the corrective measures that have and/or will be taken to

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address the disposal of the unapproved industrial waste received from the Merichem Company. The report shall include a schedule for the completion of the proposed corrective measures and shall be submitted to the Department's Land Division for review and approval. A report shall be submitted to the Department's Land Division no later than **thirty days** after completion of remedial actions documenting that all corrective measure have been completed to correct the issue.

F. The Permittee shall comply with all terms, conditions, and limitations of its NPDES Permit, all applicable provisions of ADEM Admin Code div. 335-13, and Solid Waste Disposal Permit Number 63-16 immediately upon issuance of this Consent Order.

G. The Permittee shall submit a certification to the Department, signed by a professional engineer licensed to practice in the State of Alabama, indicating whether the Permittee is in compliance with all requirements of this Consent Order. The Permittee shall submit such certification to the Department no later than **210 days** after the date of issuance of this Consent Order.

H. After issuance of this Consent Order, the Permittee shall pay stipulated penalties for each day it fails to meet any of the written submittal milestone dates or requirement dates set forth in or established by paragraphs **C, D, E and G**. The stipulated civil penalties for failure to meet each milestone or any requirement date, except for *Force Majeure* acts as hereinafter defined, shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1st to 30th day	\$ 100.00
31st to 60th day	\$ 200.00
After 60 days	\$ 300.00

If the Permittee fails to meet any milestone or any assigned date ninety days after the required dates found in paragraphs **C, D, E and G**, the Department reserves the right to file a new action against the Permittee.

I. Cumulative stipulated penalties described in paragraph H. above shall under no circumstances exceed \$24,000.00. Once stipulated penalties of \$24,000.00 are due to the Department and violations continue to occur, or should violations continue to occur after **180 days** from the issuance of this Consent Order, the Department reserves the right to issue an additional order or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

J. Payment of stipulated penalties due for violations of milestone dates under this Consent Order shall be due not later than the 28th day of the month following the month a milestone date was not achieved. Notification to the Permittee by the Department of the assessment of any stipulated penalty is not required.

K. 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.

L. Subject to the terms of these presents 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.

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M. The Permittee it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

N. For purposes of this Consent Order only, the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. In any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee 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 Permittee, 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 the Permittee) 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. The Permittee shall submit this information so that it is received by 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 the Permittee, 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.

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O. 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 concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in other orders as may be issued by the Director, by litigation initiated by the Department, or by 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 such future orders, litigation or other enforcement action addresses new matters not raised in this Consent Order.

P. 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 same.

Q. This Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

R. Final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the proposed Consent Order.

S. 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.

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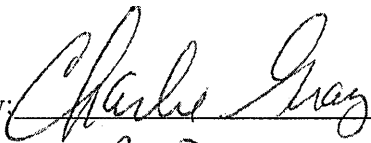
T. Any modifications of this Consent Order shall be agreed to in writing and signed by both Parties.

U. 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.

Advanced Disposal Services
Eagle Bluff Landfill, Inc.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

By: 
Its: RVP
Date: 2/4/2019

EXECUTED AND ISSUED:
By: _____
Its: _____
Date: _____

Attachment I: Penalty Synopsis

Attachment 1

Advanced Disposal Services Eagle Bluff Landfill Inc
Holt, Tuscaloosa County

NPDES Permit No. ALG160090

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Unpermitted outfall (new face)	1	\$ 5,000.00	\$ 2,500.00	
Unpermitted outfall (entrance)	1	\$ 5,000.00	\$ 2,500.00	
Failure to develop and implement adequate BMPs / SPCC Plan	4	\$ 5,000.00	\$ 2,500.00	\$ 2,500.00
Records not available for inspection	1	\$ 250.00	\$ 250.00	
Failure to monitor / incorrectly reporting	15	\$ 3,000.00	\$ 2,200.00	\$ 2,200.00
		\$18,250.00	\$9,950.00	\$4,700.00
		Total (A)	Total (B)	Total (C)

Solid Waste Disposal Permit No. 63-16

Violation*	Number of Violations*	(A)	(B)	(C)
		Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to properly confine waste mass	2	\$ 2,000.00	\$ 1,000.00	
Failure to control litter	3	\$ 2,000.00	\$ 1,000.00	
Failure to properly cover waste	4	\$ 7,000.00	\$ 3,000.00	
Failure to adequately provide an on-site drainage structure	2	\$ 3,000.00	\$ 2,000.00	
Failure to properly compact waste	2	\$ 1,000.00	\$ 1,000.00	
Failure to strictly control waste accepted at the facility	2	\$ 2,000.00	\$ 1,000.00	
		\$17,000.00	\$9,000.00	\$0.00
		Total (A)	Total (B)	Total (C)

Footnotes

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

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Additional Adjustments due to negotiations, receipt of additional information, or public comment

Mitigating Factors (-)	
Economic Benefit (+)	\$20,000.00
Ability to Pay (-)	
Other Factors (+/-)	-\$24,000.00
Total Adjustments (+/-)	-\$4,000.00

\$35,250.00	\$18,950.00	\$4,700.00
Total (A)	Total (B)	Total (C)
Base Penalty Total		
[Total (A) + Total (B) + Total (C)]		\$58,900.00
Mitigating Factors (-)		
Economic Benefit (+)		
Ability to Pay (-)		
Other Factors (+/-)		
INITIAL PENALTY		\$58,900.00
Total Adjustments (+/-)		-\$4,000.00
FINAL PENALTY		\$54,900.00

Footnotes

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