

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Kith Kitchens, LLC
Haleyville, Marion County, Alabama
USEPA ID Number ALD983191297**

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 Kith Kitchens, LLC (“Kith Kitchens”) pursuant to the provisions of the Alabama Environmental Management Act, 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. Kith Kitchens operates a custom kitchen cabinet manufacturing facility (the “Facility”) with EPA Identification Number ALD983191297, located at 280 North Industrial Loop in Haleyville, Marion County, Alabama. Kith Kitchens, as a result of its operations at the Facility, was a large quantity generator of hazardous waste and a small quantity handler of universal waste, 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 AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On November 2, 2022, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection ("CEI") of Kith Kitchens. The CEI and a review of Kith Kitchens' compliance showed the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-3-.14(6), a large quantity generator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

Kith Kitchens failed to maintain adequate aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment in the hazardous waste central accumulation area.

(b) Pursuant to ADEM Admin. Code r. 335-14-3-.14(10)(b), a large quantity generator must submit a quick reference guide of the contingency plan to the local emergency responders identified at paragraph (a) of this section or, as appropriate, the Local Emergency Planning Committee.

Kith Kitchens failed to submit a quick reference guide to local emergency responders or the Local Emergency Planning Committee.

(c) ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in Chapter 335-14-2.

Kith Kitchens engaged in treatment of hazardous waste without a permit. Kith Kitchens placed an additive in hazardous waste containers to adjust the pH of certain hazardous wastes generated at the facility. Since these wastes were not hazardous solely because they exhibited the characteristic of corrosivity, the containers did not meet the definition of an elementary neutralization unit in ADEM Admin. Code r. 335-14-1-.02(1)(a). Therefore, the permitting exclusion in ADEM Admin. Code r. 335-14-8-.01(c)2.(v) does not apply to treatment of these wastes.

5. On November 28, 2022, the Department issued a Notice of Violation to Kith Kitchens, which cited violations of the hazardous waste regulations that were discovered during the CEI and subsequent record review.

6. On December 27, 2022, the Department received Kith Kitchens' response to the aforementioned Notice of Violation.

7. Pursuant to Ala. Code § 22-22A-5(18), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATIONS:** In 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 Kith Kitchens, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Kith Kitchens failed to exhibit a standard of care commensurate with the applicable regulatory standards.

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

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

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Kith Kitchens does not have a history of similar violations.

(f) ABILITY TO PAY: The Department does not have any evidence indicating that Kith Kitchens is unable to pay the civil penalty.

(g) OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty that is warranted in the spirit of cooperation and the desire to resolve this matter amicably without incurring the unwarranted expense of litigation (see Attachment A, which is made a part of the Department's Contentions).

8. The Department neither admits nor denies Kith Kitchens' contentions, which are set forth below. The Department has agreed to the terms of this Special Order by Consent in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Special Order by Consent are in the best interest of the citizens of Alabama.

FACILITY'S CONTENTIONS

9. Kith Kitchens neither admits nor denies the Department's contentions. Kith Kitchens consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, Kith Kitchens, 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 Kith Kitchens agree to enter into this Special Order by Consent with the following terms and conditions:

A. Kith Kitchens agrees to pay to the Department a civil penalty in the amount of \$10,120 in settlement of the violations alleged herein within forty-five days of the effective date of this Special Order by Consent. 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. Kith Kitchens agrees that all penalties due pursuant to this Special Order by Consent shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or other payment methods acceptable to the Department and shall be remitted to:

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

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

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

D. The Department and Kith Kitchens ("parties") agree that this Special Order by Consent shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Special Order by Consent certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions

of this Special Order by Consent, to execute the Special Order by Consent on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Special Order by Consent is intended to operate as a full resolution of the alleged violations cited herein.

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

G. For purposes of this Special Order by Consent only, Kith Kitchens agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County.

H. The parties agree that the sole purpose of this Special Order by Consent is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Special Order by Consent, then such future violations may be addressed in orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement actions as may be appropriate. Kith Kitchens agrees not to object to such future orders, litigation, or enforcement actions based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement actions address new matters not raised in this Special Order by Consent.

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

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

K. The parties agree that final approval and entry into this Special Order by Consent is subject to the requirements that the Department give notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the order.

L. The parties agree that, should any provision of this Special Order by Consent be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

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

N. The parties agree that, except as otherwise set forth herein, this Special Order by Consent is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State, or local law, and shall not be construed to waive or relieve Kith Kitchens of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

KITH KITCHENS, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Trent Terry

(Printed Name)

CFO

(Printed Title)

3/9/23

(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A

Kith Kitchens, LLC
 Haleyville, Marion County
 Facility ID No. ALD983191297

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Failure to maintain adequate aisle space	1	\$1,000	\$500	\$0	
Failure to submit a quick reference guide to local emergency responders	1	\$100	\$50	\$0	
Treatment of hazardous waste without a permit	1	\$10,000	\$1,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$11,100	\$1,550	\$0	\$12,650

Adjustments to Amount of Initial Penalty

Economic Benefit (+)	\$0
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	-\$2,530

Amount of Initial Penalty	\$12,650
Total Adjustments (+/-)	-\$2,530
FINAL PENALTY	\$10,120

Footnotes

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