

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Allworth, LLC
Birmingham, Jefferson County, Alabama
USEPA ID NUMBER ALD094476793**

Consent Order No. 18-XXX-CHW

PREAMBLE

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

STIPULATIONS

1. Allworth operates a commercial hazardous waste treatment and storage facility under AHWMMA Hazardous Waste Facility Permit Number ALD094476793, located at 500 Medco Road in Birmingham, Jefferson County, Alabama (hereinafter "the Site"). Allworth, as a result of its operations at the facility, was a treatment and storage facility, as defined in ADEM Admin. Code Div. 14, at all times relevant to this action.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to

6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On March 19, 2018, a representative of the Department conducted a compliance evaluation inspection (hereinafter "CEI") of Allworth to determine compliance with all applicable requirements of Division 14 of the ADEM Administrative Code. The CEI and a review of Allworth's compliance showed the following:

(a) Pursuant to Permit Condition III.A., the Permittee may operate the units and processes described in Table III.1. and Table III.2. of this permit, subject to the terms of this permit. Operation of any process or unit not listed in Table III.1. and Table III.2. of this permit is prohibited.

Allworth managed hazardous waste in a unit other than those described in Table III.1 and Table III.2. of its Hazardous Waste Facility Permit. Allworth placed eleven pallets of hazardous waste containers on the walkway between Container Storage Area D and Loading / Unloading Area - 2. This walkway is not located within any of the waste management units described in Table III.1 and Table III.2. of the permit.

(b) Pursuant to 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).

Allworth failed to maintain an intact impervious coating on the containment system surfaces associated with Container Storage Area D, Container Storage Area E, and Loading / Unloading Area - 2. The impervious coating on a berm between Container Storage Area D and Container Storage Area E was worn away in at least one area. Furthermore, the impervious coating on

a containment berm between Container Storage Area D and Loading / Unloading Area - 2 was chipped away in at least one area.

(c) Pursuant to 40 CFR 264.1050(d), which is incorporated by reference in ADEM Admin. Code r. 335-14-5-.28(a), equipment subject to 40 CFR 264 Subpart BB must be marked in such a manner that it can be distinguished readily from other pieces of equipment.

Allworth failed to tag one piece of equipment (an end cap on a pipe associated with one or more hazardous waste storage tanks in Tank System TS-1) in a manner that would allow it to be distinguished from other pieces of equipment.

(d) Pursuant to ADEM Admin. Code r. 335-14-11-.03(4)(d)1., a large quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

Allworth failed to keep closed three containers of universal waste lamps.

5. On March 27, 2018, the Department received Allworth's response to the Preliminary Inspection Report.

6. On April 9, 2018, the Department issued a Notice of Violation (hereinafter "NOV") to Allworth which cited violations of the hazardous waste regulations that were discovered during the March 19, 2018, CEI.

7. Pursuant to Ala. Code § 22-22A-5(18), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any

civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

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

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

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

(e) **HISTORY OF PREVIOUS VIOLATIONS:** Based on a review of Department records, Allworth has a history of previous violations.

(f) **THE ABILITY TO PAY:** Allworth has not alleged an inability to pay the civil penalty.

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

8. The Department neither admits nor denies Allworth's contentions, which are set

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

ALLWORTH'S CONTENTIONS

9. Allworth neither admits nor denies the Department's contentions. Allworth 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, Allworth, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Allworth agree to enter into this Special Order by Consent with the following terms and conditions:

A. Allworth agrees to pay to the Department a civil penalty in the amount of **\$15,000** 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. Allworth 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 Allworth's name and address, and the ADEM Administrative Order number of this action.

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

D. The Department and Allworth (hereinafter the "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. Allworth 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, Allworth agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County.

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

I. The parties agree that this Special Order by Consent shall be considered final and effective immediately upon signature of all parties. This Special Order by Consent shall not be appealable, and Allworth 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 Allworth's obligation to comply with any Federal, State, or local laws or regulations.

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

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

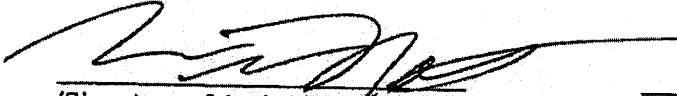
M. The parties agree that any modifications of this Special Order by Consent must be agreed to in writing signed by both parties.

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

Executed in duplicate, with each part being an original.

ALLWORTH, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

William Norton
(Printed Name)

Regional Compliance Mgr.
(Printed Title)

8-9-18
(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A
Allworth, LLC
Birmingham, Jefferson County
Facility ID No. ALD094476793

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Placement of eleven pallets of hazardous waste containers in an unpermitted unit.	1	\$5,000	\$2,500	\$2,500	
Failure to maintain an intact impervious coating on the containment systems associated with three permitted units.	3	\$3,000	\$1,500	\$1,500	
Failure to tag one piece of Subpart BB equipment in a manner that would allow it to be distinguished from other pieces of equipment.	1	\$1,000	\$500	\$500	
Failure to keep closed three containers of universal waste lamps.	1	\$300	\$150	\$0	Total of Three Factors
TOTAL PER FACTOR		\$9,300	\$4,650	\$4,500	\$18,450

Adjustments to Amount of Initial Penalty			
Mitigating Factors (-)	\$0	Economic Benefit (+)	
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$18,450
Other Factors (+/-)	\$-3,450	Total Adjustments (+/-)	(\$-3,450)
Total Adjustments (+/-) Enter at Right	(\$-3,450)	FINAL PENALTY	\$15,000

Footnotes

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