

ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT

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IN THE MATTER OF:	)
	)
Hyche Landfill, LLC	)
Addison, Winston County, Alabama	)
Solid Waste Disposal Permit No. 67-06	)

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Consent Order No. 21-XXX-CSW

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and the Hyche Landfill, LLC (hereinafter "Permittee") a domestic limited liability company, 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 Permittee operates a construction and demolition landfill, known as the Hyche Landfill (hereinafter "landfill") in Addison, Winston 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 September 2, 2015, the Department issued renewal Solid Waste Disposal Permit Number 67-06 to the Permittee for the operation of the landfill located at 19170 County Road 41, Addison, Winston County, Alabama.

5. On June 12, 2020, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with Solid Waste Disposal Permit No. 67-06 and Division 13 of the ADEM Administrative Code. During the course of the inspection, Department personnel documented the following violations:

A. ADEM Admin. Code r. 335-13-4-.23(1)(a)1. and Section III.D. of the facility permit require that all waste be covered with a minimum of six inches of compacted earth or other cover material approved by the Department at the conclusion of each week's operation. Large quantities of uncovered waste were noted, indicating that weekly cover had not been applied for some time.

B. ADEM Admin. Code r. 335-13-4-.23(1)(c) and Section III.D. of the facility permit require that all waste be confined to as small an area as possible. Due to a lack of cover, the working face was not confined to a small area.

6. On June 26, 2020, the Department issued a Notice of Violation (hereinafter "NOV") to the Permittee addressing the violations noted above.

7. On August 5, 2020, the Department received a response to the June 26, 2020 NOV. The response indicated that the violations identified in the NOV would be addressed in a timely manner.

8. On October 19, 2020, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with the Solid Waste Permit and Division 13 of the ADEM Administrative Code. During the course of the inspection, Department personnel documented the following violations:

A. ADEM Admin Code r. 335-13-4-.23(1)(a)1. and Section III.D. of the facility permit require that all waste be covered with a minimum of six inches of compacted earth or other cover material approved by the Department at the conclusion of each week's operation. At the time of the inspection, the current and previous working faces had not been covered.

B. ADEM Admin. Code r. 335-13-4-.23(1)(c) and Section III.D. of the facility permit require that all waste be confined to as small an area as possible. After failing to properly cover the previous disposal area, the facility began disposing in a second disposal area. The facility

has not been approved to operate two working faces. In addition, a large quantity of waste was exposed due to the lack of weekly cover.

C. ADEM Admin. Code r. 335-13-4-.17(2) states that the owner or operator of all facilities must design, construct, and maintain a run-off control system and control at least the water volume from a 24-hour, 25-year storm. The stormwater pond was approximately one third full of sediment.

9. On November 12, 2020, the Department issued a NOV to the Permittee addressing the violations noted above.

10. On December 22, 2020, the Department received a response to the November 12, 2020 NOV. The response indicated that the violations identified in the NOV were being addressed and all actions would be complete within thirty days.

11. On April 20, 2021, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with the Solid Waste Permit and Division 13 of the ADEM Administrative Code. Department personnel documented the following violations:

A. ADEM Admin. Code 335-13-4-.17(2) states that the owner or operator of all facilities must design, construct, and maintain a run-off control system and control at least the volume of a 24-hour, 25-year storm. At the time of inspection, the stormwater pond was approximately ninety percent full of sediment. Vegetation was noted growing on portions of the accumulated sediment.

B. ADEM Admin Code r. 335-13-4-.23(1)(a)1. and Section III.D. of the facility permit requires that all waste be covered with a minimum of six inches of compacted earth or other cover material approved by the Department at the conclusion of each week's operation. At the time of the inspection, a large amount of waste was noted at the active working face indicating that weekly cover had not been applied at the conclusion of the previous week's operation.

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. 67-06 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).

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 Huche Landfill is a very small company that has been impacted in the following ways due to the COVID-19 pandemic:

A. Personnel shortage: Out of six employees, three have had the virus. An additional employee has been off work due to the death of his mother (who died of COVID). Also, from time to time employees have been off work to tend to sick loved ones, and stay at home to keep children while schools were locked down, etc. In addition, the Huche Landfill has lost two employees for various reasons (one being the main dozer operator) and it is very difficult to find replacements.

B. Interruptions to production and supply: The Huche Landfill has had a terrible time obtaining parts for heavy equipment. For example, a dozer repair that would typically take three days took eleven weeks because the necessary part had to be ordered from China. In the interim, the Huche Landfill spent approximately \$32,000 on two separate occasions to rent dozers because we could not make the necessary repairs due to inability to obtain parts.

C. Re-routing and repositioning to protect customers and employees: Huche Landfill has had to take precautions to keep employees and customers at safe distances from each other and small as this may seem it still impacts normal operations.

D. The Huche Landfill has had trouble getting supplies, including limestone for our roads too. Rock pits and other suppliers have experienced similar problems as noted above.

The result has been intermittent supplies and these shortages impact our ingress and egress at the Landfill and the roads we use to haul dirt for cover.

16. In addition to obstacles not resulting from the pandemic include receiving over a 100 inches of rain in the past year, loss of revenue, and rising fuel prices.

17. The Hyche Landfill contends that not one single factor was directly responsible for the violation noted above, but almost all contributed in one way or the other. The Hyche Landfill has always strove to do the right thing and adhere to ADEM's regulations and guidelines without having to be told to do so. To that end, most of the noted violations have been rectified.

### **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(18), (2006 Rplc. Vol.), 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. Not later than **three hundred sixty-five days** after issuance of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$7,800.00 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 in twelve monthly payments 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 and 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 67-06.

C. That, no later than **sixty days** following the issuance of this Order, the Permittee shall submit a Corrective Action Plan to the Department. The Corrective Action Plan shall address any steps (including preventative maintenance measures) that have been or will be taken to ensure the noted violations do not recur. The Corrective Action Plan should include a schedule for implementation of recommended actions to address the deficiencies outlined in this Order. If the Department determines through its review of the submitted Corrective Action Plan that it is not sufficient to accomplish compliance with applicable Federal, State laws, or Departmental regulations, or with ADEM-issued permits, 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 Department's 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 Consent 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.

HYPHE LANDFILL, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Jeffery Hyche  
(Signature of Authorized Representative)

\_\_\_\_\_  
Lance R. LeFleur, Director

JEFFERY HYCHE  
(Printed Name)

ASST. MGR.  
(Printed Title)

\_\_\_\_\_  
(Date Signed)

23<sup>rd</sup> November 2021  
(Date Signed)

**Attachment A  
 Huche Landfill  
 Addison, Winston County  
 Solid Waste Disposal Permit No. 67-06**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>	
<b>Failure to maintain run-off control system</b> (10/19/20 and 4/20/21)	2	\$2,000	\$500	\$1,000	
<b>Failure to cover waste weekly</b> (6/12/20, 10/19/20, and 4/20/21)	3	\$3,000	\$750	\$1,000	
<b>Failure to properly confine waste to small area</b> 6/12/20 and 10/19/20)	2	\$1,000	\$500	\$0	
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		\$6,000	\$1,750	\$2,000	\$9,750

<b>Adjustments to Amount of Initial Penalty</b>	
<b>Mitigating Factors (-)</b>	\$0
<b>Ability to Pay (-)</b>	\$0
<b>Other Factors (+/-)</b>	\$0
<b>Total Adjustments (+/-)</b> <i>Enter at Right</i>	\$1,950

<b>Economic Benefit (+)</b>	\$0
<b>Amount of Initial Penalty</b>	\$9,750
<b>Total Adjustments (+/-)</b>	\$1,950
<b>FINAL PENALTY</b>	\$7,800

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