

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Mueller Company
Albertville, Marshall County, Alabama
EPA Identification No. ALD077657427
Solid Waste Disposal Permit No. 48-10**

Consent Order No. 22-XXX-CHW/CSW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and Mueller Company (“Mueller”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended; the Alabama Hazardous Wastes Management and Minimization Act (“AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, as amended; the Solid Waste 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. Mueller operates a potable water flow control manufacturing and packaging facility with EPA Identification No. ALD077657427, located at 956 Industrial Blvd. in Albertville, Marshall County, Alabama. As a result of its operations, Mueller was a large quantity generator, as that term is defined in ADEM Admin. Code Div. 14, at all times relevant to this action. Mueller is also a permitted landfill operator under Solid Waste Disposal Permit No. 48-10.

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.

4. Pursuant to Ala. Code § 22-27-9(a), as amended, the Department is authorized to regulate the permitting and operation of solid waste management facilities necessary to enforce the requirement and purposes of SWRMMA, Ala. Code §§ 22-27-1 to 22-27-18, as amended.

DEPARTMENT'S CONTENTIONS

5. On November 7, 2020, the Department issued renewal Solid Waste Disposal Permit No. 48-10 to the Permittee for operation of a landfill located at 956 Industrial Blvd. in Albertville, Marshall County, Alabama.

6. On May 4, 2021, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection ("CEI") of Mueller. The CEI and a review of Mueller's compliance showed the following:

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

Based on observations made during the CEI and a review of documents subsequently provided to the Department by Mueller, Mueller disposed of spent solvent contaminated filters (i.e. EPA Hazardous Waste No. F005) in the facility's onsite solid waste landfill without an AHWMMMA Permit.

(b) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a), a large quantity generator may accumulate hazardous waste on site without a permit or interim status, and without complying with the requirements of 335-14-5 through 335-14-8, provided the generator accumulates hazardous waste on site for no more than 90 days, unless it has been granted an extension to the 90-day period. 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.

Based on observations made during the CEI and a review of documents subsequently provided to the Department by Mueller, Mueller stored hazardous waste (i.e. EPA Hazardous Waste No. D001) in the secondary containment system for the Forge Paint Area for more than 90 days without a permit or an extension.

(c) Pursuant to ADEM Admin. Code r. 335-13-4-.21(1)(b), a waste accepted at the landfill shall be strictly controlled so as to allow only waste stipulated on the permit or as may be approved by the Department. Further, Section II.C of Solid Waste Disposal Permit No. 48-10 states that the permittee shall follow the approved procedures for detecting and preventing the disposal of free liquids, regulated hazardous waste, PCBs, and medical waste at the landfill.

Based on observations made during the CEI and a review of documents subsequently provided to the Department by Mueller, Mueller disposed of a F005 hazardous waste into the onsite industrial landfill. The facility has not been permitted or approved to accept this waste stream.

7. On June 10, 2021, the Department issued a Notice of Violation to Mueller, which cited violations of the hazardous waste regulations that were discovered during the CEI and subsequent records review.

8. On June 23, 2021, the Department issued a Notice of Violation to Mueller Company Industrial Landfill, which cited a violation of the solid waste regulations and Solid Waste Disposal Permit No. 48-10 that were discovered during the CEI and subsequent records review.

9. On August 16, 2021, the Department received Mueller's response to the aforementioned Notices of Violation.

10. 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) STANDARD OF CARE: In considering the standard of care manifested by Mueller, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Mueller 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 Mueller as a result of the violations referenced herein.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts made by Mueller to mitigate any effects upon the environment that resulted from the alleged violations.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Mueller has no history of previous violations.

(f) ABILITY TO PAY: The Department does not have any evidence indicating that Mueller 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).

11. The Department neither admits nor denies Mueller'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.

FACILITY'S CONTENTIONS

12. Mueller neither admits nor denies the Department's contentions. Mueller 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, Mueller, along with the Department, desires to resolve and settle the alleged violations cited above and in the June 10, 2021 and June 23, 2021 Notices of Violation. 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 Mueller agree to enter into this Special Order by Consent with the following terms and conditions:

A. Mueller agrees to pay to the Department a civil penalty in the amount of \$22,400 in settlement of the violations alleged herein within forty-five (45) 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. Mueller 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 Mueller's name and address, and the ADEM Administrative Order number of this action.

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

D. Mueller agrees that, within ninety (90) days of the effective date of this Special Order by Consent, Mueller shall submit a plan to achieve clean closure of the waste pile located at the Albertville facility (i.e. removal of hazardous wastes from the onsite solid waste landfill). The plan shall be prepared in accordance ADEM Admin Code r. 335-14-6-.07 and shall require approval by the Department prior to implementation.

E. Mueller agrees that, within ninety (90) days of the effective date of this Special Order by Consent, Mueller shall submit a revised groundwater monitoring plan which incorporates semi-annual monitoring at the solid waste disposal landfill for Appendix I constituents while in detection monitoring, and Appendix II constituents while in assessment monitoring (or corrective action, if necessary).

F. The Department and Mueller ("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.

G. 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.

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

I. For purposes of this Special Order by Consent only, Mueller 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.

J. 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 and in the June 10, 2021 and June 23, 2021 Notices of Violation concerning the factual circumstances referenced herein and in the June 10, 2021 and June 23, 2021 Notices of Violation. 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. Mueller 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.

K. 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 Mueller does hereby waive any hearing on the terms and conditions of this Special Order by Consent.

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

M. 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.

N. 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.

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

P. 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 Mueller of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

MUELLER COMPANY

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Michael Lang
(Signature of Authorized Representative)

Lance R. LeFleur
Director

Michael Lang
(Printed Name)

Plant Manager
(Printed Title)

11/19/2021
(Date Signed)

(Date Executed)

Attachment A

Mueller Company
 Albertville, Marshall County
 EPA Identification No. ALD077657427
 Solid Waste Disposal Permit No. 48-10

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Disposal of hazardous waste without a permit.	1	\$10,000	\$1,000	\$0	
Storage of hazardous waste without a permit.	1	\$10,000	\$1,000	\$0	
Failure to strictly control waste/ Disposal of unauthorized waste stream	1	\$5,000	\$1,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$25,000	\$3,000	\$0	\$28,000

Adjustments to Amount of Initial Penalty

Economic Benefit (+)	\$0
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	-\$5,600

Amount of Initial Penalty	\$28,000
Total Adjustments (+/-)	-\$5,600
FINAL PENALTY	\$22,400

Footnotes

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