

ALABAMA DEPARTMENT  
OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )

EcoSouth Services of Mobile, LLC )

Axis Industrial Landfill )

12740 Highway 43 )

Axis, Mobile County, Alabama )

Solid Waste Disposal Permit No. 49-21 )

Consent Order No. 20-XXX-CSW

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and EcoSouth Services of Mobile, LLC (hereinafter "Permittee") 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. EcoSouth Services of Mobile, LLC (hereinafter "Permittee" or "EcoSouth") operates an industrial landfill, known as the Axis Industrial Landfill, (hereinafter "landfill") in Axis, Mobile 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 April 5, 2016, the Department issued renewal Solid Waste Disposal Permit Number 49-21 to the Permittee for the operation of the landfill located at 12740 Highway 43, Axis, Mobile County, Alabama.

5. On May 29, 2019, Department personnel conducted a site visit of the Permittee's landfill to determine compliance with the Solid Waste Disposal Permit and Division 13 of the ADEM Administrative Code. Department personnel documented the following violations:

A. ADEM Admin Code r. 335-13-4-.21(1)(a) states that the operation and use of the landfill shall be as stipulated in the permit. Section VIII. of Solid Waste Permit No. 49-21 states that solidification shall take place on a lined containment pad, surrounded by a two foot berm. The Operational Plan for Solidification, submitted to the Department as part of the permit application on March 20, 2014, further specifies that the lined containment pad is to be constructed approximately 30' x 60' with a two foot berm. The vats used by the facility for solidification were not located on a lined containment pad and were not surrounded by a two foot berm.

B. ADEM Admin Code r. 335-13-4-.23(1)(d) states that the landfill unit must be operated in accordance with approved plans and permits. Section I.F. of Solid Waste Permit No. 49-21 requires that the facility be operated to minimize the possibility of an unplanned sudden or nonsudden release of contaminants (including leachate) to air, soil, groundwater or surface water. Department personnel observed numerous leachate pop-outs along the northwest and northeastern slopes of the facility.

C. ADEM Admin. Code r. 335-13-4-.21(1)(d) states that the landfill unit shall be operated in such a manner that there will be no water pollution or unauthorized discharge. Discharge is defined as the accidental or intentional spilling, leaking, pumping, emitting, emptying, or dumping of solid waste, including leachate, into or on any land or water. One of the solidification vats had a release during normal operations. Department personnel observed an oily sludge from the vat in the drainage ditches of the Phase 1 disposal footprint.

6. On July 12, 2019, the Department issued a Notice of Violation (hereinafter "NOV") addressing the violations noted above.

7. The Department received a response to the NOV in a letter dated September 5, 2019. As a result of the NOV response, the Department finds the following additional violation:

A. ADEM Admin. Code r. 335-13-5-.02(4) states that prior to any change in the design or operating procedures described in the current permit the permittee shall request a modification of the permit. A request for modification must be filed with the Department at least 90 days prior to the anticipated change and approval must be received from the Department prior to implementation of the proposed change. Section VII. of Solid Waste Permit No. 49-21 states the Permittee is granted permission to stage solidification operations within the Phase I disposal footprint. The response to the NOV indicates that relocation of the solidification vats to the Phase II disposal area began in mid-August and that a request for a revision to the existing permit variance would be submitted to the Department to acknowledge these changes in the solidification system. No request for modification was submitted to the Department prior to the relocation of the vats.

8. On January 24, 2020, Department personnel conducted an inspection of the Permittee's landfill to determine compliance with the Solid Waste Disposal Permit and Division 13 of the ADEM Administrative Code. A follow-up site visit was conducted on January 28, 2020, to verify details of the NOV response, dated September 5, 2019. The Department also conducted inspections of the landfill on February 26 and 27, 2020, in response to anonymous complaints. During the inspections/site visit, Department personnel documented the following violations:

A. ADEM Admin Code r. 335-13-4-.23(1)(d) states that the landfill unit must be operated in accordance with approved plans and permits. Section I.F. of Solid Waste Permit No. 49-21 requires that the facility be operated to minimize the possibility of an unplanned sudden or nonsudden release of contaminants (including leachate) to air, soil, groundwater or surface water. Furthermore, Section VI. of Solid Waste Permit No. 49-21 states that the Permittee must collect and dispose of leachate that is generated at the facility. The section also details how leachate should be collected and disposed of at an off-site wastewater treatment plant. Department personnel noted numerous leachate pop-outs on landfill slopes, black discolored

liquid in drainage ditches and black discoloration of the sediment pond, which was presumed to be a large quantity of leachate in the pond.

B. ADEM Admin Code r. 335-13-4-.17(3) requires that the Permittee must design, construct and maintain on-site drainage structures to carry incident precipitation from the disposal site so as to minimize the generation of leachate, erosion and sedimentation. Run-off from the active and/or closed portions of the landfill unit must be routed to a settling basin or other sedimentation control structure to remove sediment prior to release onto adjacent properties or waters. Large amounts of pooled stormwater and leachate were documented in the active disposal area and drainage ditches. Drainage ditches around the perimeter of the permitted disposal area had sediment accumulation, resulting in ineffective drainage.

C. ADEM Admin Code r. 335-13-4-.21(1)(a) states that the operation and use of the landfill shall be as stipulated in the permit. Section VIII. of Solid Waste Permit No. 49-21 states that solidification shall take place within the Phase I disposal footprint on a lined containment pad, surrounded by a two foot berm. The response to the NOV, dated September 5, 2019, indicated that the solidification area would be modified to include a permanent berm. Department personnel observed that the solidification vats were not surrounded by a two foot berm.

D. ADEM Admin Code r. 335-13-4-.23(1)(c) states that all waste shall be placed onto an appropriate slope not to exceed 4 to 1 (25%) or as approved by the Department. Section VIII. of Solid Waste Permit No. 49-21 states that the Permittee has been granted a variance from ADEM Admin. Code r. 335-13-4-.23(1)(c) and is approved to operate working slopes of 3 to 1 (33%). Department personnel noted that the slopes of the working face were not in compliance with the 3 to 1 variance or the 4 to 1 Division 13 regulation requirement.

E. ADEM Admin Code r. 335-13-5-.02(4) states that prior to any change in the design or operating procedures described in the current permit, the permittee shall request a modification of the permit. A request for modification must be filed with the Department at least 90 days prior to the anticipated change and shall receive approval from the Department prior to

the implementation of the proposed change. Section VII. of the Solid Waste Permit No. 49-21 states the Permittee is granted permission to stage solidification operations within the Phase I disposal footprint. During the noted visits to the facility, the Department confirmed that the solidification operations have been relocated to the Phase II disposal footprint without prior approval from the Department.

9. On February 12, 2020, the Department received a complete permit modification application to amend the existing Operational Plan for Solidification, dated March 20, 2014.

10. 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. 4921 regarding landfill operations. The Department noted releases of fluids to soils and a change in the design of the landfill without prior Department approval. The Department has considered the general nature of the violations, the magnitude and duration of the violations and any available evidence of irreparable harm to the environment.

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 aware of initial 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 not have a history of previous violations.

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.

11. 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***

12. 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.

13. EcoSouth has made every effort to maintain compliance with ADEM requirements since it purchased the Axis Landfill in 2012 and has appropriately responded to any matters identified by ADEM.

14. EcoSouth does not dispute that a release from a solidification vat had occurred just prior to the Department's May 29, 2019, site visit. The release occurred during normal operations in an area of the landfill that is clay-lined and has a leachate system. EcoSouth personnel immediately responded and cleaned up the affected area.

15. Upon receiving the July 12, 2019 NOV, EcoSouth took significant measures to address the items noted in the NOV. On September 5, 2019, EcoSouth notified ADEM of its intent to make operational enhancements, including moving the solidification operation to a synthetically-lined area of the landfill. While EcoSouth does not dispute that it did not request a permit modification prior to beginning the relocation process, the move to the synthetically-lined area was an interim corrective measure that will undoubtedly better ensure protection of human health and the environment until EcoSouth is able to implement a more permanent solution. In addition, the temporary relocation of the solidification operation was a considerable endeavor for EcoSouth, at a cost of approximately \$150,000.

16. EcoSouth also contracted with LaBella Associates (hereinafter "LaBella") for solid waste consulting services. In early January 2020, LaBella reached out to ADEM to request a meeting to update the Department on EcoSouth's efforts to address the items noted in the NOV. LaBella met with ADEM on January 13, 2020, at which time LaBella presented both short-term actions taken by EcoSouth and long-term proposals to ensure protection of human health and the environment. On January 30, 2020, EcoSouth submitted an application to the Department addressing the permit changes discussed with ADEM during the January 13, 2020, meeting. The application was updated to include a variance request and applicable fees on February 12, 2020.

17. Upon receiving notification of ADEM's concerns related to its observations during the January 2020 and February 2020 inspections, EcoSouth quickly implemented measures to improve the intermediate cover, regrade and cover side slopes, and perform maintenance on the

stormwater conveyance systems in both Phase 1 and Phase 2 of the landfill. EcoSouth has also begun the process of cleaning sediment out of the southwest sedimentation pond.

18. EcoSouth does not dispute that some amount of leachate migrated to the southwest sedimentation pond and to the drainage ditches prior to the Department's January 2020 inspections. EcoSouth has contracted with Liquid Environmental Solutions to pump water out of the pond for offsite treatment. The pooled stormwater identified by ADEM has also been removed by Liquid Environmental Solutions for offsite treatment.

### **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), 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 the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. Not later than **forty-five days** after issuance of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$21,750.00 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 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. 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 49-21. It is understood by both parties that the items that will be addressed through the schedule for implementation under the Corrective Action Plan, as required by paragraph F, are excluded from the requirements of this paragraph.

C. Not later than **thirty days** from the issuance of this Order, the Permittee shall complete the removal of leachate from the sediment pond, sending any removed liquid to a wastewater treatment plant for proper disposal, and remove any and all impacted sediment contained in the pond.

D. Not later than **thirty days** from the issuance of this Order, the Permittee shall provide the Department with detailed calculations for the sediment pond indicating the storage capacity and water balance for the sediment pond (the calculations and other information submitted should be sufficient to provide a water balance for the stormwater going into and being discharged from the sediment pond).

E. Not later than **thirty days** from the issuance of this Order, the Permittee shall provide the Department with detailed information on how the Permittee accounts for the maximum average daily volume of 1500 cubic yards per day (the information provided should include specifics on how both the liquid portion and the stabilization agent for the solidification process are accounted for in reference to the average daily volume).

F. Not later than **thirty days** from the issuance of this Order, the Permittee shall submit a Corrective Action Plan (CAP) to the Department. The CAP shall include a detailed description of measures that have been or will be taken to address the violations noted in this Order and to ensure the facility is operated in accordance with approved plans and permits; specifically::

1. Measures ensuring draining ditches are properly maintained;
2. Measures ensuring landfill slopes are maintained as approved in the Permit; and
3. Measures ensuring the facility is maintained and operated to minimize the possibility of an unplanned sudden or nonsudden release of contaminants to air, soil,

groundwater, or surface water, which could threaten human health or the environment (including leachate seeps).

The CAP shall also include a schedule for implementation of any measures that will be taken, as noted above. If the Department determines through its review of the submitted CAP that it is not sufficient to maintain compliance with all applicable provisions of ADEM Admin. Code div. 335-13 and Solid Waste Disposal Permit No. 49-21, then the Permittee shall submit a revised CAP, addressing the Department's concerns, no later than **thirty days** after receipt of the Department's comments. The Permittee shall complete implementation of the measures described in the approved CAP pursuant to the schedule set forth in the approved plan.

G. 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.

H. 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.

I. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Order.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.


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


Q. 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.

**ECOSOUTH SERVICES OF MOBILE, LLC**

  
\_\_\_\_\_  
(Signature of Authorized Representative)

  
\_\_\_\_\_  
(Printed Name)

  
\_\_\_\_\_  
(Printed Title)

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

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

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

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

6/29/20

Attachment A  
Axis Industrial Landfill  
Axis, Mobile County

Solid Waste Disposal Permit No. 49-21

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to operate as stipulated in the permit (Solidification not operating with a lined containment pad surrounded by a two foot berm)	2	\$4,000	\$2,000	\$0	
Failure to operate in accordance with approved plans and permits (leachate seeps, discoloration in sediment pond)	5	\$5,000	\$2,500	\$0	
Failure to operate in accordance with approved plans and permits (vat release)	1	\$6,000	\$2,000	\$0	
Failure to submit permit modification prior to design change	1	\$1,000	\$500	\$0	
Failure to maintain on-site drainage structures (pooled stormwater/leachate, discoloration and sediment accumulation in drainage ditches)	3	\$3,000	\$1,500	\$0	
Failure to properly maintain landfill slopes	1	\$1,000	\$500	\$0	
					<b>Total of Three Factors</b>
<i>TOTAL PER FACTOR</i>		\$20,000	\$9,000	\$0	\$29,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	\$7,250
Total Adjustments (+/-) <i>Enter at Right</i>	\$7,250

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$29,000
Total Adjustments (+/-)	\$7,250
<b>FINAL PENALTY</b>	<b>\$21,750</b>

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