

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Clean Earth of Alabama, Inc.  
Glencoe, Etowah County, Alabama  
USEPA Identification Number ALD981020894

Consent Order No. 24-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 Clean Earth of Alabama, Inc. (“Clean Earth”) pursuant to the provisions of the Alabama Environmental Management Act (“AEMA”), 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. Clean Earth operates a permitted commercial hazardous waste treatment, storage, and disposal facility (the “Facility”) pursuant to authority of Permit and EPA Identification Number ALD981020894 (the “Permit”), issued to it on September 26, 2014, located at 402 Webster Chapel Road in Glencoe, Etowah County, Alabama. Clean Earth’s Facility and its operations are considered to be a permitted hazardous waste treatment, storage, and disposal facility, a large quantity generator of hazardous waste, a used oil generator, a large quantity handler of universal wastes, and a universal waste transporter, 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 AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On March 23, 2023, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection ("CEI") of Clean Earth. The CEI and a review of Clean Earth's compliance showed the following:

(a) Pursuant to Permit Condition III.C.3., the sampling and staging of incoming containers shall not exceed 72 hours. All containers that are to be fingerprinted or are awaiting analysis shall be segregated from other containers in the container storage area. Each container shall be marked with the date of receipt.

Clean Earth failed to mark two containers of hazardous waste located in the Main Warehouse (Building #1) with the date of receipt. These containers had been onsite for more than 72 hours.

(b) Pursuant to Permit Condition III.L.2., a container holding hazardous waste must always be closed during storage, except when it is necessary to add, remove, sample, or inspect the waste.

Clean Earth failed to keep closed one 5-gallon container of hazardous waste located in Building #1.

(c) Pursuant to Permit Condition III.E.2., the permittee shall maintain an impervious coating which is free of cracks, gaps, or other deterioration on all containment system surfaces which may be exposed to hazardous waste or hazardous constituents (or release of hazardous wastes or hazardous constituents).

Clean Earth failed to maintain an impervious coating which is free of cracks, gaps, or other deterioration in the Pharmaceutical Shredder Building (Building #2). The coating for the floor of the secondary containment system for this building was cracked.

(d) Pursuant to Permit Condition III.L.6., an appropriate hazardous waste label will be affixed to each container. The label will include, at a minimum, the date the container was received, and all appropriate EPA hazardous waste numbers associated with the hazardous waste in the container as specified in 335-14-2-.03 and 335-14-2-.04 [or other information that provides a clear indication of the type(s) of hazardous waste and the hazard(s) associated with the waste].

Clean Earth failed to mark an identification of hazards on approximately twenty-four (24) containers located in Building #2.

(e) Pursuant to Permit Condition III.J., if a container holding hazardous waste is not in good condition (e.g., severe rusting, apparent structural defects) or if it begins to leak, upon discovery the permittee shall immediately transfer the hazardous waste from such container to a container that is in good condition or otherwise manage the waste in compliance with the conditions of ADEM. Admin. Code R. 335-14-5-.09(2).

Clean Earth failed to properly manage damaged and leaking containers of hazardous waste. Two containers in Building #1 were damaged. Multiple containers in Building #2 were leaking.

(f) Pursuant to ADEM Admin. Code r. 335-14-5-.28, which incorporates by reference 40 CFR, Part 264, Subpart BB [including 40 CFR 264.1052 through 1057], the owner or operator is required to perform leak detection and repair monitoring.

Clean Earth failed to perform required leak detection and repair monitoring of all ancillary equipment associated with the hazardous waste storage tanks. Monitoring records indicated that Clean Earth was only recording the highest readings when an area had multiple sampling points. Clean Earth was not able to provide evidence (i.e., monitoring records) that monitoring had been conducted on all subject monitoring points.

(g) Pursuant to ADEM Admin. Code r. 335-14-5-.28, which incorporates by reference 40 CFR, Part 264, Subpart BB [including 40 CFR 264.1050(d)], each piece of equipment subject to Subpart BB is required to be marked in such a manner that it can be distinguished readily from other pieces of equipment.

Clean Earth failed to mark all subject pieces of ancillary equipment connected to the hazardous waste storage tanks.

(h) Pursuant to Permit Condition III.C.1., the permittee shall maintain and operate the container storage area in accordance with the procedures specified in Section 5 of the permit application. Pursuant to Permit Application Section 5.3.2, all containers are handled in such a way as to minimize the possibility of rupture, leakage, or other damage.

Clean Earth failed to manage and operate the container storage area in Building #2 in such a way as to minimize the possibility of rupture, leakage, or other damage. Multiple containers in this building were leaking. Hazardous waste was overflowing the secondary containment system for the shredder unit, and liquid and solid hazardous waste had been released onto the floor in this area.

(i) Pursuant to Permit Condition III.L.3., a container holding hazardous waste must not be opened, handled, or stored in a manner that may rupture the container or cause it to leak.

Clean Earth failed to manage containers of hazardous waste in Building #2 in a manner that would prevent them from rupturing or leaking. Multiple containers in this building were leaking. Hazardous waste was overflowing the secondary containment system for the shredder unit, and liquid and solid hazardous waste had been released onto the floor in this area.

(j) Pursuant to Permit Condition I.C.5., the Permittee shall, at all times, properly operate and maintain all facilities and systems, monitoring, and control (related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance (O&M) includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of this permit.

Clean Earth failed to operate or maintain Building #2 in a manner to prevent hazardous waste from being released by the unit. Solid and liquid hazardous wastes had been



released on the floor in this area and around the shredder unit. The secondary containment system for the shredder unit was overflowing with liquid hazardous waste(s).

5. On July 14, 2023, the Department issued a Notice of Violation to Clean Earth, which cited violations of the hazardous waste regulations that were discovered during the CEI.

6. On August 23, 2023, the Department received Clean Earth's 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 VIOLATION(S):** 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 Clean Earth, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Clean Earth 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 Clean Earth as a result of the violations referenced herein.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION(S) 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, Clean Earth has a history of similar violations and the penalty reflects that history.

(f) ABILITY TO PAY: The Department does not have any evidence indicating that Clean Earth is unable 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 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 Clean Earth'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 violation(s) cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violation(s). The Department has determined that the terms contemplated in this Consent Order are in the best interest of the citizens of Alabama.

#### CLEAN EARTH'S CONTENTIONS

9. Clean Earth neither admits nor denies the Department's Contentions. Clean Earth consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. Clean Earth would like to state that the following findings were corrected during the inspection and were completed before the Department left the facility:

(a) The containers found in Building #1 that had been found without a date and that were found to be outside of storage were immediately moved into the proper location in the warehouse and the received date was added to the label.

(b) The 5-gallon container that was found open was immediately closed.

(c) Floor coatings in each building were evaluated. Floors that were discovered

to need the coating repaired was done over the next several months.

(d) The containers in Building #2 that were missing hazard identification labels were identified and labeled properly.

(e) The two containers found to be leaking in Building #1 were immediately overpacked into other containers. Building #2 containers were also removed and overpacked.

(f) Clean Earth added additional lines on the quarterly forms to show that all monitoring points are being read and recorded.

(g) Clean Earth did a full inspection of all tags in the LDAR program. Any missing tags were replaced in the April quarterly monitoring event.

(h) Building #2 is now maintaining the containers and secondary containment in a manner to that minimizes leaks and spills onto the floor.

(i) Clean Earth has since instituted more frequent inspections of the housekeeping to improve the management of the shredder unit secondary containment. This was noted in ADEM's inspection on 7/20/23.

#### ORDER

Therefore, without admitting that it has violated any statutes or regulations, Clean Earth, along with the Department, desires to resolve and settle the alleged violation(s) 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 violation(s) alleged herein. Therefore, the Department and Clean Earth agree to enter into this Consent Order with the following terms and conditions:

A. Clean Earth agrees to pay to the Department a civil penalty in the amount of \$45,200 in settlement of the violation(s) alleged herein within forty-five days of the effective date of this Consent Order. 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. Clean Earth agrees that all penalties due pursuant to this Consent Order 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 Consent Order shall reference Clean Earth's name and address, and the ADEM Administrative Order Number of this action.

C. Clean Earth agrees to comply with all terms, conditions, and limitations of its permit, the AHWMMA, the AEMA, and the regulations promulgated pursuant thereto immediately upon the effective date of this Order and continuing every day thereafter.

D. The Department and Clean Earth ("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 alleged violation(s) cited herein.

F. Clean Earth 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, Clean Earth 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. Clean Earth also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Clean Earth shall be limited to the defenses of *Force Majeure*, compliance with this Agreement, and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable



and are beyond the reasonable control of the Clean Earth, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Clean Earth) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Clean Earth, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

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 actions as may be appropriate. Clean Earth agrees not to object to such future orders, litigation, or enforcement actions based on the issuance of this Consent Order if future orders, litigation, or other enforcement actions 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 shall not be appealable, and Clean Earth does hereby waive any hearing on the terms and conditions of this Consent Order.

J. The Parties agree that this Consent Order shall not affect Clean Earth'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 Consent 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 Clean Earth of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CLEAN EARTH OF ALABAMA, INC.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Bradley Phillips  
(Signature of Authorized Representative)

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

Bradley Phillips  
(Printed Name)

General Manager  
(Printed Title)

12-26-23  
(Date Signed)

\_\_\_\_\_  
(Date Executed)

**Attachment A**

Clean Earth of Alabama, Inc.  
 Glencoe, Etowah County  
 Facility ID No. ALD981020894

<b>Violation</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violation*</b>
Failure to mark hazardous waste containers with the date of receipt	1	\$500	\$500	\$500
Failure to keep containers of hazardous waste closed	1	\$500	\$250	\$250
Failure to maintain impervious coatings on all containment system surfaces	1	\$5,000	\$2,500	\$2,500
Failure to mark containers of hazardous waste with identification of the hazards	1	\$500	\$250	\$250
Failure to properly manage damaged and/or leaking containers of hazardous waste	1	\$1,000	\$1,000	\$1,000
Failure to perform required leak detection and repair monitoring	1	\$10,000	\$2,500	\$0
Failure to mark ancillary equipment connected to hazardous waste storage tanks	1	\$2,500	\$1,250	\$1,250

Failure to operate container storage areas in a manner that minimizes the possibility of rupture, leakage, or other damage	1	\$5,000	\$2,500	\$0	
Failure to manage containers of hazardous waste to prevent rupture, leakage, or other damage	1	\$5,000	\$2,500	\$0	
Failure to properly operate and maintain hazardous waste management units	1	\$5,000	\$2,500	\$0	<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		\$35,000	\$15,750	\$5,750	\$56,500

Adjustments to Amount of Initial Penalty

Economic Benefit (+)	\$0	Amount of Initial Penalty	\$56,500
Mitigating Factors (-)	\$0	Total Adjustments (+/-)	-\$11,300
Ability to Pay (-)	\$0	<b>FINAL PENALTY</b>	\$45,200
Other Factors (+/-)	-\$11,300		

Footnotes

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