

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Sign Builders Inc.
Birmingham, Jefferson County, Alabama
EPA Identification Number ALR000013201**

Consent Order No. 19-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 Sign Builders Inc. 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. Sign Builders Inc., a domestic corporation, operates a commercial outdoor sign and sign component manufacturing facility with EPA Identification Number ALR000013201, located at 4800 Jefferson Avenue in Birmingham, Jefferson County, Alabama (hereinafter "the Site"). Sign Builders Inc., as a result of its operations at the facility, was a small quantity generator, as that term is 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 April 9, 2019, representatives of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection (hereinafter "CEI") of Sign Builders Inc. The CEI and a review of Sign Builders Inc.'s compliance showed the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-3-.01(2), a person who generates a solid waste, as defined in 335-14-2-.01(2), must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable AHWMMMA regulations.

Sign Builders Inc. failed to make an accurate waste determination on still bottoms generated during reclamation of F003 and F005 listed hazardous wastes. Sign Builders Inc. failed to properly characterize this waste and subsequently managed it as non-hazardous waste.

(b) Pursuant to ADEM Admin. Code r. 335-14-3-.02(1)(a)1., a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transportation a rejected hazardous waste load, must prepare a Manifest (OMB control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A.

Sign Builders Inc. failed to prepare a uniform hazardous waste manifest for each shipment of hazardous waste (i.e. still bottoms waste) sent for disposal.

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.01(8)(c), a generator must not offer his hazardous waste to transporters that have not received an EPA identification number and an Alabama Hazardous Waste Transport Permit.

Sign Builders Inc. offered its hazardous waste (i.e. still bottoms waste) to a transporter that had not received an EPA identification number and an Alabama Hazardous Waste Transport Permit.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.01(8)(c), a generator must not offer his hazardous waste to treatment, storage, or disposal facilities that have not received an EPA identification number and an Alabama Hazardous Waste Facility Permit or interim status pursuant to 335-14-8-.07 (or, in the case of out-of-state facilities, a permit valid in the receiving state).

Sign Builders Inc. sent its hazardous waste (i.e. still bottoms waste) to a solid waste landfill that had not received an EPA identification number and an Alabama Hazardous Waste Facility Permit or interim status pursuant to 335-14-8-.07.

(e) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)4., a container of hazardous waste must be closed at all times during accumulation, except when adding, removing, or consolidating waste or when temporary venting of a container is necessary for the proper operation of equipment or to prevent dangerous situations.

Sign Builders Inc. failed to keep closed two satellite accumulation containers of hazardous waste. Waste was not being added to, removed from, or consolidated in the containers. The containers were not being vented to prevent dangerous conditions.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)5., a generator must mark or label containers of hazardous waste with the words "Hazardous Waste" and an indication of the hazards of the contents.

Sign Builders Inc. failed to mark or label twenty-nine satellite accumulation containers of hazardous waste with the words "Hazardous Waste" and an indication of the hazards of their contents.

(g) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)10., facility personnel whose duties have a direct effect on hazardous waste management and/or hazardous waste accumulation, whether by direct contact with the hazardous waste or through hazardous waste management activities, must receive training. A small quantity generator must maintain at the site

documentation that the required training has been administered to and completed by required employees.

Sign Builders Inc. failed to provide hazardous waste management training to its employees.

5. On April 17, 2019, the Department issued to Sign Builders Inc. a Notice of Violation citing violations of the hazardous waste program regulations that were observed or existed at the time of the April 9, 2019 CEI.

6. On May 14, 2019, the Department received Sign Builders Inc.'s response to the April 17, 2019, 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 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 Sign Builders Inc., the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Sign Builders Inc. has failed to exhibit a standard of care commensurate with the applicable regulatory standards.

(c) **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE**

CONFERRED: Sign Builders Inc. gained an economic benefit due to the improper management and disposal of hazardous waste.

(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, Sign Builders Inc. has no history of previous violations.

(f) **THE ABILITY TO PAY:** Sign Builders Inc. 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 Sign Builders Inc.'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

9. Sign Builders Inc. neither admits nor denies the Department's contentions. Sign Builders Inc. 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, Sign Builders Inc., 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 Sign Builders Inc. agree to enter into this Special Order by Consent with the following terms and conditions:

A. Sign Builders Inc. agrees to pay to the Department a civil penalty in the amount of \$25,300 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. Sign Builders Inc. 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 Sign Builders Inc.'s name and address, and the ADEM Administrative Order number of this action.

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

D. The Department and Sign Builders Inc. (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. Sign Builders Inc. 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, Sign Builders Inc. 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; Sign Builders Inc. 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 Sign Builders Inc. 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 Sign Builders Inc.'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 Sign Builders Inc. of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

FACILITY

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

Preston Rayfield

(Printed Name)

President

(Printed Title)

9/19/2019

(Date Signed)

(Date Executed)

Attachment A

Sign Builders, Inc.
Birmingham, Jefferson County
Facility ID No. ALR000013201

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Failure to make an accurate waste determination on still bottoms generated during reclamation of F003 and F005 listed hazardous wastes.	1	\$2,500	\$500	\$0	
Offering hazardous waste for transportation without first preparing a hazardous waste manifest.	1	\$1,000	\$100	\$0	
Offering hazardous waste to a transporter not permitted to transport hazardous waste	1	\$5,000	\$1,000	\$0	
Shipping hazardous waste for disposal to a landfill not permitted to accept the waste	1	\$10,000	\$1,000	\$0	
Failure to keep closed all hazardous waste satellite accumulation containers.	1	\$100	\$100	\$0	
Failure to mark or label all hazardous waste satellite accumulation containers with the words "Hazardous Waste" and an indication of the hazards of their contents.	1	\$100	\$100	\$0	
Failure to provide hazardous waste management training to its employees.	1	\$1,000	\$100	\$0	Total of Three Factors
TOTAL PER FACTOR		\$19,700	\$2,900	\$0	\$22,600

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	\$2,700
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$22,600
Other Factors (+/-)	\$0	Total Adjustments (+/-)	\$2,700
Total Adjustments (+/-) Enter at Right	\$0	FINAL PENALTY	\$25,300

Footnotes

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