

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF

**The UNIVERSITY of ALABAMA
Tuscaloosa, Tuscaloosa County, AL 35487**

USEPA ID NUMBER ALD 077 647 691

Consent Order NO. 19-XX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") and The University of Alabama (hereinafter referred to as "UA", "Operator", "facility", or "the owner"), 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 of 1978, (AHWMMA), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the ADEM Administrative Code, promulgated thereunder.

STIPULATIONS

1. The University of Alabama ("UA", "Operator" or "Facility") is a teaching, research, and public service institution. The site is located at Tuscaloosa, Alabama in Tuscaloosa County. UA is a Large Quantity Generator of hazardous waste with USEPA ID Number ALD 077 647 691 and a Large Quantity Handler of Universal Waste.
2. The Alabama Department of Environmental Management 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, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On February 26 through March 1, 2018, the Department conducted a Compliance Evaluation Inspection (CEI) at UA to determine the facility's compliance with applicable requirements of Division 14 of the ADEM Administrative Code. During the inspection, the following was noted.

- A. ADEM Administrative Code rs. 335-14-3-.03(5)(a) (4) (2017) and 335-14-6-.02(5)(c) provide that a large quantity generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status provided that the generator complies with ADEM Admin. Code r. 335-14-6-.02(5)(c). That rule states in pertinent part, that a "Danger-Unauthorized Personnel Keep Out" sign be posted and legible from 25 feet. UA's less than 90-day Chemical Storage Facility (CSF) did not comply with this signage requirement.
- B. ADEM Administrative Code r. 335-14-3-.03(5)(a)3. (2017) provides that a large quantity generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status provided that while being accumulated on-site, each container of waste is labeled or marked clearly with the words, "Hazardous Waste" and the EPA hazardous waste number. Containers in rooms 1024 and 1026 of the CSF did not have the appropriate hazardous waste label marking the containers.

- C. ADEM Administrative Code r. 335-14-11-.03(5)(a) states that a large quantity handler of universal waste batteries must mark each container of batteries with the words "Universal Waste Battery(ies)", "Waste Battery(ies)", or "Used Battery(ies)". Four white 5-gallon containers of used batteries in Room 1027 were not marked.
- D. ADEM Administrative Code r. 335-14-11-.03(5)(e) states that a large quantity handler of universal waste lamps must label or mark each lamp or container in which the lamps are stored must be marked with one of the following phrases: "Universal Waste Lamp(s)", "Waste Lamp(s)", or "Used Lamp(s)". The 4-foot and 8-foot fiberboard containers and cardboard boxes of used lamps were not properly labeled.
- E. ADEM Administrative Code r. 335-14-11-.03(6)(c) states that a large quantity handler of universal waste must be able to demonstrate the length of time that the universal waste has been accumulated from the date it becomes a waste or is received. UA was not able to demonstrate the length of time the containers of universal waste lamps had been accumulated.
- F. ADEM Administrative Code r. 335-14-11-.03(4)(d)2. states that a large quantity handler of universal waste must clean up and place in a container any lamp that shows evidence of breakage, leakage, or damage that could cause the release of mercury or any other hazardous constituents to the environment. Broken lamps were observed on the Bulb Shed floor.
- G. ADEM Administrative Code r. 335-14-11-.03(4)(d)1. states that a large quantity handler of universal waste must manage used lamps in containers that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers must

remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions. The 4-foot and 8-foot fiberboard containers and cardboard boxes of used lamps were open and were not managed in a manner that would prevent breakage.

- H. ADEM Administrative Code r. 335-14-3-.03(5)(c)1.(i) (2017) and 335-14-6-.09(4)(a) provide that a satellite accumulation container must remain closed except when necessary to add or remove waste. During the CEI, containers in the following areas were not closed: Spray shop-one 55-gallon drum containing paint waste; Shelby Hall room 3003-two containers, Lab 3101 one 4-liter container, Lab 3100 one 4-liter container of spent acetone.
- I. ADEM Administrative Code r. 335-14-3-.01(2) states that a person who generates a solid waste must determine if that waste is a hazardous waste. Inside a paint-covered grate was a material with a solvent smell. A waste determination had not been performed on the material which is located at the paint waste satellite accumulation area. Waste water from experiments in Lab Room 1015 (NERC) did not have an appropriate waste determination.
- J. ADEM Administrative Code r. 335-14-17-.03(4)(a)1. states that a container holding used oil must always be closed except when it is necessary to add or remove used oil. A blue 55-gallon drum located in the Pump Room (SERC) containing used oil was not closed.
- K. ADEM Administrative Code r. 335-14-17-.03(4)(c)1. states in pertinent part, that containers used to store used oil must be marked with the words "Used Oil." Two 55-gallon containers and one drip pan in the Pump Room containing used oil were not labeled as required.

- L. ADEM Administrative Code rs. 335-14-3-.03(5)4. (2017) and 335-14-6-.03(4) require of a large quantity generator, that all facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, must be tested and maintained as necessary to assure its proper operation in time of emergency. Inspections were last performed on eye wash, safety shower, and fume hoods in Lab 3100 in July and September 2016.
- M. ADEM Administrative Code r. 335-14-3(5)(c).(2017), states in pertinent part, that a generator may accumulate up to 55 gallons of non-acute hazardous waste in containers at or near the point of generation. A generator who accumulates hazardous waste in excess of 55 gallons at or near the point of generation, must, with respect to the initial amount (55 gallons), comply within three days with applicable provisions of Division 335-14, that is, move the 55 gallons to a storage area. The generator must mark the container holding the initial amount of hazardous waste with the date the initial amount was reached. The sample preservation lab located in Mary Harmon Bryant Hall was operating as a less than 90-day area at the time of inspection. The lab contained one 55-gallon drum filled in January, a second drum had been filled in February, and the third drum contained about 5-gallons.
- N. ADEM Administrative Code rs. 335-14-3-.03(5)(a)4.(2017) and 335-14-6-.02(7) provide in pertinent part, that facility personnel of a large quantity generator must successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the regulations. Some personnel whose duties have a direct effect on hazardous waste management and/or hazardous waste accumulation

had not successfully completed the required training at the time of inspection.

- O. ADEM Administrative Code rs. 335-14-3-.03(5)(a)4.(2017) and 335-14-6-.04(2) & (3) provide that large quantity generators must have a contingency plan which should list all emergency equipment at the facility and provide the location and physical description of each item on the list. The CSF Contingency Plan did not include a list of emergency equipment.
- P. ADEM Administrative Code rs. 335-14-3-.03(5)(a)4. (2017) and 335-14-6-.04(3) require that a copy of the required Contingency Plan be submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services. No documentation showing the CSF Contingency Plan had been made available to the appropriate emergency services could be provided during the inspection.
- Q. ADEM Administrative Code rs. 335-14-3-.03(5)(a)4.(2017) and 335-14-6-.04(5) require that the Contingency Plan be updated when the emergency contacts change. The CSF Contingency Plan had not been updated to reflect current emergency coordinators.
- R. ADEM Administrative Code rs. 335-14-3-.03(5)(a)(4) (2017) and 335-14-6-.02(6)(d) provides that a large quantity generator must record inspections in an inspection log or summary. The records must include the date and time of inspection, the name of the inspector, a notation of the observations, and the date and nature of any repairs. The inspection records for the CSF did not include the inspection dates and times, the name of the inspector, or notes of any repairs.
- S. ADEM Administrative Code r. 335-14-3-.04(1)(e) (2017) provides that a generator who offers hazardous waste for transportation offsite must

have a program in place to reduce volume and toxicity of hazardous waste and that the program must be documented in a written waste minimization plan. A Waste Minimization Plan was not available at the time of inspection.

T. ADEM Administrative Code r. 335-14-17-.03(6) provides that used oil generators must ensure that their used oil is transported only by transporters who have obtained an EPA ID Number and an Alabama Used Oil Transporter Permit. At the time of the inspection, the most recent used oil pickup at the facility was December 13, 2017 by Rick's Oil. The Used Oil Transporter Permit (EPA ID ALD982121410) was revoked by the Department on November 6, 2017.

5. The Department issued a Notice of Violation on May 4, 2018, that cited violations of the ADEM Administrative Code discovered during the CEI.

6. On June 6, 2018, the Department received a response to the May 4, 2018, NOV.

7. In a letter sent to the Department by UA, dated June 1, 2018, the facility outlined the actions it was taking to correct the violations listed.

8. 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 violations, 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 violations 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 the civil penalty assessed in this Order, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The violations involved the failure of UA to adhere to the ADEM Administrative Code. These violations resulted in an increased potential exposure and/or release of hazardous waste to the public and environment.

B. **THE STANDARD OF CARE:** By committing these violations, UA did not exhibit a standard of care sufficient to prevent the violations.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** UA received no economic benefit.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** UA has done nothing to minimize or mitigate the effects of the violations to the environment.

E. **HISTORY OF PREVIOUS VIOLATIONS:** UA does not have a significant history of non-compliance.

F. **THE ABILITY TO PAY:** The Operator 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).

9. The Department neither admits nor denies UA'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.

UA'S CONTENTIONS

UA neither admits nor denies the Department's Contentions. UA consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

As communicated in UA's June 1, 2018 response to ADEM's Compliance Notice of Violation, during the November 14, 2018 phone call with ADEM officials, and UA's November 14, 2018 written response to ADEM's October 12, 2018 Administrative Order, all violations have been corrected, many of which were corrected during the June 2018 Compliance Evaluation Inspection (CEI).

UA further contends that it has worked diligently to demonstrate regulatory compliance through implementation of a variety of measures, including inspections, new procedures, and trainings, all of which were designed to prevent future violations. Documentation of such measures have been provided to ADEM.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, the Operator, along with the Department, desires to resolve and settle the 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 the Operator agree to enter into this Special Order by Consent with the following terms and conditions:

A. UA agrees to pay to the Department a civil penalty in the amount of \$18,067 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. UA 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 UA's name and address, and the ADEM Administrative Order number of this action.

C. UA shall comply with all terms, conditions, and limitations of the Alabama Hazardous Wastes Management and Minimization Act of 1978, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

D. ADEM and UA (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 violations, which are cited in this Special Order by Consent.

F. UA 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, UA 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 Department and UA agree that the sole purpose of this Special Order by Consent is to resolve and dispose of any and all violations 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. With regard to any such future order(s), litigation, or other enforcement action(s) which address a violation not raised in this Special Order by Consent, UA shall not be precluded from raising any defense it may have available except that UA may not assert the issuance of this Special Order by Consent as a defense to future order(s), litigation or other enforcement action(s) that address new matters not raised in this Special Order by Consent.

I. The Department and UA 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 UA hereby waives any hearing on the terms and conditions of this Special Order by Consent.

J. The Department and UA agree that this Special Order by Consent shall not affect the Operator'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.

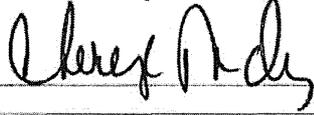
L. The Department and UA agree that, should any provision of this Special Order by Consent be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full force and effect.

M. The Department and UA agree that any modifications of this Special Order by Consent must be agreed to in writing and 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 UA of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

The University of Alabama

 1/16/19

Cheryl Mowdy
Assistant Vice President for Finance & Operations
The University of Alabama

Alabama Department of
Environmental Management

Lance R. LeFleur
Director

Date Signed _____

ATTACHMENT A

Penalty Synopsis Worksheet

The University of Alabama
US EPA ID NUMBER ALD 077 647 691

Violation	Number of Violations	Seriousness of Violation & Base Penalty	Standard of Care	History of Previous Violations
UA failed to use a transporter with an Alabama used oil permit	1	\$2,500	\$250	\$00
UA failed to update the Contingency plan	1	\$500	\$50	\$00
UA failed to perform a proper hazardous waste determination on material near the paint SAA and in Lab Room 1015 (NERC).	2	\$2,000	\$200	\$00
UA failed to post a "Danger-Unauthorized Personnel Keep Out" sign for the less than 90-Day storage area.	1	\$1,000	\$100	\$00
UA failed to label containers clearly with the words, "Hazardous Waste" and the EPA hazardous waste codes.	75	\$7500	\$750	\$00
UA failed to maintain a Waste Minimization Plan.	1	\$100	\$10	\$00
UA failed to mark satellite accumulation containers with the words "Hazardous Waste" or with other words that identify the contents of the container.	2	\$200	\$20	\$00
UA failed to ensure satellite accumulation containers holding hazardous waste were closed during storage except when it is necessary to add or remove waste.	5	\$500	\$50	\$00

UA failed to test all facility communication or alarm systems including fire protection equipment, spill control equipment, and decontamination equipment to assure its proper operation in a time of emergency.	1	\$100	\$10	\$00
UA failed to inspect areas where containers were stored at least weekly.	4	\$400	\$40	\$00
UA failed to label each battery or container of batteries with any one of the following phrases: "Universal Waste Battery(ies)", or "Waste Battery(ies)" or "Used Battery(ies)".	4	\$400	\$40	\$00
UA failed to contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps.	>25	\$2,500	\$250	\$00
UA failed to label containers of UW lamps clearly with any one of the following phrases: "Universal Waste -Lamp(s)", or "Waste Lamp(s)" or "Used Lamp(s)".	2	\$200	\$20	\$00
UA failed to demonstrate the length of time that the universal waste had been accumulated from the date it became a waste or was received.	>25	\$2,500	\$250	\$00
UA failed to ensure container holding used oil was closed during storage except when necessary to add or remove used oil.	1	\$100	\$10	\$00
UA failed to ensure that excess waste was removed from Satellite Accumulation Area within three days.	2	\$500	\$50	\$00
UA failed to ensure that facility personnel complete necessary programs and on-the-job training that teaches them to	1	\$500	\$50	\$00

perform their duties in a way that ensures the facility's compliance with the regulations.				
UA failed to maintain a list of all emergency equipment and provide the location and physical description of each item on the list.	1	\$100	\$10	\$00
UA failed to provide a copy of the Contingency Plan and to ensure that a copy of this plan was provided to local police, fire, hospitals, and state emergency response teams.	1	\$100	\$10	\$00
UA failed to label or mark clearly with the words, "Used Oil", containers and used oil tanks used to store used oil.	2	\$200	\$20	\$00

Economic Benefit*:	\$00
Mitigating Factors:	\$00
Ability to Pay*:	\$00
Other Factors:	(6,023)
Total Civil Penalty:	\$18,067