

LANCE R. LEFLEUR
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

ROBERT J. BENTLEY
GOVERNOR

October 24, 2013

CERTIFIED MAIL

Dr. Larry V. Turner, Ed. D.
President
The Alabama School of Math and Science
1255 Dauphin Street
Mobile, AL 36604

RE: **Alabama School of Math and Science**
EPA Identification Number: ALR 000 033 266

Dear Dr. Turner:

Enclosed please find Consent Order No. 14-006-CHW which requires The Alabama School of Math and Science to take certain actions in regard to alleged violations of the Alabama Hazardous Waste Management and Minimization Act. This Order has been issued with your consent and is final and not appealable.

Should you have any questions concerning this matter, please contact Kelley Hartley at (334) 394-4328.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip D. Davis", followed by a long horizontal line.

Phillip D. Davis, Chief
Land Division

Attachment
Consent Order No. 14-006-CHW

Cc: Ms. Paula Whiting, EPA Region 4

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S. W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF

**ALABAMA SCHOOL OF MATH AND SCIENCE
MOBILE, MOBILE COUNTY, ALABAMA**

USEPA ID NUMBER ALR 000 033 266

Consent Order NO. 14-006-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 Alabama School of Math and Science (hereinafter “ASMS” or “Operator”), pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (AHWMMA), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the ADEM Administrative Code, promulgated thereunder.

STIPULATIONS

1. The Alabama School of Math and Science (“ASMS”, “Operator” or “Facility”) is an independent school established under Ala. Code § 16-26A-3, as amended, and governed by a board of directors. The school is located at 1255 Dauphin Street, Mobile in Mobile County. ASMS has been assigned the USEPA ID Number ALR 000 033 266.

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 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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 (2006 Rplc. Vol.).

DEPARTMENT'S CONTENTIONS

4. On May 17, 2012, Department personnel were notified of a complaint at the Alabama School of Math and Science. The complaint was originally received by the Environmental Protection Agency (EPA) and referred to the Department. The EPA received an anonymous complaint alleging that the president of ASMS, Dr. Larry V. Turner, had improperly disposed of numerous computer monitors which were characteristic for hazardous waste under codes D008 (lead) and D011 (silver).

5. On May 22, 2012, Department personnel investigated the complaint at the ASMS to determine any possible non-compliance with the applicable requirements of Division 14 of the ADEM Administrative Code. The complaint investigation included interviews with Dr. Turner and several members of the staff of ASMS and investigation of the location where the waste was improperly disposed. During the investigation, Dr. Turner admitted to burying the waste at a location in Chatom, AL in lieu of proper disposal. At that time Dr. Turner was informed that the waste was a hazardous waste and the facility would need to perform a proper hazardous waste determination for the waste. Dr. Turner was also informed that the hazardous waste would have to be disposed of at a permitted hazardous waste facility. The investigation showed the following:

A. ADEM Administrative Code r. 335-14-3-.01(2). ASMS failed to perform a proper hazardous waste determination on twenty-four (24) hazardous waste computer monitors.

B. ADEM Administrative Code r. 335-14-8-.01(1)(c). ASMS failed to obtain an AHWMA hazardous waste disposal permit prior to land disposal of twenty-four (24) hazardous waste computer monitors.

C. ADEM Administrative Code r. 335-14-3-.03(5)(a)4 and 335-14-6-.03(2). ASMS buried 24 hazardous waste computer monitors. The facility failed to prevent a release of hazardous waste to the environment.

D. ADEM Administrative Code r. 335-14-4-.01(2)(c). ASMS transported hazardous waste without obtaining an Alabama Hazardous Waste Transport Permit.

E. ADEM Administrative Code r. 335-14-3-.02(1)(a). ASMS failed to prepare a uniform hazardous waste manifest for hazardous waste transported off-site.

F. ADEM Administrative Code r. 335-14-3-.03(5)(d)5, 335-14-9-.01(7) and 40 CFR 268.7(a)(2). ASMS did not send a one-time written notice to each treatment, storage, or disposal facility (TSDF) with the initial shipment if the waste does not meet treatment standards.

6. As a result of the investigation, the Department issued a Notice of Violation on May 31, 2012 that cited violations of the hazardous waste regulations discovered during the investigation.

7. On May 30, 2012, ASMS personnel exhumed the buried computer monitors that had been improperly land disposed. They then transported them to the Choctaw County Regional Landfill. The Choctaw County Regional Landfill is not permitted to receive this hazardous waste. The actions taken by ASMS account for the following violations of Division 14 of the ADEM Administrative Code:

A. ADEM Administrative Code r. 335-14-4-.01(2)(c). ASMS transported hazardous waste without obtaining an Alabama Hazardous Waste Transport Permit.

B. ADEM Administrative Code r. 335-14-3-.02(1)(a). ASMS failed to prepare a uniform hazardous waste manifest for the transportation of hazardous waste.

C. ADEM Administrative Code r. 335-14-3-.01(3)(d). ASMS offered its waste to a treatment, storage, or disposal facility that did not have an EPA identification number and an Alabama Hazardous Waste Facility Permit.

8. On July 3, 2012, ASMS had the hazardous waste computers removed from the Choctaw County landfill and sent to Chemical Waste Management in Emelle, AL for proper disposal at the hazardous waste landfill.

9. 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 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 improper management, transportation and disposal of hazardous waste.

B. THE STANDARD OF CARE: By committing these violations, ASMS did not exhibit a standard of care sufficient to prevent the violations. Some of these violations occurred after a specific warning from the Department.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: ASMS initially received economic benefit from avoiding the cost associated with proper management and disposal of hazardous waste.

In addition, ASMS avoided the cost of obtaining a hazardous waste transporter permit for the transportation of hazardous waste and a hazardous waste disposal permit for the disposal of the hazardous waste in Chatom, AL.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: ASMS has removed the waste from the initial disposal location in Chatom, AL, and from the subsequent disposal location at the Choctaw County Regional Landfill and sent it for proper disposal at a hazardous waste landfill.

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator does not have a significant history of non-compliance at this site.

F. THE ABILITY TO PAY: The Operator has provided the Department with documentation in order to demonstrate limited ability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code §§ 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of **\$10,000.00** (see attachment) is appropriate and consistent with the historical penalty range imposed by the Department for similar violations.

10. The Department neither admits nor denies the Operator'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.

OPERATOR'S CONTENTIONS

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

ORDER

THEREFORE, without admitting that it has violated any statute or regulations, ASMS, 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, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and ASMS agree to enter into this Consent Order with the following terms and conditions:

A. That not later than forty-five (45) days from the date of receipt of this Administrative Order, ASMS shall pay to the Department a civil penalty in the amount of **\$10,000.00** for the violations cited in this Order. All penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

**Office of General Counsel
Alabama Department of Environmental Management
Post Office Box 301463
Montgomery, AL 36130-1463**

All checks shall reference the ASMS's name and address, and the ADEM Administrative Order number of this action.

B. That within forty-five (45) days of receipt of this Order, ASMS shall submit to the Department a site assessment plan for the area in Chatom, AL where the computer monitors were improperly disposed.

C. The site assessment plan shall be implemented within thirty (30) days of the Department's approval of the plan.

D. ASMS shall provide an assessment report to the ADEM Land Division for review and comment. Said report shall be submitted to the ADEM Land Division within thirty (30) days of the completion date of the implementation of the Department approved assessment plan. The assessment report shall include the results and findings of the site assessment including the sampling and analysis of all soil and groundwater samples where necessary.

E. That if necessary, within sixty (60) days of completion of the site assessment, ASMS shall submit to ADEM a closure plan and, if necessary, post-closure plan, for the area in Chatom, AL where the hazardous waste monitors were improperly disposed containing all required specific details of the closure/post-closure and all certifications and notices of closure in accordance with the requirements of ADEM Admin. Code r. 335-14-5-.07.

F. That within sixty (60) days of approval of the closure/post-closure plan by the Department, ASMS shall begin closure/post-closure of the area in Chatom, AL where the hazardous waste monitors were improperly disposed in accordance with all requirements of ADEM Admin. Code r. 335-14-5-.07.

G. That immediately upon receipt of this Order and continuing thereafter, ASMS 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.

H. The Department and ASMS 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 herein shall remain in full force and effect.

I. That issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against ASMS for the violations cited herein.

J. That failure to comply with the provisions of this Order shall constitute cause for commencement of legal action by the Department against ASMS for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

K. 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.

L. ASMS agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

M. For purposes of this Consent Order only, ASMS 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. ASMS also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, it 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 ASMS, including the ASMS's 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 ASMS) 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 the Operator, the Department will extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but the Department is not obligated to do so.

N. 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; ASMS agrees not to 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.

O. The Department and ASMS agree that this Consent Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.

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

Q. The Department and ASMS 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 ASMS hereby waives any hearing on the terms and conditions of same.

R. 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 ASMS of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Alabama School of Math and Science

Alabama Department of
Environmental Management

Samy V. Turner
ASMS President

Lance R. Lefleur
Lance R. Lefleur
Director

Date Signed: 9-11-13

Date Signed: 10-24-13

ATTACHMENT A

Penalty Synopsis Worksheet

**ALABAMA SCHOOL OF MATH AND SCIENCE
MOBILE COUNTY, AL
USEPA ID NUMBER ALR000033266**

| Violation* | Number of Violations * | Seriousness of Violation & Base Penalty* | Standard of Care* | History of Previous Violations* |
|---|-------------------------------|---|--------------------------|--|
| ASMS failed to perform a hazardous waste determination on 24 hazardous waste computer monitors | 24 | \$12,000 | \$12,000 | \$00 |
| ASMS failed to obtain an AHWMMMA hazardous waste disposal permit | 1 | \$5,000 | \$5,000 | \$00 |
| The facility failed to prevent a release of hazardous waste to the environment | 24 | \$12,500 | \$12,500 | \$00 |
| ASMS transported hazardous waste without obtaining an Alabama Hazardous Waste Transport Permit | 2 | \$10,000 | \$10,000 | \$00 |
| ASMS failed to prepare a uniform hazardous waste manifest for 24 hazardous waste monitors | 2 | \$1,000 | \$1,000 | \$00 |
| ASMS did not send a one-time written notice to each TSF with the initial shipment if the waste does not meet treatment standards. | 1 | \$50 | \$50 | \$00 |
| ASMS offered its waste to a treatment, storage, or disposal facility that did not have an EPA identification number and an Alabama Hazardous Waste Facility Permit. | 1 | \$2,500 | \$2,500 | \$00 |
| Total proposed Penalty Amount | 55 | \$43,050 | \$43,050 | \$00 |

| | |
|-----------------------------|--------------------|
| Economic Benefit*: | \$1,200 |
| Mitigating Factors: | \$00 |
| Ability to Pay*: | -\$77,300 |
| Other Factors: | \$00 |
| Total Civil Penalty: | \$10,000.00 |