

**LANCE R. LEFLEUR**  
DIRECTOR



**ROBERT J. BENTLEY**  
GOVERNOR

**Alabama Department of Environmental Management**  
**adem.alabama.gov**

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

November 15, 2013

**CERTIFIED MAIL #91 7199 9991 7030 3346 2073**

Ms. Sherry Hutt  
EWS Alabama, Inc.  
402 Webster Chapel Road  
Glencoe, Alabama 35905

RE: **Consent Order No. 14-010-CHW**  
EWS Alabama, Inc. (EWS)  
USEPA Identification Number ALD981020894

Dear Ms. Hutt:

Enclosed is a copy of the Consent Order No. 14-010-CHW, which constitutes an agreement between EWS and the Alabama Department of Environmental Management. This Order requires EWS to take certain actions at the facility in regard to alleged violations of the Alabama Hazardous Wastes Management and Minimization Act of 1978. This Order was signed by ADEM's Director and became effective as of November 15, 2013. As described in Order Item A, EWS has forty-five days from that date to pay the civil penalty assessed therein.

Should you have any questions, please feel free to contact Corey Holmes of my staff at 334-270-5630.

Sincerely,

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

Phillip D. Davis, Chief  
Land Division

PDD/CH/nbf

Enclosure

CC via email: Cesar Zapata, EPA Region 4  
Paula Whiting, EPA Region 4  
Jerome Hand, ADEM Office of Public Affairs  
Chris Sasser, ADEM Office of General Counsel

**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:

**EWS Alabama, Inc.  
Glencoe, Etowah County, Alabama  
EPA ID NUMBER ALD981020894**

ORDER NO. 14-010-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 EWS Alabama, Inc. (hereinafter “EWS”) 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, (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

**STIPULATIONS**

1. EWS owns and operates an AHWMMA permitted hazardous waste treatment and storage facility with EPA Identification Number ALD981020894, located at 402 Webster Chapel Road in Glencoe, Etowah County, Alabama. EWS is operating under the authority of ADEM Hazardous Waste Facility Permit #ALD981020894 and Alabama Hazardous Waste Transport Permit #ALD981020894 issued by the Department on March 26, 2004 and June 28, 2010, respectively. In addition, EWS submitted to the Department a notification identifying itself as a large quantity generator of hazardous waste on March 23, 2012.

2. The Department 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 §§ 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 AHWMA, Ala. Code §§ 22-30-1 to 22-30-24, (2006 Rplc. Vol.).

#### **DEPARTMENT'S CONTENTIONS**

4. On October 18, 2012, representatives of the U. S. Environmental Protection Agency - Region 4 and the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection (hereinafter "CEI") of EWS. The CEI and a review of EWS' compliance showed the following:

- (a) Pursuant to ADEM Admin Code r. 335-14-3-.03(5)(a)1.(ii), referencing ADEM Admin. Code r. 335-14-6-.28, incorporating 40 CFR § 265.1050(b), generators must maintain certain equipment associated with tanks holding hazardous wastes with at least a 10% organic concentration by weight in accordance with the applicable requirements of 40 CFR 265 Subpart BB.

EWS did not comply with all of the requirements of Subpart BB, specifically equipment monitoring [40 CFR § 265.1052 to 40 CFR § 265.1062], record keeping, [40 CFR § 265.1064] and equipment marking [40 CFR § 265.1050(c)].

- (b) ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(ii), referencing ADEM Admin. Code r. 335-14-6-.29, incorporating 40 CFR 265.1085(c), generators controlling air pollutant emissions from a tank using Tank Level 1 controls must meet specified requirements. EWS did not design or operate six 15,000-gallon hazardous waste storage tank closure devices such that when the closure device is secured in the closed position there are no visible cracks, holes, gaps, or other open spaces in the closure device or between the perimeter of the opening and the closure device as required by 40 CFR 265.1085 (c)(2)(ii). As noted during the CEI, one of the tanks had an approximate 1-inch gap between the tank and the lid. The remaining tanks had quick release lids that were not

bolted down or secured in any way. EWS did not perform the initial or annual inspection of the roof and its closure devices for the hazardous waste storage tanks as required by 40 CFR 265.1085(c) .

5. As a result of this CEI, the Department issued to EWS a Notice of Violation (dated January 15, 2013), which cited violations of the hazardous waste program regulations.

6. On February 19,, 2013, the Department received EWS' response to the aforementioned Notice of Violation.

7. 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(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 the civil penalty assessed in this Order, the Department has considered the following:

(a) SERIOUSNESS OF THE VIOLATIONS: EWS's failure to comply with all subpart BB and CC requirements constitutes significant deviations for the above-mentioned regulatory requirements of ADEM Admin. Code div. 335-14. However, the Department does not have any evidence of any threat to the health or safety of the public or of any irreparable harm to the environment resulting from the violations.

(b) THE STANDARD OF CARE: By committing these violations, EWS did not exhibit a standard of care sufficient to prevent the violations.

(c) ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any evidence indicating that EWS received any significant economic benefit from the alleged violations.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of the extent or efficacy of EWS's efforts to minimize or mitigate the effects of the release to the environment.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, EWS does have a history of noncompliance with respect to ADEM Admin. Code div. 335-14. EWS's historical noncompliance is not similar to the violations listed above.

(f) THE ABILITY TO PAY: The Department does not have any evidence indicating that EWS 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 appropriate 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 EWS' 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 interest of the citizens of Alabama.

#### **EWS' CONTENTIONS**

9. EWS is in full compliance with all state, federal and local regulations. All alleged violations have been corrected and submitted to the Department.

10. EWS neither admits nor denies the Department's contentions. EWS consents to abide by the terms of this Consent Order.

### **ORDER**

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

A. EWS agrees to pay to the Department a civil penalty in the amount of \$7,000 in settlement of the violation alleged herein within forty-five days from 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. EWS 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 Order shall reference EWS' name and address, and the ADEM Administrative Order number of this action.

C. EWS agrees that, independent of this Consent Order, EWS 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 EWS (hereinafter 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.

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 violations cited in this Consent Order.

F. EWS 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, EWS 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 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; EWS 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.

I. 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 EWS 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 EWS' 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 Consent 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 EWS of its obligations to comply in the future with any permit.

**Executed in duplicate, with each part being an original.**

**EWS Alabama, Inc.**

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

Sherry Hutt  
(Signature of Authorized Representative)

Sherry Hutt  
(Printed Name)

General Manager  
(Printed Title)

9-18-13  
(Date Signed)

Lance R. LeFleur  
Director

**NOV 15 2013**

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



**Attachment A**

**Civil Penalty Synopsis**

EWS Alabama, Inc.  
Glencoe, Etowah County, Alabama  
EPA ID NUMBER ALD981020894

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation &amp; Base Penalty*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>
Failure to comply with all of the equipment monitoring, record keeping, and equipment marking requirements of 40 C.F.R. Subpart BB.	1	\$2,500	\$2,500	\$0
Failure to comply with the requirements specified in 40 CFR 265.1085(c).	1	\$1,000	\$1,000	\$0
<b>Totals:</b>	2	\$3,500	\$3,500	\$0

<b>Economic Benefit:</b>	<b>\$0</b>
<b>Mitigating Factors:</b>	<b>\$0</b>
<b>Ability to Pay:</b>	<b>\$0</b>
<b>Other Factors:</b>	<b>\$0</b>
<b>Civil Penalty:</b>	<b>\$7,000</b>

Footnote

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