

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

April 11, 2014

CERTIFIED MAIL

Edward Kiessling
Manager Environmental Engineering and Occupational Health Office
George C. Marshall Space Flight Center
Bldg 4249 Code AS10
MSFC, AL 35812-0001

RE: **Marshall Space Flight Center**
EPA Identification Number: AL1 800 013 863

Dear Mr. Kiessling:

Enclosed please find Consent Order No. 14-055-CHW which requires Marshall Space Flight Center 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 Dustin Land at (334) 271-7837.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip D. Davis", written over a horizontal line.

Phillip D. Davis, Chief
Land Division

Attachment
Consent Order No. 14-055-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

**National Aeronautics and Space Administration
George C. Marshall Space Flight Center
Bldg 4249 Code AS10
MSFC, Madison County, Alabama 35812-0001**

Consent Order NO. 14-055-CHW

USEPA ID NUMBER AL1 800 013 863

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") and George C. Marshall Space Flight Center (hereinafter "MSFC" 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. National Aeronautics and Space Administration (NASA) is an agency of the federal government. NASA owns and operates George C. Marshall Space Flight Center (MSFC). MSFC is a research and development facility as directed by the NASA. MSFC is located at Bldg 4200 Code AS10, MSFC in Madison County, Alabama. MSFC has been assigned the US EPA ID Number AL1 800 013 863. MSFC operates under a Federal Facilities Agreement between the Environmental Protection Agency (EPA), ADEM, and MSFC that was approved by ADEM on June 29, 2001.

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 October 31, 2012, MSFC notified ADEM that roll-off box WWA-100 containing waste with Polychlorinated Biphenyls (PCB) contamination greater than 50 parts per million and elevated pesticide levels was sent to Morris Farm Landfill (MFL) for disposal on October 25, 2012. Then, on November 1, 2012, MSFC reported to ADEM that MSFC sent roll-off box WWA-186 containing hazardous waste that was contaminated with Hexachlorobenzene (D032) and Hexachlorobutadiene (D033) to MFL for disposal on October 25, 2012. MFL is permitted by ADEM as a municipal solid waste landfill, but it is not permitted to receive hazardous waste. During a review of this incident by ADEM, several violations of the ADEM Administrative Code were observed.

A. 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. MSFC made an improper waste determination and failed to determine whether roll-off boxes WWA-100 and WWA-186 were hazardous, despite the sample results received on September 27, 2012 that showed PCB concentrations greater than 50 ppm, elevated pesticide levels, and elevated Semi-Volatile Organic Compound levels.

B. ADEM Administrative Code r. 335-14-3-.02(1)(a) states that a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a manifest. MSFC failed to prepare a uniform hazardous waste manifest for shipment of hazardous waste for off-site disposal.

C. ADEM Administrative Code r. 335-14-3-.01(3)(d) states that a generator must not offer his hazardous waste to transporters that have not received an EPA Identification number and an Alabama Hazardous Waste Permit. MSFC failed to use a permitted transporter to haul hazardous waste sent for off-site disposal.

D. ADEM Administrative Code r. 335-14-3-.01(3)(d) states that 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 rule 335-14-8-.07 (or, in the case of out-of-state facilities, a permit valid in the receiving State). MSFC shipped hazardous waste to MFL for disposal. Morris Farm Landfill does not have an Alabama Hazardous Waste Facility permit to receive or dispose of hazardous waste.

E. ADEM Administrative Code r. 335-14-3-.03(5)(a)4 referencing 335-14-6-.03(2) provide that facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unpermitted sudden or non-sudden release of hazardous waste or hazardous waste constituents to the air, soil, surface water, or groundwater which could threaten human health or the environment. On October 25, 2012, MSFC shipped hazardous waste to Morris Farm Landfill for disposal, which is not permitted to treat, store, or dispose of hazardous waste. In doing so, MSFC did not operate to minimize the release of hazardous waste to the environment.

F. ADEM Administrative Code r. 335-14-3-.03(5)(d)5 referencing 335-14-9-.01(7), in turn referencing 40 Code of Federal Regulations (CFR) 268.7(a)(2) provide that if the waste or contaminated soil does not meet the treatment standards referenced in 40 CFR 268.7(a)(2), or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. MSFC failed to send

a one-time written notice to Morris Farm Landfill with the initial shipment informing them that the waste does not meet the treatment standard.

5. As a result of the shipment of the roll-off boxes of hazardous waste to Morris Farm Landfill, the Department issued a Notice of Violation on December 7, 2012, that cited violations of the ADEM Administrative Code.

6. In December 2012, MSFC submitted the Morris Farm Landfill Hazardous Waste Recovery Plan to ADEM, which was approved by ADEM on January 17, 2013. On January 29, 2013, MSFC began excavating the material from the Morris Farm Landfill and completed the excavation work on February 4, 2013. During the excavation work, 64 roll-off containers were filled and sent for disposal at two permitted disposal facilities. Confirmatory sampling was completed by MSFC on February 5, 2013. ADEM received the Morris Farm Landfill Hazardous Waste Recovery Final Report from MFSC on May 28, 2013.

7. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), 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 failure of MSFC to adhere to the ADEM Administrative Code. These violations resulted in the disposal of hazardous waste at an unauthorized facility.

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

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: MSFC initially received economic benefit from avoiding the cost associated with the proper transportation and disposal of the roll-off boxes containing hazardous waste.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: MSFC has removed the hazardous waste from Morris Farm Landfill and has sent the waste for proper disposal at a permitted hazardous waste treatment, storage, or disposal facility.

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator has a history of non-compliance at this site. Over the last 10 years MSFC has received eight Warning Letters and two Notice of Violation letters (3 letters related to issues with the MSFC making improper waste determinations).

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 Consent Order is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty that is warranted in this matter 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 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

9. MSFC discovered the errors, took responsibility for the violations, and implemented corrective actions immediately. In addition, MSFC implemented measures to prevent the recurrence of these errors.

10. MSFC neither admits nor denies the Department's contentions. MSFC consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. As such, this Consent Order shall not be deemed or construed at any time for any purpose by anyone (including but not limited to other parties who bring claims in any legal, administrative, or other proceeding) as an admission by MSFC of liability.

ORDER

Therefore, MSFC, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to the Department and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), 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 MSFC agree to enter into this Consent Order with the following terms and conditions:

A. That, immediately upon receipt of this Order and continuing thereafter, MSFC shall comply with all terms, conditions, and limitations of the Alabama Hazardous Wastes Management and Minimization Act, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated thereto.

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

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

D. That, not later than forty-five (45) days from the date of receipt of this Consent Order, MSFC shall pay to the Department a civil penalty in the amount of **\$31,125** for the violations cited in this Order. Said penalty due pursuant to this 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, AL 36130-1463**

Any payment submitted to the Department pursuant to this order shall reference MSFC's name and address, and the ADEM Administrative Order number of this action.

E. 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.

F. MSFC 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, MSFC 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. MSFC reserves the right to request removal under federal law. MSFC anticipates that all obligations arising under this order will be fully funded. However, any requirement for the payment or obligation of funds by MSFC established by the terms of this order shall be subject to the availability of funds, and no provision herein shall be interpreted to require obligation of funds in violation of the Anti-Deficiency Act (ADA), 31 USC sec. 1341. In cases where payment or obligation of funds would constitute a violation of the

ADA, the dates established requiring the payment or obligations of such funds shall be appropriately adjusted.

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; MSFC 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 Department and MSFC 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 MSFC hereby waives any hearing on the terms and conditions of same.

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

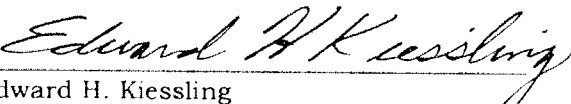
K. The Department and MSFC agree that, should any provision of this Consent Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with federal or State law and therefore unenforceable, the remaining provisions herein shall remain in full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

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

M. The Department and MSFC 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 MSFC of its obligations to comply in the future with any permit coverage.

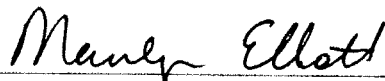
Executed in duplicate, with each part being an original.

National Aeronautics and Space Administration
George C. Marshall Space Flight Center


Edward H. Kiessling
Manager Environmental Engineering and
Occupational Health Office

Date Signed: 1/21/2014

Alabama Department of
Environmental Management


Lance R. Lefleur
Director

Date Signed: 4/11/2014

ATTACHMENT A

Penalty Synopsis Worksheet

**Marshall Space Flight Center US EPA ID NUMBER
AL1800013863**

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
MSFC failed to determine whether roll-off boxes WWA-100 and WWA-186 were hazardous, despite the sample results received on September 27, 2012 that showed PCB concentrations greater than 50 ppm and elevated SVOC levels.	1	\$5,000	\$5,000	\$00
MSFC failed to prepare a uniform hazardous waste manifest for the shipment of hazardous waste containing roll-off boxes WWA-100 and WWA-186 for off-site disposal.	1	\$500	\$500	\$00
MSFC failed to use a permitted transporter to haul the two hazardous waste roll off boxes to Morris Farm Landfill.	1	\$2,000	\$2,500	\$00
MSFC shipped the hazardous waste to Morris Farms Landfill for disposal, however, Morris Farm Landfill is not permitted to receive or dispose of hazardous waste.	1	\$5,000	\$5,000	\$00
MSFC failed to prevent the delivery of roll-off boxes WWA100 and WWA186 to Morris Farm Landfill for disposal.	1	\$10,000	\$5,000	\$00
MSFC failed to send a one-time written notice to Morris Farm Landfill with the initial shipment informing them that the waste does not meet Morris Farm Landfill's treatment standard.	1	\$500	\$500	\$00

Economic Benefit*:	\$00
Mitigating Factors:	\$00
Ability to Pay*:	\$00
Other Factors:	-\$10,375

Total Civil Penalty:	\$31,125
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