

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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ONIS "TREY" GLENN, III, P.E.

DIRECTOR

BOB RILEY

GOVERNOR

September 1, 2006

Ms. Barbara G. Williams
Vice President/Director of Human Resources Management
Tuskegee University
101 Kresge Center
Tuskegee, AL 36088

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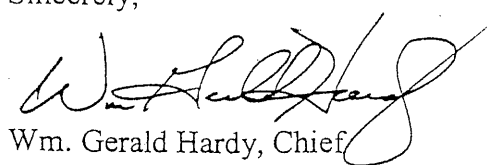
Dear Ms. Williams:

RE: **Consent Order**
Tuskegee University
USEPA Identification Number ALD 982 167 108

Enclosed is an original copy of Consent Order No. 06-092-CHW, which constitutes an agreement between Tuskegee University and the Alabama Department of Environmental Management. This Order requires Tuskegee University 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 August 31, 2006.

Should you have any questions, please feel free to contact Heather Jones of my staff at (334) 270-5679.

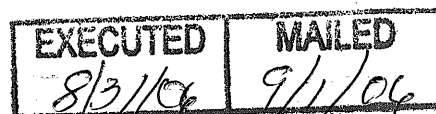
Sincerely,



Wm. Gerald Hardy, Chief
Land Division

WGH/hj/set:Z:

cc: Jerome Hand, ADEM Office of Public Affairs (via email)
Brian Gross, EPA Region 4 (via email)



Birmingham Branch
110 Vulcan Road
Birmingham, Alabama 35209-4702
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**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Tuskegee University
Tuskegee, AL**

USEPA ID NUMBER ALD982167108

ORDER NO. 06-092-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and Tuskegee University (hereinafter “the Respondent”) pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Hazardous Waste Minimization Act of 1978, Code of Alabama.(1975), §§ 22-30-1 through 22-30-24, as amended, and the ADEM Administrative Code of Regulations (hereinafter “ADEM Admin. Code R.”) promulgated thereto.

STIPULATIONS

1. Tuskegee University (hereinafter “the Respondent” or “TU”) is an independent and state-related institution of higher education in Tuskegee, Macon County, Alabama, that is assigned EPA ID Number ALD982167108. TU is a large quantity generator of hazardous waste subject to the requirements of ADEM Admin. Code Chapters 335-14-3, 335-14-5, 335-14-8, 335-14-9, 335-14-11, and 335-14-17.

2. The Department is a duly constituted department of the State of Alabama pursuant to Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended.

3. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, 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. 3251, et. seq, as amended, including §§ 6901 through 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, Code of Alabama (1975), §§ 22-30-1 through 22-30-24, as amended.

4. On November 7, 2002, a Department employee conducted an environmental assistance site visit at Tuskegee University. The purpose of the visit was to help Tuskegee University personnel gain a better understanding of what is required to achieve and remain in compliance with the hazardous waste management standards detailed in Division 14 of the ADEM Administrative Code. To do this, the assessor established an objective analysis of the existing environmental conditions at the university, and provided on-site technical assistance on appropriate issues such as compliance options and requirements, and pollution prevention options.

5. On August 19, 2003, a Department employee conducted a compliance evaluation inspection (CEI) at TU. The purpose of the inspection was to determine the facility's compliance with the applicable standards of Division 14 of the ADEM Administrative Code. As a result of this inspection, a Notice of Violation was issued on December 2, 2003 citing twenty-two violations of the Alabama Hazardous Waste Management and Minimization Act and its implementing regulations.

6. On August 5, 2004, Consent Order 04-091-CHW was signed by the respondent. The Order was issued as a result of the compliance evaluation inspection on August 19, 2003 and the Notice of Violation that resulted from said inspection.

7. On June 28, 2005, Environmental Protection Agency (hereinafter "EPA") and Department personnel conducted a (CEI) of Tuskegee University. As a result of the inspection, TU was issued a Notice of Violation on November 22, 2005 citing various violations of the Alabama Hazardous Waste Management and Minimization Act and its implementing regulations. More specifically, the violations are described, in part, as follows:

- (a) Several compressed gas canisters were stored in Storage Bay #7, along with three 55-gallon drums of unknown material. A television set, six CPUs, and five computer monitors were thrown in the dumpster behind the Maintenance Shop. No records were available to verify that a hazardous waste determination had been performed on the spent materials. ADEM Admin Code R. 335-14-3-.01(2) requires that a generator of a solid waste must determine if that waste is a hazardous waste.
- (b) A television set, six CPUs, and five computer monitors were thrown in the dumpster behind the Maintenance Shop. By placing the units in the dumpster, TU offered up the units for transportation to a municipal landfill without proper manifesting and ensuring that the landfill is permitted to accept such waste shipments. ADEM Admin. Code R. 335-14-3-.02(1)(a-b) requires that a generator who offers for transportation hazardous waste for off-site treatment, storage, or disposal must prepare a manifest

documenting such transfer. On the manifest, the generator must designate one facility which is permitted to accept the waste shipment.

- (c) Lab waste containers accumulated in labs in Carver and Armstrong Halls were not labeled as "Hazardous Waste" or with other identifying words. ADEM Admin. Code R. 335-14-3-.03(5)(c)1(ii) requires that satellite accumulation containers must be marked with the words "Hazardous Waste" or with other identifying words.
- (d) Lab waste containers accumulated in labs in Carver and Armstrong Halls were not in good condition. Numerous containers were extremely old, rusty, corroded, and potentially incompatible with the waste being stored. At least one container had significant amounts of crystallization on the outside of the lid. ADEM Admin. Code R. 335-14-3-.03(5)(c)1(i) requires that satellite accumulation containers must be in good condition and compatible with the waste being stored.
- (e) While job descriptions were available for employees who handle or assist in the management of hazardous waste, the descriptions did not mention hazardous waste management. ADEM Admin. Code R. 335-14-3-.03(5)(a)4 (which refers the reader to 335-14-6-.02(7)(d)) requires that a Large Quantity Generator must maintain the job title and description for each position related to hazardous waste management. (A similar violation was observed at the facility during a compliance evaluation inspection performed on August 19, 2003; the Respondent was cited for failure to adhere to this requirement in a Notice of Violation issued to the facility on December 2, 2003 and Consent Order 04-091-CHW that was signed by the facility on August 5, 2004.)
- (f) No hazardous waste management training records were available for employees who handle or assist in the management of hazardous waste. ADEM Admin. Code 335-14-3-.03(5)(a)4 [which refers the reader to 335-14-6-.02(7)(a)] requires that a Large Quantity Generator must implement an employee training program consisting of initial training within six months of new employment with annual updates to familiarize all employees with proper hazardous waste handling and emergency procedures. Documentation shall be kept for all employees that have completed training for at least three years.
- (g) TU had Mr. Jesse Barnes listed as an alternate emergency coordinator; however, he is no longer employed by the university. ADEM Admin. Code R. 335-14-3-.03(5)(a)4 (which refers the reader to 335-14-6-.04(5)(c)) requires that a Large Quantity Generator must revise the contingency plan when the facility changes in such a way that would change the response in an emergency.

- (h) Fourteen (14) spent lamps, stored in a box in the Biological Waste storage area, were not marked with identifying words. ADEM Admin. Code R. 335-14-11-.02(5)(e) requires that universal waste lamps or containers or packages of universal waste fluorescent lamps must be labeled or marked clearly with the words "Universal Waste Lamps," "Waste Lamps," or "Used Lamps." (A similar violation was observed at the facility during a compliance evaluation inspection performed on August 19, 2003; the Respondent was cited for failure to adhere to this requirement in a Notice of Violation issued to the facility on December 2, 2003 and Consent Order 04-091-CHW that was signed by the facility on August 5, 2004.)
- (i) The box containing fourteen (14) spent lamps in the Biological Waste storage area was open. A container of spent lamps stored in the Maintenance Shop had a large hole in one side. ADEM Admin. Code R. 335-14-11-.02(4)(d)2 requires that containers of universal waste must be closed, structurally sound, and have no evidence of damage, spillage or leakage. (A similar violation was observed at the facility during a compliance evaluation inspection performed on August 19, 2003; the Respondent was cited for failure to adhere to this requirement in a Notice of Violation issued to the facility on December 2, 2003 and Consent Order 04-091-CHW that was signed by the facility on August 5, 2004.)
- (j) Fourteen (14) spent lamps in the Biological Waste storage area and three containers of spent lamps stored in the Maintenance Shop were not labeled with an accumulation start date. ADEM Admin. Code R. 335-14-11-.02(6)(c) requires that generators of universal waste must be able to demonstrate the time that universal waste is accumulated. (A similar violation was observed at the facility during a compliance evaluation inspection performed on August 19, 2003; the Respondent was cited for failure to adhere to this requirement in a Notice of Violation issued to the facility on December 2, 2003 and Consent Order 04-091-CHW that was signed by the facility on August 5, 2004.)

8. The Respondent's consent to this Order is conditioned as follows: if the Department receives, during the public comment period for this Order, comments advocating the provisions of the following order be modified or rescinded, the Respondent's consent is deemed withdrawn by the Respondent.

9. The Respondent consents to abide by the terms of the following Order and to pay the civil penalty assessed herein, but denies the alleged violations are sufficiently

serious to warrant any civil penalty or any remedial action and reserves its right to contest the alleged violations as against the Department or any third party in any proceedings, except as provided for in Code of Alabama (1975), § 22-22A-7(7).

10. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama. However, the Department agrees no Consent Order referencing the consent of the Respondent shall issue after the receipt of comment advocating a change in the terms of the following Order without the expressed consent of the Respondent and that prior to initiating any subsequent enforcement the Department will extend to the Respondent an invitation for an informal conference with the Department.

CONTENTIONS

11. The Respondent neither admits nor denies the Department's allegations, but rather contends that the alleged violations have caused no harm to the public health or environment, that the Respondent has made every possible effort to remedy the alleged violations within a reasonable time period, and that no civil penalty is warranted under the alleged circumstances.

12. The Department neither admits nor denies the Respondent's contentions. Pursuant to Code of Alabama (1975), § 22-22A-5(18), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation,

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 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 be less than \$100.00 or 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 VIOLATION: There is no evidence of any harm to human health or the environment as a result of the alleged violations.

B. THE STANDARD OF CARE: Since the date of the aforementioned inspection, the Respondent has taken measures to correct and/or prevent the recurrence of the alleged violations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Failure to comply with these regulations conferred a potential economic benefit upon the Respondent.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects as a result of the alleged violation.

E. HISTORY OF PREVIOUS VIOLATIONS: The Respondent does have a record of previous violations within the last five (5) years, as described above.

F. THE ABILITY TO PAY: The Respondent 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 it believes 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.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Respondent, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Code of Alabama (1975), § 22-22A-5(18), 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 Permittee agree to enter into this Order with the following terms and conditions:

A. The Respondent agrees to pay to the Department a civil penalty in the amount of thirty-three thousand dollars (\$33,000.00) in settlement of the violations alleged herein within 45 days from the effective date of this Consent Order. Failure to pay the civil penalty within 45 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. The Respondent 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 and shall be remitted to:

**Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463**

C. The Respondent agrees to perform a hazardous waste determination on any and all wastes generated on-site, in accordance with ADEM Admin. Code R. 335-14-3-.01(2), beginning immediately upon the effective date of this Consent Order.

D. The Respondent agrees to prepare a manifest documenting each transfer of hazardous waste for off-site treatment, storage, or disposal and on the manifest, designate one facility which is permitted to accept the waste shipment, in accordance with ADEM Admin. Code R. 335-14-3-.02(1)(a-b), beginning immediately upon the effective date of this Consent Order.

E. The Respondent agrees to label all satellite accumulation containers as "Hazardous Waste" or with other identifying words, in accordance with ADEM Admin. Code R. 335-14-3-.03(5)(c)1(ii), beginning immediately upon the effective date of this Consent Order.

F. The Respondent agrees to accumulate hazardous waste only in containers that are in good condition and compatible with the waste being stored, in accordance with ADEM Admin. Code R. 335-14-3-.03(5)(c)1 (i), beginning immediately upon the effective date of this Consent Order.

G. The Respondent agrees to maintain the job description, job title and amount of training needed for each position relating to hazardous waste management, in accordance with ADEM Admin. Code Rs. 335-14-3-.03(5)(a)4 and 335-14-6-.02(7)(d), beginning immediately upon the effective date of this Consent Order.

H. The Respondent agrees to implement an employee training program consisting of initial training within six months of new employment with annual updates to familiarize all applicable employees with proper hazardous waste management and emergency procedures and retain documentation of such training, in accordance with ADEM Admin. Code Rs. 335-14-3-.03(5)(a)4 and 335-14-6-.02(7)(a), beginning immediately upon the effective date of this Consent Order.

I. The Respondent agrees to revise the contingency plan to reflect current facility status and update the contingency plan in accordance with the requirements of ADEM Admin. Code Rs. 335-14-3-.03(5)(a)4 and 335-14-6-.04(5)(c), beginning immediately upon the effective date of this Consent Order.

J. The Respondent agrees to mark all universal waste lamps or containers of universal waste lamps with the words "Universal Waste Lamps," "Waste Lamps," or "Used Lamps" in accordance with ADEM Admin. Code R. 335-14-11-.02(5)(e), beginning immediately upon the effective date of this Consent Order.

K. The Respondent agrees to ensure that all containers of universal waste are closed, structurally sound, and have no evidence of damage, spillage or leakage, in accordance with ADEM Admin. Code R. 335-14-11-.02(4)(d)2, beginning immediately upon the effective date of this Consent Order.

L. The Respondent agrees to be able to demonstrate the length of time that universal waste is accumulated, in accordance with ADEM Admin. Code R. 335-14-11-.02(6)(c), beginning immediately upon the effective date of this Consent Order.

M. 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.

N. 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 which are cited in this Consent Order.

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

P. For purposes of this Consent Order only, the Respondent 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. The Respondent also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Respondent 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 the Respondent, including its 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 the Respondent) 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 10 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 Respondent, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

Q. The Department and the Respondent 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 concerning the facility 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, and the Respondent shall not 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.

R. The Department and the Respondent 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 the Respondent does hereby waive any hearing on the terms and conditions of same.

S. The Department and the Respondent agree that this Order shall not affect the Respondent's obligation to comply with any Federal, State, or local laws or regulations.

T. The Department and the Respondent agree that final approval and entry into this 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 (30) days within which to comment on the Order.

U. The Department and the Respondent agree that, should any provision of this 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.


V. The Department and the Respondent agree that any modifications of this Order must be agreed to in writing signed by both parties.

W. The Department and the Respondent agree that, except as otherwise set forth herein, this 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 the Respondent of its obligations to comply in the future with any permit.

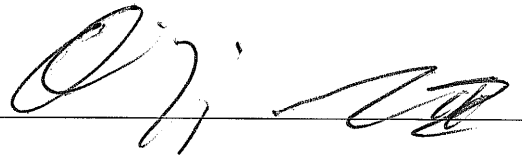
Executed in duplicate, with each part being an original.

TUSKEGEE UNIVERSITY

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)
Benjamin F. Payton
(Printed Name)

President
(Printed Title)


Onis "Trey" Glenn, III

Director

Date Signed: 31 AUG 06