

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF

**ANNISTON ARMY DEPOT
7 FRANKFORD AVENUE
ANNISTON, CALHOUN COUNTY, AL**

USEPA ID NUMBER AL3 210 020 027

Consent Order NO. 15-XXX-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 Anniston Army Depot 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. Anniston Army Depot (hereinafter referred to as "ANAD", "facility", or "the owner") owns and operates facilities at 7 Frankfort Avenue, Anniston, Alabama (assigned EPA Identification Number AL3 210 020 027). ANAD's primary activities involve the storage of munitions; the disassembly, cleaning, refurbishing and reassembly of military vehicles and weapons; and the treatment of conventional munitions. ANAD has an AHWMMA Permit for the treatment and storage of hazardous 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 (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 August 18 – 20, 2014, the Department conducted a Compliance Evaluation Inspection at ANAD to determine the facility's compliance with the applicable requirements of Division 14 of the ADEM Administrative Code and the facility's AHWMMMA hazardous waste permit. As a result of the inspection, the following violations were noted:

A. ADEM Admin. Code r. 335-14-3-.01(2) states that a person who generates a solid waste, as defined in 335-14-2-.01(2), must determine if that waste is a hazardous waste. ANAD failed to perform a proper waste determination on paint booth filters generated by three paint booths located in the Lockheed Martin Hellfire Missile Refurbish Operation, Bldg 680.

B. ADEM Admin. Code r. 335-14-5-.02(7)(d) states that the owner or operator must maintain, at the facility, records that document training required under 335-14-5-.02(7)(a). ADEM Admin. Code r. 335-14-5-.02(7)(a), in turn, states that facility personnel whose duties have a direct effect on hazardous waste management and/or hazardous waste accumulation, whether by direct contact with the hazardous waste or through hazardous waste management activities, must receive training. The facility's AHWMMMA Permit Condition II.B.4.b. states that the Permittee shall ensure that all personnel who handle hazardous waste are trained in hazardous waste management, safety

procedures and emergency procedures. At the time of the inspection the facility did not have hazardous waste training records for seven employees.

5. The Department issued a Notice of Violation on September 26, 2014, that cited the violations of the ADEM Administrative Code listed above.

6. A September 18, 2014, submission from ANAD notified the Department that the facility sent 3,248 pounds of hazardous (D003) waste off-site for disposal to General Dynamics Ordnance and Tactical Systems in Missouri (EPA ID# MOD985798164) without a hazardous waste manifest. This is a violation of the ADEM Administrative Code r. 335-14-3-.02(1)(a) which states that a generator who offers hazardous waste for off-site treatment, storage or disposal must prepare a uniform hazardous waste manifest. The facility was previously issued a Notice of Violation and entered into a Consent Order for the same violation after a similar incident in 2007.

7. The Department issued a Notice of Violation on October 31, 2014, that cited the violation of the ADEM Administrative Code listed above.

8. A January 13, 2015, submission from ANAD notified the Department that a shipment of demolition hazardous waste sent for disposal was found to contain corrosive liquid that was not identified on the manifest. The waste was rejected by the disposal facility and returned to ANAD on a discrepancy manifest. The facility failed to perform a proper hazardous waste determination on the demolition material that was sent for disposal. This is a violation of ADEM Admin. Code r. 335-14-3-.01(2) which states that a person who generates a solid waste, as defined in 335-14-2-.01(2), must determine if that waste is a hazardous waste.

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 \$25,000.00 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 ANAD 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, ANAD did not exhibit a standard of care sufficient to prevent the violations.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has determined that there was no significant economic benefit gained by ANAD as a result of the violations referenced herein.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** Upon discovery of the shipment of unmanifested waste for disposal, ANAD self reported both the failure to prepare a hazardous waste manifest and failure to perform a waste determination to the Department.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The facility has a history of violations and non-compliance. Since January 1, 2004, ANAD has received seven (7) Warning Letters, eleven (11) Notices of Violation, two (2) Administrative Orders and five (5) Consent Orders. ANAD has previously been cited for violations of the same requirements described in the "Department's Contentions" portion of this order.

F. THE ABILITY TO PAY: The Operator has not alleged an inability 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 **\$12,750.00** (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

11. The Alabama Department of Environmental (ADEM) issued the Anniston Army Depot (ANAD) a Notice of Violation (NOV) dated September 26, 2014 for two violations found during a compliance inspection on August 18-20, 2014.

A. One violation was for a failure to perform a proper hazardous waste determination on paint booth filters generated by three paint booths operated by Lockheed Martin, a Government contractor, at its Hellfire Missile Refurbish Operation in Building 680. During the compliance inspection, a Lockheed Martin employee stated that spent paint filters generated at the facility were disposed as nonhazardous waste. No waste paint filters were found being managed as nonhazardous waste during the inspection. This contractor employee's statement contradicted existing ANAD hazardous waste management procedure which prescribed that all waste paint filters are to be managed as

hazardous waste. Lockheed Martin informed ANAD that this apparent failure to follow procedures was due to personnel turnover.

B. As a corrective action, ANAD retrained Lockheed Martin personnel on proper management of paint filters and conducted a Toxicity Characteristic Leaching Procedure (TCLP) analysis on the paint filters being used in the booths at the time of the inspection. The analysis determined the paint filters being used in the booths at the time of the inspection to be nonhazardous. This information was provided to ADEM by ANAD in a letter dated October 27, 2014 in response to the Notice of Violation.

C. In the NOV of 26 September, ADEM also cited ANAD for failure to provide documentation of hazardous waste training for seven Department of Defense (DoD) civilian and contractor employees during the inspection. In response to the inspection, ANAD found the relevant training records for five of the seven personnel noted in the violation. The training records of these five employees revealed that they were in compliance with hazardous waste training requirements at the time of the inspection. As a corrective measure, ANAD has enhanced hazardous waste training tracking procedures for ANAD and contractor employees. This information was provided by ANAD in its October 27, 2014 response to the Notice of Violation.

12. On September 18, 2014, ANAD notified ADEM of a possible violation by informing the Department that one of its tenant activities, the Anniston Munitions Center, had shipped munitions to a contractor facility in Missouri for treatment, storage or disposal without a uniform hazardous waste manifest. ADEM issued an NOV for the violation on October 31, 2014.

A. In its response dated December 9, 2014, ANAD stated that an internal investigation revealed that existing procedures for issuing hazardous waste manifest for munitions shipments were adequate but that they had not been followed properly by the personnel involved in this operation.

B. To prevent a recurrence of the violation, additional checks were added to Anniston Munitions Center waste shipment and manifesting procedures and personnel involved in these operations were retrained.

C. Although no manifest was prepared, Department of Defense and Army shipping procedures were followed and the bill of lading included with the shipment properly identified the type, quantity and hazards associated with the shipment. ANAD notified the receiving facility as soon as it learned that a uniform hazardous waste manifest had not accompanied the shipment.

13. On January 13, 2015, ANAD notified ADEM of a possible violation by informing the Department that a shipment of demolition hazardous waste was found by the disposal facility to contain a liquid not included on the manifest. ANAD was cited for a failure to perform a proper hazardous waste determination on hazardous waste sent for disposal.

A. An internal investigation revealed that demolition debris was placed in a container by the demolition contractor during a project. Hazardous liquid trapped in the debris was not detected or identified during the pre-acceptance inspection prior to shipment.

B. ANAD provides special instructions to demolition contractors concerning potential hazards associated with demolition waste. In this case a leak proof sludge box had been used to mitigate the possibility of liquids being present in the debris, and prevented a potential release to the environment during transport.

14. In Paragraph 9 E of the DEPARTMENT'S CONTENTIONS, HISTORY OF PREVIOUS VIOLATIONS, ADEM contends that ANAD has received 7 Warning Letters, 11 NOVs, and 5 Consent orders since January 1, 2004. As a point of clarification, ANAD records indicate that 8 of the NOVs, 3 of the Consent orders, and 5 of the Warning Letters noted above were issued to the Anniston Chemical Stockpile Disposal

Facility which is no longer in operation and has been closed in accordance with its permit requirements.

ORDER

THEREFORE, without admitting that it has violated any statute or regulations, ANAD, 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)(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 ANAD 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 Consent Order, ANAD shall pay to the Department a civil penalty in the amount of **\$12,750.00** for the violations cited in this Consent 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 ANAD's name and address, and the ADEM Administrative Order number of this action.

B. That immediately upon the effective date of this Consent Order and continuing thereafter, ANAD 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.), the regulations promulgated pursuant thereto, and ANAD's AHWMMMA Hazardous Waste Facility Permit.

C. The Department and ANAD 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.

D. 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. ANAD 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, ANAD 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. ANAD reserves the right to request removal under federal law. ANAD anticipates that all obligations arising under this order will be fully funded. However, any requirement for the payment or obligation of funds by ANAD 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; ANAD 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 ANAD agree that this Consent Order shall not affect the Operator's obligation to comply with any federal, state, or local laws or regulations.

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

K. The Department and ANAD 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 ANAD hereby waives any hearing on the terms and conditions of same.

L. 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.

M. 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 ANAD of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Anniston Army Depot

Alabama Department of
Environmental Management



Brent T. Bolander
Commanding Officer

Lance R. Lefleur
Director

Date Signed: 7/6/15

Date Signed: _____

Attachment A

Anniston Army Depot
Anniston, Calhoun

Facility ID No. AL3 210 020 027

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
ANAD failed to prepare a uniform hazardous waste manifest for a shipment of hazardous waste sent off-site for disposal	1	\$1,000	\$1,000	\$2,000	
ANAD failed to perform a proper hazardous waste determination on paint booth filters generated by three paint booths located at the Lockheed Martin Hellfire Missile Refurbish Operation, Bldg 680	1	\$1,000	\$1,000	\$2,000	
ANAD failed to perform a proper hazardous waste determination on demolition waste sent for disposal	1	\$1,000	\$1,000	\$2,000	
ANAD failed to provide documentation of hazardous waste training for seven of its employees	1	\$1,000	\$1,000	\$1,000	Total of Three Factors
TOTAL PER FACTOR		\$4,000	\$4,000	\$7,000	\$15,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-2,250
Total Adjustments (+/-) <i>Enter at Right</i>	-2,250

Economic Benefit (+)	
Amount of Initial Penalty	
Total Adjustments (+/-)	-\$2,250
FINAL PENALTY	\$12,750

Footnotes

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