

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Kohler Co., Inc.
Huntsville, Madison County, Alabama
EPA Identification Number ALD057202558**

Consent Order No. 19-XXX-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 Kohler Co., Inc. (hereinafter “Kohler”) 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, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Kohler Co., Inc. (hereinafter “Kohler”), a foreign corporation, operates a fiberglass manufacturing and molding facility with EPA Identification Number ALD057202558, located at 176 Cochran Road in Huntsville, Madison County, Alabama. Kohler Company, as a result of its operations at the facility, was a large quantity generator and a small quantity handler of universal waste, as those terms are defined in ADEM Admin. Code Div. 14, at all times relevant to this action. Kohler is also subject to regulation under ADEM Admin. Code ch. 335-14-17.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), 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 AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On April 17, 2019, 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 Kohler. The CEI and a review of Kohler's compliance showed the following:

- (a) Pursuant to ADEM Admin. Code r. 335-14-3-.01(2), a person who generates a solid waste, as defined in 335-14-2-.01(2), must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable AHWMMMA regulations.

Kohler failed to make a hazardous waste determination for certain wastes generated at the facility.

- (b) Pursuant to ADEM Admin. Code rs. 335-14-3.01(7)(a)1.(viii) and 335-14-6-.09(6), a large quantity generator's container storage areas must have a containment system, designed and operated in accordance with 335-14-6-.09(6).

Kohler stored liquid hazardous waste, not in satellite accumulation, in the Vikrell Room without a containment system.

- (c) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)10., a large quantity generator must prevent unknowing entry into the central accumulation area.

Kohler stored hazardous waste, not in satellite accumulation, in the Vikrell Room that did not have access adequately restricted.

- (d) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(i)a., a large quantity generator must mark or label its containers with the Words "Hazardous Waste" and the EPA hazardous waste number.

Kohler failed to label a 55-gallon drum containing hazardous waste located in the Vikrell Room as required.

- (e) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(i)c., a large quantity generator must mark or label its containers with the date upon which each period of accumulation begins clearly visible for inspection on each container.

Kohler failed to mark an accumulation start date on six 55-gallon drums containing hazardous waste in the Vikrell Room.

- (f) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)4., a satellite accumulation container holding hazardous waste must be closed at all times during accumulation, except when adding, removing, or consolidating waste, or when temporary venting of a container is necessary for the proper operation of equipment or to prevent dangerous situations.

Kohler failed to keep closed two satellite accumulation containers holding hazardous waste. Kohler was not adding, removing, or consolidating waste nor was it venting temporarily venting containers to prevent dangerous conditions.

- (g) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)10.(ii), unless exempt under 335-14-3-.01(7)(a)10., a sign with the legend, "Danger--Unauthorized Personnel Keep Out", must be posted at each entrance to the central accumulation area in sufficient numbers to be seen from any approach and must be legible from a distance of at least 25 feet.

Kohler was not exempt under 335-14-3-.01(7)(a)10. and failed to post signs with the legend, "Danger—Unauthorized Personnel Keep Out", at the front entrance of the 90-Day Hazardous Waste Accumulation Area.

- (h) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)1.(vi)b., large quantity generators must take precautions to prevent accidental ignition or reaction of ignitable or reactive waste. "No Smoking" signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

Kohler failed to post a “No Smoking” sign at the front entrance of its 90-day Hazardous Waste Accumulation Area.

- (i) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv), large quantity generators must maintain records that document required training has been given to facility personnel. ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iii) provides that facility personnel must take part in an annual review of the initial hazardous waste training required in 335-14-3-.01(7)(a)7.(i).

Kohler failed to provide documentation that facility personnel who manage hazardous waste have completed an annual review of the initial hazardous waste training.

- (j) Pursuant to ADEM Admin. Code rs. 335-14-3-.01(7)(a)7.(i)b. and ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv), a large quantity generator must maintain records documenting that the required training has been given, and that the facility personnel hazardous waste training program must be directed by a person trained in hazardous waste management procedures.

Kohler failed to provide documentation that its hazardous waste training program was directed by a person trained in hazardous waste management procedures.

- (k) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv) a. and b., a large quantity generator must maintain the following documents and records at the facility: the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job, and a written job description for each position listed under 335-14-3-.01(7)(a)7.(iv)a.

Kohler failed to provide documentation of the job title and a written job description for each position at the facility related to hazardous waste management.

- (l) Pursuant to ADEM Admin. Code r. 335-14-3-.14(10)(a), a large quantity generator must submit a copy of the contingency plan and all revisions to all local emergency responders

(i.e., law enforcement agencies, fire departments, hospitals and State and local emergency response teams that may be called upon to provide emergency services).

Kohler failed to document that it had submitted copies of its contingency plan and all revisions to all local emergency responders.

- (m) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)1.(v), at least weekly, a large quantity generator must inspect central accumulation areas. The large quantity generator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of inspection.

Kohler failed to provide documentation that it had inspected central accumulation areas weekly. At the time of inspection, several weekly inspection reports were not available for review.

- (n) Pursuant to ADEM Admin. Code r. 335-14-17-.03(4)(a)1., a container holding used oil must always be closed during storage, except when it is necessary to add or remove used oil.

Kohler failed to keep closed one 55-gallon drum containing used oil in the Used Oil Storage Area.

- (o) Pursuant to pertinent provisions of ADEM Admin. Code r. 335-14-17-.03(4)(d), upon detection of a release of used oil to the environment, a used oil generator must perform the following cleanup steps: stop the release, contain the released used oil, clean up and manage properly the released used oil and other materials in accordance with all applicable Division 335-13 and 335-14 requirements.

Kohler failed to prevent, contain, and manage the release of used oil. Oil and oily debris was observed on the pavement surrounding the compacter area.

- (p) Pursuant to ADEM Admin. Code r. 335-14-17-.03(4)(c)1., containers and used oil tanks, except underground tanks, used to store used oil at used oil generator locations must be labeled or marked clearly with the words "Used Oil".

Kohler failed to properly label three containers of used oil with the words "Used Oil".

5. On May 30, 2019, the Department issued a Notice of Violation to Kohler citing violations of the hazardous waste program regulations that were observed or existed at the time of the April 17, 2019 CEI.

6. On July 11, 2019, the Department received Kohler's response to the May 30, 2019 Notice of Violation.

7. Pursuant to Ala. Code § 22-22A-5(18), 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 this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATIONS:** In arriving at the civil penalty, the Department considered the general nature and magnitude of the violations along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

(b) **THE STANDARD OF CARE:** In considering the standard of care manifested by Kohler, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Kohler has failed to exhibit a standard of care commensurate with the applicable regulatory standards.

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

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects to mitigate as a result of the violations referenced herein.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Kohler has a history of similar violations.

(f) THE ABILITY TO PAY: Kohler 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 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 Kohler's contentions, which are set forth below. The Department has agreed to the terms of this Special Order by Consent in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Special Order by Consent are in the best interest of the citizens of Alabama.

FACILITY'S CONTENTIONS

9. Kohler Co.'s Huntsville facility addressed the deficiencies and implemented sound measures to prevent their recurrence. Kohler Co. is committed to assuring compliance with local, State, and federal regulations.

10. Kohler Co. neither admits nor denies the Department's contentions. Kohler Co. 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 Kohler Co. of liability.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, Kohler, 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 Kohler agree to enter into this Special Order by Consent with the following terms and conditions:

A. Kohler agrees to pay to the Department a civil penalty in the amount of \$22,150 in settlement of the violations alleged herein within forty-five days of the effective date of this Special Order by Consent. 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. Kohler agrees that all penalties due pursuant to this Special Order by Consent 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 Special Order by Consent shall reference Kohler's name and address, and the ADEM Administrative Order number of this action.

C. Kohler agrees that, independent of this Special Order by Consent, Kohler 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 Kohler (hereinafter the “parties”) agree that this Special Order by Consent 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 Special Order by Consent certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Special Order by Consent, to execute the Special Order by Consent 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 Special Order by Consent is intended to operate as a full resolution of the alleged violations cited herein.

F. Kohler agrees that it is not relieved from any liability if it fails to comply with any provision of this Special Order by Consent.

G. For purposes of this Special Order by Consent only, Kohler 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 Special Order by Consent 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 Special Order by Consent, 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; Kohler agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement action address new matters not raised in this Special Order by Consent.

I. The parties agree that this Special Order by Consent shall be considered final and effective immediately upon signature of all parties. This Special Order by Consent shall not be appealable, and Kohler does hereby waive any hearing on the terms and conditions of this Special Order by Consent.

J. The parties agree that this Special Order by Consent shall not affect Kohler's obligation to comply with any Federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Special Order by Consent 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 order.

L. The parties agree that, should any provision of this Special Order by Consent 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 Special Order by Consent must be agreed to in writing signed by both parties.

N. The parties agree that, except as otherwise set forth herein, this Special Order by Consent 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 Kohler of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

FACILITY

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

Joseph Bassow

(Printed Name)

Assoc. Director

(Printed Title)

8/28/19

(Date Signed)

(Date Executed)

Attachment A

Kohler Company
Huntsville, Madison County
Facility ID No. ALD057202558

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*
Failure to make a hazardous waste determination for all wastes generated at the facility.	1	\$2,500	\$2,000	\$0
Failure to provide a containment system for all areas where hazardous waste is stored.	1	\$1,000	\$500	\$500
Failure to prevent unknowing entry into the central accumulation area.	1	\$1,000	\$500	\$100
Failure to mark or label all containers with the Words "Hazardous Waste".	1	\$500	\$250	\$200
Failure to ensure all containers holding hazardous waste are marked with an accumulation start date.	1	\$500	\$250	\$200
Failure to keep closed all containers holding hazardous waste.	1	\$200	\$100	\$200
Failure to post signs at the front entrance of the central accumulation area.	1	\$100	\$50	\$50
Failure to post a "No Smoking" sign at the front entrance of the central accumulation area.	1	\$100	\$50	\$0
Failure to keep closed all containers holding used oil.	1	\$100	\$50	\$50
Failure to mark with the words "Used Oil" all containers holding used oil.	1	\$100	\$50	\$50
Failure to prevent, contain, and manage a release of used oil.	1	\$1,000	\$500	\$0

Failure to document that all personnel who manage hazardous waste have completed an annual review of the initial hazardous waste training.	1	\$1,000	\$1,000	\$500	
Failure to document that the hazardous waste training program is directed by a person trained in hazardous waste management procedures.	1	\$2,500	\$1,000	\$500	
Failure to provide documentation of the job title and a written job description for each position at the facility related to hazardous waste management.	1	\$100	\$50	\$50	
Failure to document that it submitted the contingency plan to all local emergency responders.	1	\$100	\$50	\$50	
Failure to conduct and/or document weekly inspections of all central accumulation areas.	1	\$1,000	\$1,000	\$500	Total of Three Factors
TOTAL PER FACTOR		\$11,800	\$7,400	\$2,950	\$22,150

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	\$0
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$22,150
Other Factors (+/-)	\$0	Total Adjustments (+/-)	\$0
Total Adjustments (+/-) Enter at Right	\$0	FINAL PENALTY	\$22,150

Footnotes

* See the "DEPARTMENT'S CONTENTIONS" portion of the Order for a detailed description of each violation and the penalty factors.