

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF

**United States Department of the Army
United States Army Garrison, Redstone
4488 Martin Road
Redstone Arsenal, Alabama 35898-5000
Huntsville, Madison County, Alabama**

Consent Order NO. 22-XX-CHW

USEPA ID NUMBER AL7 210 020 742

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “ADEM” or “the Department”) and Redstone Arsenal (hereinafter “RSA” or “Operator”), pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, and the Alabama Hazardous Wastes Management and Minimization Act, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the ADEM Administrative Code, promulgated thereunder.

STIPULATIONS

1. Redstone Arsenal (RSA) is a facility that is owned and operated by the United States Department of the Army. Redstone Arsenal is a research and development facility as directed by the Department of Defense. Redstone Arsenal is located at 4488 Martin Road, Redstone Arsenal in Madison County. RSA has been assigned the USEPA ID Number AL7 210 020 742. Redstone Arsenal operates under a hazardous waste facility permit that was approved by ADEM on July 19, 2021

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, as amended.

3. Pursuant to Ala. Code § 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. §§ 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, (AHWMMA) Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On August 2-3, 2021 a Compliance Evaluation Inspection was conducted by the Governmental Compliance Unit at RSA. During this inspection, violations of the ADEM Administrative Code and the facility's AHWMMA Permit were noted.

A. ADEM Administrative Code rule 335-14-3-.01(5)(a)5.(ii) requires that a container holding hazardous waste at a satellite accumulation area must be marked with an indication of the hazards of the contents (examples include, but not limited to, the applicable hazardous waste characteristic(s) (i.e., ignitable, corrosive, reactive, toxic). During the inspection, multiple containers at OB/OD and garrison maintenance satellite accumulation areas did not have indication of hazards of content.

B. ADEM Administrative Code rule 335-14-3-.01(7)(a) provides that a Large Quantity Generator (LQG) may accumulate Hazardous Waste (HW) on site for no more than 90 days, unless in compliance with the accumulation time limit extension or F006 accumulation. During the inspection, the inspectors noted that in building 7631A, less than 90 day storage area, which is operated by U.S. Army Combat Capabilities Development Command Aviation and Missile Center (DEVCOM AVMC), a container of HCL/HNO₃/HF Etch was dated April 19, 2021. Thus the hazardous waste was accumulated for greater than the 90 day accumulation time limit.

5. As a result of the investigation, the Department issued a Notice of Violation on September 7, 2021, that cited violations of the ADEM Administrative Code.

6. On January 23-24, 2022 another inspection was conducted by the Governmental Compliance Unit at RSA. During this inspection, violations of the ADEM Administrative Code and the facility's AHWMMA Permit were noted.

A. AHWMMMA Permit Condition III.B.4 provides that containers in storage shall be marked with the date of receipt. During the inspection, the inspectors noted one 8-gallon container in Igloo 8623, one 30-gallon container and two 8-gallon buckets in Igloo 8622, one 55-gallon container and two 8-gallon containers in Igloo 8630, and one 8-gallon container in Igloo 8621 that were not marked with the date of receipt. The containers were labeled with internal tracking numbers.

7. On January 27, 2022, the Department received photographs of the properly labeled containers.

8. 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 VIOLATION: The violations involved the failure of RSA to adhere to hazardous waste regulations.

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

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: RSA received minimal economic benefit as a result of noncompliance.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: To date, RSA has initiated efforts to minimize the effects of noncompliance.

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator does have a history of non-compliance at this site. Over the last 10 years RSA has received 8 Warning Letters, 3 Notices of Violation, and 1 Consent Order.

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 Special Order by Consent is a negotiated settlement, and therefore, the Department has compromised the amount of the penalty it believes is warranted in the spirit of cooperation and in 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.)

9. The Department neither admits nor denies the Operator'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 above violations. The Department has determined that the terms contemplated in this Special Order by Consent are in the best interests of the citizens of Alabama.

OPERATOR'S CONTENTIONS

10. The Operator neither admits nor denies the Department's contentions. The Operator consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein.

11. The Operator notes that all inspection findings were either corrected on the spot, or on the next day.

12. The Operator initiated several awareness actions throughout the facility to remediate future hazardous waste non-compliance issues such as: customized operator

awareness trainings both in the classroom and on site, establishment of an Environmental Quality Control Committee (EQCC) Working Group consisting of representatives from each tenant organization to help streamline compliance efforts across the installation, appointment and training of managers for each 90 day and Satellite Accumulation Area on site, and revision of its hazardous waste management plan to provide updated guidance and the use of standardized forms and labeling practices for hazardous waste storage, management, and disposal across the installation.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, the Operator, along with the Department, desires to resolve and settle the 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 RSA agree to enter into this Special Order by Consent with the following terms and conditions:

A. RSA agrees to pay to the Department a civil penalty in the amount of \$8,160.00 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. RSA reserves the right to request removal under federal law.

B. RSA 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 RSA's name and address, and the ADEM Administrative Order number of this action.

C. RSA 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, as amended, and the regulations promulgated pursuant thereto.

D. ADEM and RSA (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 violations, which are cited in this Special Order by Consent.

F. RSA 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, RSA 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. RSA reserves the right to request removal under federal law. RSA also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, it shall be limited to the defenses of Force Majeure, compliance with this Agreement and physical impossibility, and those defenses available to the Federal Government under the U.S. Constitution and federal statutes. A Force Majeure is defined as any event arising from causes that are

not foreseeable and are beyond the reasonable control of RSA, including RSA's 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 RSA) 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 ten 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 Operator, the Department will extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but the Department is not obligated to do so. RSA anticipates that all obligations arising under this order will be fully funded. However, any requirement for the payment or obligation of funds by RSA 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 Department and RSA agree that the sole purpose of this Special Order by Consent is to resolve and dispose of any and all violations 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. With regard to any such future order(s), litigation, or other enforcement action(s) which address a violation not raised in this Special Order by Consent, RSA shall not be precluded from raising any defense it may have available except that RSA may not assert the issuance of this Special Order by Consent as a defense to future order(s), litigation or other enforcement action(s) that address new matters not raised in this Special Order by Consent.

I. The Department and RSA 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 RSA hereby waives any hearing on the terms and conditions of this Special Order by Consent.

J. The Department and RSA agree that this Special Order by Consent shall not affect the Operator'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 Department and RSA 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 herein shall remain in full force and effect.

M. The Department and RSA agree that any modifications of this Special Order by Consent must be agreed to in writing and 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 RSA of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

United States Department of the Army
United States Army Garrison, Redstone

Alabama Department of
Environmental Management

Glenn O. Mellor
Colonel, US Army
Garrison Commander

Lance R. Lefleur
Director

Date Signed: _____

Date Signed: _____

ATTACHMENT A

Penalty Synopsis Worksheet

Redstone Arsenal
USEPA ID NUMBER AL7210020742

Violation*	Number of Violations *	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Redstone Arsenal failed to mark containers with an indication of the hazards of the contents	1	\$100	\$00	\$00
Redstone Arsenal accumulated hazardous waste in building 7631A for greater than 90 days	1	\$10000	\$00	\$00
Redstone Arsenal failed to mark containers with the accumulation start date.	1	\$100	\$00	\$00

Economic Benefit*: \$00

Mitigating Factors: \$00

Ability to Pay*: \$00

Other Factors: (\$2040)

Total Civil Penalty: **\$8,160.00**