

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Navistar Incorporated dba Navistar-Cherokee
Manufacturing Plant
Cherokee, Colbert County, Alabama
EPA Identification Number ALR000047332

Consent Order No. 17-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 Navistar Incorporated dba Navistar-Cherokee Manufacturing Plant (hereinafter "Navistar-Cherokee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2015 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter "AHWMMA"), Ala. Code §§ 22-30-1 to 22-30-24, (2015 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Navistar-Cherokee owns and operates a railroad car manufacturing facility with EPA Identification Number ALR000047332, located at 1200 Haley Drive in Cherokee, Colbert County, Alabama. In its last Notification of Regulated Waste Activity prior to the inspection, dated July 28, 2016, Navistar-Cherokee identified itself as a large quantity generator, as that term is defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)153.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, (2015 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n), (2015 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 §§ 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 AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, (2015 Rplc. Vol.).

DEPARTMENT'S CONTENTIONS

4. On January 12, 2017, a representative of the Department conducted a compliance evaluation inspection (hereinafter "CEI") of Navistar-Cherokee to determine compliance with all applicable requirements of Division 14 of the ADEM Administrative Code. The CEI and a review of Navistar-Cherokee's compliance revealed the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(b), a large quantity generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 335-14-5 and 335-14-6 and the permit requirements of 335-14-8 unless he has been granted an extension of the 90-day period. ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the "storage" of any "hazardous waste" as identified or listed in Chapter 335-14-2.

Navistar-Cherokee stored one 275-gallon tote containing a mixture of mineral spirits, epoxy paint, and a catalyst (hardener) in the hazardous waste storage area for greater than 90 days (since at least September 9, 2016) without first obtaining a permit or requesting an extension.

(b) 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 determine if that waste is a hazardous waste.

Navistar-Cherokee did not make a hazardous waste determination on the contents of the following: one 55-gallon drum labeled "1-K Flush Material"; three 55-gallon drums marked with the word "Hazardous"; one 275-gallon tote in the Paint Kitchen/hazardous waste storage area; one drum marked with the words "Dirty Rags" located outside the entrance to the FCA Maintenance Shop; one half-full, pressurized aerosol can found in the scrap metal container; and several containers holding unidentified liquids in the "empty drum area" outside the plant.

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(i), a large quantity generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, provided that the waste is placed in containers and the generator complies with the applicable requirements of 335-14-6-.09, 335-14-6-.27 through 335-14-6-.29.

Navistar-Cherokee did not place all hazardous waste in containers. Free liquids were present on top of one hazardous waste container in the Paint Kitchen/hazardous waste storage area.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)3., a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit, provided that containers and tanks are labeled or marked clearly with the words "Hazardous Waste" and the EPA hazardous waste number(s).

Navistar-Cherokee did not mark eight hazardous waste containers in the Paint Kitchen/hazardous waste storage area with the applicable EPA hazardous waste numbers.

(e) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii), a generator may accumulate as much as 55 gallons of hazardous waste in containers at or near the point of generation where wastes initially accumulate, without a permit and without complying with 335-14-3-.03(5)(a), provided that the containers are marked either with the words "Hazardous Waste" or with other words that identify the contents of the containers.

Navistar-Cherokee did not mark with the words "Hazardous Waste" or other words describing the contents the aerosol can satellite accumulation container located in the FreightCar America (FCA) store.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.02(5)(c), a large quantity generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, provided that a sign with the legend, "Danger--Unauthorized Personnel Keep Out", is

posted at each entrance to the active portion of the facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion.

Navistar-Cherokee did not post signs with the legend "Danger - Unauthorized Personnel Keep Out" at any of the entrances to the Paint Kitchen/hazardous waste storage area.

(g) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.02(7)(d)2., a large quantity generator must maintain at the facility a written job description for the positions related to hazardous waste management, which includes the requisite skills, education or other qualifications, and duties of personnel assigned to each position.

Navistar-Cherokee did not maintain at the site job descriptions for all employees that handle hazardous waste. A job description was available for one of the three employees that handle hazardous waste, but it did not include the hazardous waste management duties of that employee.

(h) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing 335-14-6-.03(6), the owner or operator must maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

Navistar-Cherokee did not provide adequate aisle space between containers in the Paint Kitchen/hazardous waste storage area.

(i) Pursuant to ADEM Admin. Code r. 335-14-11-.02(4)(d)1., a small quantity handler of universal waste must contain any lamp in containers or packages that are structurally sound, adequate to prevent breakage, and compatible with the contents of the lamps. Such containers and packages must remain closed and must lack evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions.

Navistar-Cherokee did not place all universal waste lamps in containers and keep those containers closed. One box of universal waste lamps located in the Maintenance Shop was not closed. In addition, at least six fluorescent and high-intensity discharge lamps in the same location were not containerized.

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

Navistar-Cherokee did not ensure that all containers holding used oil were marked with the words "Used Oil". One 55-gallon drum of used oil in the FCA Maintenance Shop lacked the required marking.

(k) 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.

Navistar-Cherokee did not keep closed all containers holding used oil. One 55-gallon drum of used oil in the FCA Maintenance shop had an open funnel in the bung. One 275-gallon tote of used oil in the Fabrication Area had an open lid.

5. On February 9, 2017, the Department issued to Navistar-Cherokee a Notice of Violation citing violations of the hazardous waste program regulations that were observed or existed at the time of the January 12, 2017 CEI.

6. On March 17, 2017, the Department received Navistar-Cherokee's response to the aforementioned Notice of Violation.

7. Pursuant to Aia. Code § 22-22A-5(18)c., (2015 Rplc. Vol.), 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 violation(s) 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 Navistar-Cherokee, the Department noted that the violations described above were non-technical and easily avoidable. Consequently Navistar-Cherokee 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 conferred upon Navistar-Cherokee 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, Navistar-Cherokee has no history of previous violations.

(f) **THE ABILITY TO PAY:** Navistar-Cherokee has not alleged an inability to pay the civil penalty.

8. **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 amicable 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 Navistar-Cherokee'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

10. Navistar-Cherokee has corrected the issues found in the January 12, 2017 inspection.

11. Navistar-Cherokee neither admits nor denies the Department's contentions. Navistar-Cherokee consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, Navistar-Cherokee, 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., (2015 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 Navistar-Cherokee agree to enter into this Special Order by Consent with the following terms and conditions:

A. Navistar-Cherokee agrees to pay to the Department a civil penalty in the amount of \$15,000 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. Navistar-Cherokee 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 Navistar-Cherokee's name and address, and the ADEM Administrative Order number of this action.

C. Navistar-Cherokee agrees that, independent of this Special Order by Consent, Navistar-Cherokee shall comply with all terms, conditions, and limitations of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, (2015 Rplc. Vol.), and the regulations promulgated pursuant thereto.

D. The Department and Navistar-Cherokee (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. Navistar-Cherokee 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, Navistar-Cherokee 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; Navistar-Cherokee 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 Navistar-Cherokee 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 Navistar-Cherokee'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 Navistar-Cherokee 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

Dan B. Tucker
(Signature of Authorized Representative)

Lance R. LeFleur
Director

DAN B. TUCKER
(Printed Name)

OPERATIONS MGR.
(Printed Title)

5/26/17
(Date Signed)

(Date Executed)

Attachment A

Navistar Incorporated dba Navistar-Cherokee Manufacturing Plant Cherokee, Colbert County Facility ID No. ALR000047332
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Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*
Storage of hazardous waste for greater than 90 days without obtaining a permit.	1	\$10,000	\$1,000	\$0
Failure to make a hazardous waste determination on at least six wastestreams at the site.	1	\$2,500	\$1,200	\$0
Failure to place all hazardous waste in containers. Free liquids were present on top of one hazardous waste container.	1	\$100	\$50	\$0
Failure to mark eight hazardous waste containers in the hazardous waste storage area with the applicable EPA hazardous waste numbers.	8	\$1,600	\$800	\$0
Failure to mark with the words "Hazardous Waste" or other words describing the contents the aerosol can satellite accumulation container.	1	\$200	\$100	\$0
Failure to post signs with the legend "Danger - Unauthorized Personnel Keep Out" at any of the entrances to the hazardous waste storage area.	1	\$100	\$50	\$0
Failure to maintain job descriptions for all employees that handle hazardous waste.	1	\$100	\$50	\$0
Failure to provide adequate aisle space between containers in the hazardous waste storage area.	1	\$100	\$50	\$0

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Failure to properly containerize universal waste lamps.	1	\$500	\$250	\$0	
Failure to mark one drum holding used oil with the words "Used Oil".	1	\$100	\$50	\$0	
Failure to keep closed two containers holding used oil.	2	\$200	\$100	\$0	Total of Three Factors
TOTAL PER FACTOR		\$15,500	\$3,700	\$0	\$19,200

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$19,200
Other Factors (+/-)	(\$4,200)	Total Adjustments (+/-)	(\$4,200)
Total Adjustments (+/-) Enter at Right	(\$4,200)	FINAL PENALTY	\$15,000

Footnotes

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