

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Titan Coatings, Inc.  
Bessemer, Jefferson County, Alabama  
USEPA ID NUMBER AL0000266569**

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 Titan Coatings, Inc. (hereinafter "Titan") 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. Titan operates a facility that manufactures and distributes custom paints with EPA Identification Number AL0000266569, located at 2025 Exchange Place in Bessemer, Jefferson County, Alabama (hereinafter "the Site"). Titan, as a result of its operations at the facility, was a large quantity generator, as that term is defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)153., at all times relevant to this action.

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 March 27, 2017, a representative of the Department conducted a compliance evaluation inspection (hereinafter "CEI") of Titan. The CEI and a review of Titan's compliance showed 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, 335-14-6, and the permit requirements of 335-14-8. ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the storage of hazardous waste.

Titan accumulated two metal 55-gallon drums of hazardous waste on-site for greater than 90 days without first obtaining a permit for the storage of hazardous waste from the Department. The referenced drums were staged in the central hazardous waste accumulation area and were marked with accumulation start dates of December 6, 2016 and December 13, 2016, respectively.

(b) Pursuant to ADEM Admin. Code r. 335-14-3-.02(1)(a), a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal must prepare a Manifest (OMB control number 2050-0039) on EPA Form 870022 according to the instructions in 335-14-3-Appendix I.

Titan failed to prepare accurate hazardous waste manifests in accordance with the instructions in 335-14-3-Appendix I. Titan failed to write the EPA Identification Number assigned to its facility in Box 1 of the manifests (the EPA Identification Number assigned to a different address was used on the manifests instead).

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.04(2)(a)1., a generator who ships hazardous waste off-site to a treatment, storage, or disposal facility within the United States must prepare and submit a single copy of a biennial report to the Department by March 1 of

each even numbered year. The biennial report must include the EPA Identification Number, name, and address of the generator.

Titan's most recent biennial report, which was received by the Department on June 30, 2014, failed to include the EPA Identification Number assigned to its facility (the EPA Identification Number assigned to a different address was used on the report instead).

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.04(2)(a), a generator who ships hazardous waste off-site to a treatment, storage, or disposal facility within the United States must prepare and submit a single copy of a biennial report to the Department by March 1 of each even numbered year.

Titan failed to submit a biennial report to the Department in 2016 as required.

(e) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.04(4)(b), a large quantity generator may accumulate hazardous waste that is generated on-site for 90-days or less without a permit or without having interim status, provided that a copy of the contingency plan and all revisions of the plan is submitted to all local law enforcement, fire departments, hospitals, and ADEM Field Operations Division and local emergency response teams that may be called upon to provide emergency services. Documentation of compliance with this requirement must be maintained at the facility.

Titan failed to provide documentation indicating that copies of the contingency plan had been submitted to local law enforcement, fire departments, hospitals, and ADEM Field Operations Division and local emergency response teams.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin. Code r. 335-14-6-.02(5)(a), a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that the generator prevents the unknowing entry, and minimizes the possibility for the unauthorized entry, of person or livestock onto the active portion of the facility.

Titan failed to adequately prevent or minimize entry of unauthorized personnel into the central hazardous waste accumulation area.

(g) 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 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 a facility, and at other locations, in sufficient numbers to be seen from any approach to this active portion.

Titan failed to post warning signs at each entrance to the central hazardous waste accumulation area.

(h) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(i) referencing ADEM Admin. Code r. 335-14-6-.09(6)(b)1., a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that a base underlies containers of hazardous waste that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

Titan failed place containers of hazardous waste on a base that is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation. The chemical-resistant coating of the floor of the central hazardous waste accumulation area was cracked and worn away in several areas.

(i) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)1.(i) referencing ADEM Admin. Code r. 335-14-6-.09(4)(c), a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that containers having a capacity greater than 30 gallons are not stacked over two containers high.

Titan stacked containers of hazardous waste in the central hazardous waste accumulation area three containers high.

(j) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(a)4. referencing ADEM Admin Code r. 335-14-6-.03(6), a large quantity generator may accumulate hazardous waste on-site for 90 days or less without a permit or without having interim status provided that the generator maintains 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.

Titan failed to maintain sufficient aisle space between containers of hazardous waste in the central hazardous waste accumulation area.

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

Satellite accumulation containers (plastic 5-gallon buckets placed under tank valves to catch drips) in the central hazardous waste accumulation area were not labeled with the words "Hazardous Waste" or with other words identifying their contents.

5. On As a result of this CEI, the Department issued to Titan a Notice of Violation (dated April 18, 2017), which cited violations of the hazardous waste regulations that were discovered during the CEI.

6. On June 27, 2017, the Department received Titan's response to the aforementioned Notice of Violation.

7. Pursuant to Ala. 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 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 Titan, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Titan 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 Titan 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 records, the Department has determined that Titan has a history of violations similar to violations referenced herein and the penalty has been adjusted for those findings.

(f) **THE ABILITY TO PAY:** Titan 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 Titan'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. Titan neither admits nor denies the Department's contentions. Titan 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, Titan, 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 Titan agree to enter into this Special Order by Consent with the following terms and conditions:

A. Titan agrees to pay to the Department a civil penalty in the amount of \$20,000 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. Titan 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 Titan's name and address, and the ADEM Administrative Order number of this action.

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

D. The Department and Titan (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. Titan 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, Titan 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; Titan 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 Titan 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 Titan'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 Titan of its obligations to comply in the future with any permit.

**Executed in duplicate, with each part being an original.**

**TITAN COATINGS, INC.**

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**



\_\_\_\_\_  
(Signature of Authorized Representative)

David K. Richie

(Printed Name)

Secretary-Treasurer

(Printed Title)

09/05/2017

(Date Signed)

\_\_\_\_\_  
Lance R. LeFleur  
Director

\_\_\_\_\_  
(Date Executed)

**Attachment A**

**Titan Coatings, Inc.  
Bessemer, Jefferson County  
Facility ID No. AL0000266569**

<b>Violation</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violation*</b>
Failure to obtain a permit or an extension prior to storing two metal 55-gallon drums of hazardous waste on-site for greater than 90 days.	1	\$10,000	\$2,500	\$5,000
Failure to document that copies of the contingency plan had been submitted to state and local emergency responders.	1	\$100	\$50	\$50
Failure to prevent unauthorized entry into the central hazardous waste accumulation area.	1	\$1,000	\$500	\$500
Failure to post warning signs at each entrance to the central hazardous waste accumulation area.	1	\$100	\$50	\$50
Failure to maintain adequate secondary containment.	1	\$100	\$50	\$50
Failure to ensure containers of hazardous waste were stacked not more than two containers high.	1	\$500	\$250	\$250
Failure to provide aisle space between containers in the hazardous waste storage area.	1	\$500	\$250	\$250
Failure to mark at least four satellite accumulation containers with the words "Hazardous Waste" or with other words identifying their contents.	4	\$400	\$200	\$200

<b>Violation</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violation*</b>	
Failure to use the EPA Identification Number assigned to the facility when preparing hazardous waste manifests.	1	\$1,000	\$500	\$0	
Failure to submit the 2015 biennial report to the Department as required.	1	\$100	\$50	\$0	<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		\$13,800	\$4,400	\$6,350	<b>\$24,550</b>

<b>Adjustments to Amount of Initial Penalty</b>			
Mitigating Factors (-)	\$0	Economic Benefit (+)	\$0
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$24,550
Other Factors (+/-)	\$0	Total Adjustments (+/-)	(\$4,550)
<b>Total Adjustments (+/-) Enter at Right</b>	<b>\$0</b>	<b>FINAL PENALTY</b>	<b>\$20,000</b>

Footnotes

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