

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF

**WASTE PROCESSING EQUIPMENT INC.
260 DILBECK ROAD
RAINSVILLE, ALABAMA**

USEPA ID NUMBER ALR 000 014 365

ADMINISTRATIVE ORDER NO. 02-136-HW

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama 1975, §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Hazardous Wastes Minimization Act of 1978, Code of Alabama 1975, §§ 22-30-1 through 22-30-24, as amended, and the ADEM Administrative Code, promulgated thereunder, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following FINDINGS:

1. Waste Processing Equipment Inc. (hereinafter "WPE") operates a facility in Rainsville, Alabama, which has been assigned EPA ID Number ALR 000 014 365. WPE manufactures vertical and horizontal bailers, and trailers for handling recycled materials.
2. The Alabama Department of Environmental Management is a duly constituted department of the state of Alabama pursuant to §§22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended.
3. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste

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regulations in accordance with the federal Solid Waste Disposal Act, 42 U.S.C. 3251, et. seq. as amended, including §§ 6901 through 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, Code of Alabama (1975), §§ 22-30-1 through 22-30-24, as amended.

4. ADEM Admin. Code R. 335-14-3-.01(2) requires persons who generate a solid waste, as defined in ADEM Admin. Code R. 335-14-2-.01(2), to determine if that waste is a hazardous waste.

5. ADEM Admin. Code R. 335-14-17-.03(3)(a)1 requires that a container holding used oil must be always be closed during storage, except when it is necessary to add or remove used oil.

6. ADEM Admin. Code R. 335-14-17-.03(3)(c)1 requires that containers and aboveground tanks used to store used oil at generator facilities be labeled or marked clearly with the words "Used Oil."

7. ADEM Admin. Code Rules 335-14-3-.03(5)(a)2, 335-14-3-.03(5)(d), and 335-14-3-.03(5)(e) allow a generator to accumulate hazardous waste which is generated on-site for 270 days or less without a permit or without having interim status, provided that the date upon which each period of accumulation begins is clearly marked and is visible on each container.

8. ADEM Admin. Code R. 335-14-3-.01(3)(a) requires that a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Department.

9. ADEM Admin. Code R. 335-14-3-.03(5)(c)1(i) and 335-14-6-.09(4) requires that a container holding a hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

10. ADEM Admin. Code R. 335-14-3-.03(5)(c) allows a generator to accumulate as much as 55 gallons of hazardous waste in containers at or near any point of generation, which is under control of the operator of the process generating the waste, without a permit or interim status as long as

the containers are marked with the words "Hazardous Waste" or other words that identify the contents of the containers.

11. ADEM Admin. Code R. 335-14-3-.03(5)(d)2 and 335-14-6-.09(5) requires that at least every seven days the owner or operator must inspect areas where containers are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. These inspections must be documented.

12. An inspection of WPE was conducted by ADEM on March 22, 2001 based on a complaint that WPE was dumping waste paint on the ground. As a result of the inspection, WPE was issued a Notice of Violation (NOV) dated April 2, 2001 that included the following violations:

A. WPE had not conducted a hazardous waste determination on several waste streams (waste paint filters, used oil dry, the contents of one drum located outside the paint area, and paint residue coating the ground outside the paint area) as required by ADEM Admin. Code R. 335-14-3-.01(2).

B. Two used oil containers in the vehicle maintenance area were not closed as required by ADEM Admin. Code R. 335-14-17-.03(3)(a)1.

C. One tank and two containers used to store used oil were not labeled "Used Oil" as required by ADEM Admin. Code R. 335-14-17-.03(3)(c)1.

D. One container of hazardous waste was not marked with a date that waste accumulation began as required by ADEM Admin. Code R. 335-14-3-.03(5)(a)2, 335-14-3-.03(5)(d), and 335-14-3-.03(5)(e).

E. WPE was storing and offering for transportation, hazardous waste without having obtained an EPA identification number as required by ADEM Admin. Code R. 335-14-17-.01(3)(a).

F. A satellite accumulation container holding hazardous waste in the paint area was not closed as required by ADEM Admin. Code Rules 335-14-3-.03(5)(c)1(i) and 335-14-6-.09(4).

G. WPE had one satellite accumulation container of hazardous waste paint that was not labeled "hazardous waste" or with words that identified the contents of the container as required by ADEM Admin. Code R. 335-14-3-.03(5)(c).

H. WPE did not have any documentation that inspections of hazardous waste storage areas had been conducted every seven days as required by ADEM Admin. Code Rules 335-14-3-.03(5)(d)2 and 335-14-6-.09(5).

13. On April 12, 2001, WPE submitted a letter to the Department describing corrective actions that had been taken in response to the April 2, 2001 NOV.

14. On May 7, 2001, the Department sent WPE a letter stating that the corrections described in WPE's April 12th letter were adequate with three exceptions: no hazardous waste determination had been conducted on used oil dry or paint residue, WPE had not received an EPA identification number, and inspections of the hazardous waste storage areas were not being documented. ADEM's letter required WPE to respond in writing within 15 days of receipt of the letter. WPE received this letter on May 9, 2001, and should have responded by May 24, 2001.

15. On June 26, 2001, the Department sent WPE a letter stating that WPE had failed to respond to ADEM's May 7th letter. The June 26th letter required WPE to respond in writing within seven days of receipt of the June 26th letter. WPE received this letter on July 11, 2001, and should have responded by July 18, 2001.

16. On July 17, 2001, WPE sent the Department a letter documenting the corrective actions that had been accomplished in response to ADEM's May 7th and June 26th letters. (Note: At the time of the March 22, 2001 inspection, WPE had not obtained an EPA Identification Number as required by

ADEM Admin. Code R. 335-14-3-.01(3)(a). WPE submitted a Notification of Regulated Waste Activity Form (ADEM Form 8700-12) on April 23, 2001, and was assigned an EPA Identification Number on August 21, 2001).

17. On July 27, 2001, the Department sent WPE a certified letter (received by WPE on August 3, 2001) stating that the corrections described in WPE's July 17th letter were adequate with one exception: the hazardous waste analysis of the used oil dry and waste paint residue had not been completed. ADEM's letter required a written response from WPE within 30 days of receipt of the July 27th letter documenting actions to correct the one outstanding violation.

18. On September 27, 2001, the Department sent WPE a letter (received by WPE on October 3, 2001) stating that WPE had failed to respond to ADEM's July 27th letter. The September 27th letter required WPE to respond in writing within seven days of receipt of the September 27th letter. At the time of the issuance of this Order, the Department has received no response from WPE to the July 27th or September 27th letters.

19. In February 2002, the Department received an undated letter from WPE claiming used oil dry and paint residue outside the paint booth had been tested and the results were to be sent to the Department by Mr. John Ashworth, Safety-Kleen, Chattanooga, TN.

20. On March 15, 2002, Mr. John Ashworth, Safety-Kleen, Chattanooga, TN, informed the Department that samples of WPE's oil dry and paint waste outside the paint booth had been taken on July 24, 2001. He stated that an analysis of the paint waste had been conducted, but WPE has never given Safety-Kleen approval to analyze the waste oil dry. Mr. Ashworth provided a copy of the analysis of the waste oil dry. The analysis was inadequate to make a proper determination as to whether the material was hazardous.

21. The assessment of civil penalties for violations of the Department's rules and regulations, and for violations of any order, permit condition, license, certification or variance issued

by the Department is authorized by Code of Alabama 1975, § 22-22A-5(18), as amended. The statute also authorizes that the penalty amount may range from \$100 to \$25,000 per day for each violation, so long as the penalty amount does not exceed \$250,000 in any given order. Each day a violation continues constitutes a separate violation. In addition to the foregoing “findings”, the Department has considered the factors detailed in the aforementioned statute in determining the appropriate penalty amount in this particular instance. Those factors are listed as follows:

- A. The seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public;
- B. The standard of care manifested by the Permittee;
- C. The economic benefit which delayed compliance may have conferred upon the Permittee;
- D. The nature, extent, and degree of success of the Permittee’s efforts to minimize or mitigate the effects of such violations upon the environment;
- E. The Permittee’s history of previous violations; and
- F. The Permittee’s ability to pay the assessed penalty.

ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama 1975, §§ 22-22A-5(10), 22-22A-5(18), 22-30-20 and 22-30-19(a) and (b), as amended, it is hereby Ordered:

- A. That, immediately upon receipt of this Order and continuing each and every day thereafter, WPE shall determine if solid wastes generated at the facility are hazardous waste. Not later than thirty (30) days from the effective date of this Order, WPE shall provide the results of the waste analysis for used oil dry and waste paint residue discussed in paragraph 12 above.

B. That, not later than thirty (30) days from the effective date of this Order, WPE shall pay a civil penalty in the amount of **five thousand dollars (\$5,000.00)**. 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:

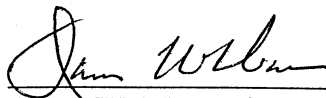
**Office of General Counsel
Alabama Department of Environmental Management
Post Office Box 301463
Montgomery, AL 36130-1463**

All checks shall reference WPE's name and address, and the ADEM Administrative Order number of this action.

C. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Owner for the violations cited herein.

D. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against WPE for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 2nd day of April, 2002.



James W. Warr, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, AL 36110-2059
(334) 271-7700

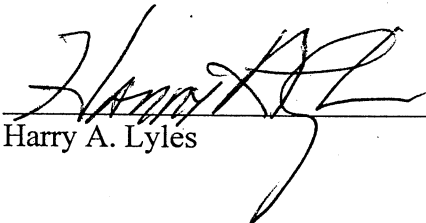
CERTIFICATE OF SERVICE

I, Harry A. Lyles, hereby certify that I have served Administrative Order 02-136-HW, upon Waste Processing Equipment, Inc. by sending the same, postage paid, through the United States Mail, as Certified Mail, with instructions to forward and return receipt requested to:

CERTIFIED MAIL NO.: 7000 1530 0000 2467 7853

Mr. Dewayne Pierce
Waste Processing Equipment, Inc.
P.O. Box 1047
Rainsville, AL 35986

DONE this the 2nd day of April, 2002.



Harry A. Lyles