

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Mayco Manufacturing, LLC
d.b.a. Mayco Industries
Birmingham, Jefferson County, AL
EPA Identification Number ALR000012005**

CONSENT ORDER NO. 16-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 Mayco Manufacturing, LLC. (hereinafter "Mayco") 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, (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Mayco owns and operates a lead products manufacturing facility with EPA ID No. ALR000012005, located at 18 West Oxmoor Road in Birmingham, Jefferson County, Alabama. At all times relevant to these findings, Mayco was a small quantity generator of hazardous waste, a used oil generator, and a small quantity handler of universal waste.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n) (2006 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 AHWMA, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

DEPARTMENT'S CONTENTIONS

4. On January 12, 2015, representatives of the United States Environmental Protection Agency and the Department conducted a compliance evaluation inspection (CEI) of Mayco to determine compliance with all applicable requirements of Division 14 of the ADEM Administrative Code.

5. Based on the CEI, the Department determined that Mayco violated certain requirements of Division 14 of the ADEM Administrative Code. Specifically, the Department identified the following violations:

(a) Pursuant to ADEM Admin. Code r. 335-14-3-.01(2), a person who generates a solid waste must determine if that waste is a hazardous waste.

Mayco did not make hazardous waste determinations on personal protective equipment (PPE) that was either discarded with the general trash or incinerated in the melting kettles, five Super Sacks containing plastic scheduled for incineration in the melting kettles, and dirty/spent wash water from the floor sweeper that is evaporated in the melting kettles.

(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.

On about eighteen separate occasions, Mayco sent its hazardous waste spent solvent (D001, F003) off-site without a manifest.

6. As a result of the CEI, the Department issued to Mayco a Notice of Violation (NOV), dated February 23, 2015, for violations of hazardous waste regulations noted in Paragraph 4.

7. On April 8, 2015, the Department received Mayco's response to the aforementioned NOV.

8. After reviewing Mayco's response, the Department determined that the following additional violations were in existence at the time of the CEI:

(a) ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the "treatment" of any "hazardous waste" as identified or listed in Chapter 335-14-2. Under ADEM Admin. Code r. 335-14-1-.02(1)(a) 278., "treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to render such waste non-hazardous or less hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it non-hazardous or less hazardous.

Mayco treated regulated hazardous waste by incineration without first obtaining a hazardous waste facility treatment permit from the Department. As noted during the inspection, the following wastes had been treated by incineration on site:

- Personnel protective equipment (which in Mayco's April 8, 2015 response to the Department's NOV was shown to be hazardous); and
- Five Super Sacks containing plastic used to stage lead ingots.

(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.

Mayco sent hazardous waste, personal protection equipment contaminated with lead (D008), off-site without a manifest.

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.01(3)(d) a generator must not offer his hazardous waste to transporters that have not received an EPA identification number and an Alabama Hazardous Waste Transport Permit or to treatment, storage, or disposal facilities that have not received an EPA identification number and an Alabama

Hazardous Waste Facility Permit or interim status pursuant to rule 335-14-8-.07 (or, in the case of out-of-state facilities, a permit valid in the receiving State).

Between May, 2013 and January, 2015 (inclusive), Mayco offered multiple shipments of hazardous waste, personal protection equipment contaminated with lead (D008), to a transporter (Amwaste, LLC) and a disposal facility (Sylvan Springs Waste Complex, Permit No. 37-46) that did not have an EPA ID number or a permit for hazardous waste transport or disposal.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)5. referencing ADEM Admin. Code r. 335-14-9-.01(7) and 40 CFR 268.7(a)(2), if the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file.

Mayco failed to provide notice that the wastes did not meet treatment standards and place a copy of the notice in the file.

9. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), 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.

10. In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATIONS:** The Department noted six violations of ADEM Admin. Code div. 335-14. In arriving at the civil penalty, the Department considered the general nature and magnitude of the violations along with the lack of any 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 Mayco, the Department noted that the violations listed above were non-technical and easily avoidable. Consequently, Mayco did not exhibit a standard of care commensurate with 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 Mayco 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 alleged violations.

(e) **HISTORY OF PREVIOUS VIOLATIONS:** Based on a review of Department records, Mayco does not have a documented history of noncompliance with respect to the ADEM Administrative Code.

(f) **THE ABILITY TO PAY:** The Department does not have any evidence indicating that Mayco is unable to pay the civil penalty.

(g) **OTHER FACTORS:** It should be noted that this Consent Order 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 Department's Contentions).

11. The Department has agreed to the terms of this Consent Order 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 Consent Order are in the best interests of the citizens of Alabama.

MAYCO'S CONTENTIONS

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

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, Mayco, 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; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Mayco agree to enter into this Consent Order with the following terms and conditions:

A. Mayco agrees to pay to the Department a civil penalty in the amount of \$25,000 in settlement of the violation alleged herein within forty-five days from the effective date of this Consent Order. 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. Mayco agrees that all penalties due pursuant to this Consent Order 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 Order shall reference Mayco's name and address, and the ADEM Administrative Order number of this action.

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

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

G. For purposes of this Consent Order only, Mayco 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 Consent Order 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 Consent Order, 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; Mayco agrees not to object to such future orders, litigation, or enforcement action based on the

issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

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

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

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

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

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

Attachment A

**Mayco Manufacturing, LLC
Birmingham, Jefferson County
EPA Identification Number ALR000012005**

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Failure to perform a waste determination	1	\$450	\$45	\$0	
Failure to use a hazardous waste manifest	1	\$1,000	\$100	\$0	
Treating hazardous waste without obtaining a permit	1	\$10,000	\$1,000	\$0	
Offering hazardous waste to a transporter that did not have an EPA identification number or an Alabama Hazardous Waste Transporter Permit	1	\$5,000	\$500	\$0	
Offering hazardous waste to a disposal facility that did not have an EPA identification number or a Alabama Hazardous Waste Facility Permit	1	\$10,000	\$1,000	\$0	
Written notice to the disposal facility regarding the treatment standard was not available for review	1	\$1,000	\$100	\$0	
					Total of Three Factors
TOTAL PER FACTOR		\$27,450	\$2,745	\$0	\$30,195

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	(\$5,195)
Total Adjustments (+/-) Enter at Right	\$0

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$30,195
Total Adjustments (+/-)	(\$5,195)
FINAL PENALTY	\$25,000

Footnotes

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

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

SEP 18 2015

CERTIFIED MAIL 91 7108 2133 3936 7157 8002
RETURN RECEIPT REQUESTED

Eddie Hardaway, Jr.
Chairman
Industrial Development Authority of Sumter County
760 Port of Epes Highway
Epes, Alabama 35460

RE: Proposed Unilateral Order
NPDES Permit No. AL0062456
Port of Epes Industrial Complex
Sumter County (119)

Dear Mr. Hardaway:

Enclosed please find a proposed Unilateral Order which, if issued, would require you to take certain actions with regard to alleged violations of applicable environmental laws and regulations. This Order is not final, and we will provide you with an opportunity to present evidence and show cause why this Order should not be made final.

If you wish an opportunity to respond to the allegations contained in the proposed Order, please provide a written response no later than 10 days from the date of receipt of this letter. Your response should be sent to the attention of Nicholas Lowe, Water Division, at the above Montgomery address.

In drafting your response, please direct your attention to each of the Findings in the proposed Order and provide any facts or arguments which you believe are relevant to the alleged violations. Also, provide any additional facts which you believe may mitigate the effect of the violations or explain why the violations occurred.

All proposed Orders assessing a civil penalty are subject to a 30-day public notice and comment period and may be the subject of a public hearing if significant comments are received. If changes are made to the proposed Order in response to public comments, those changes will be sent to you for your further review. Upon completion of the public notice process, the Department will enter the final order, assign the "effective date," and mail a signed original to you. Payment of civil penalties is due within 45 days of the Order's effective date.

Please also carefully review the requirements contained in the "Order" portion of the proposed Order. If certain actions cannot be accomplished within the time proposed or alternative actions would be preferable, please provide suggested changes and reasons why such changes are appropriate. Input from a registered professional engineer or other qualified environmental consultant is preferred. Of course, you have the right to be represented by legal counsel in any proceedings by the Department.

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

In addition, if you would like to have an informal conference with our staff concerning the proposed Order, please either write or call Nicholas Lowe no later than 10 days from the date of receipt of this letter. You need not request an informal conference if you do not desire one or if you feel that you have nothing to add to the written response. If you do not request a conference, we will base our final action upon the evidence we have before us, including your written response. **If the Department has not received a response from you within 10 days from the date of receipt of this letter, the Department will proceed with placing the draft Order on public notice with full intention to issue the Order, as drafted, at the completion of the public notice period.**

If you have questions regarding this matter, please contact Nicholas Lowe at Nicholas.lowe@adem.state.al.us or (334) 271-7811.

Sincerely,

Glenda L. Dean

Glenda L. Dean, Chief
Water Division

GLD/

Enclosure: Proposed Unilateral Order

cc: Tom Johnston/ADEM, Office of General Counsel
Schuyler Espy/ADEM, Office of General Counsel
Daphne Lutz/ADEM, Industrial/Municipal Branch
Emily Anderson/ADEM, Industrial/Municipal Branch
Nicholas Lowe/ADEM, Industrial/Municipal Branch