

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**P O Box 301463 (Zip 36130-1463)****1400 Coliseum Boulevard (Zip 36110-2059)****Montgomery, Alabama 36130-1463****(334) 271-7700****PROPOSED CONSENT ORDER****Account Code: 421****Mobile County**

Pursuant to the provisions of the Alabama Environmental Management Act, the Alabama Department of Environmental Management is proposing to issue a Consent Order to **Mobile Paint Manufacturing Company of Delaware, Inc. dba Mobile Paint Mfg. Co., Inc.** (EPA Identification Number **ALD008163115**), which owns/operates a paint manufacturing facility located at **4775 Hamilton Boulevard in Theodore, Mobile County, Alabama.**

The violation consisted of storage of hazardous wastes for greater than 90 days without a permit or interim status.

The Department is proposing a civil penalty in the amount of **\$11,000**. The Order, if issued, would require **Mobile Paint Manufacturing Company of Delaware, Inc. dba Mobile Paint Mfg. Co., Inc.** to comply with all applicable requirements of Division 14 of the ADEM Administrative Code.

Interested persons may submit written comments, including a request for a hearing, within 30 days of the publication date of this notice to:

Alabama Department of Environmental Management**Attention: Phillip D. Davis, Chief of the Land Division****P. O. Box 301463****Montgomery, Alabama 36130-1463**

The comment period shall end at the close of business 30 days from the publication date of this notice. A copy of the proposed order is available on the ADEM web page at <http://adem.alabama.gov/compInfo/adminOrders.cnt> or may be obtained by written request to the above address. A nominal fee for copying may be charged.

This notice is hereby given **15th day of June, 2016**, by authorization of the Alabama Department of Environmental Management.

Lance R. LeFleur
Director

The Department does not discriminate on the basis of race, color, national origin, sex, religion, age or disability in the administration of its programs.

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Mobile Paint Manufacturing Company of
Delaware, Inc. dba Mobile Paint Mfg. Co., Inc.
Theodore, Mobile County, AL
EPA Identification Number ALD008163115**

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 Mobile Paint Manufacturing Company of Delaware, Inc. dba Mobile Paint Mfg. Co., Inc. (hereinafter "Mobile Paint") 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, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Mobile Paint operates a paint manufacturing facility, with EPA Identification Number ALD008163115, located at 4775 Hamilton Boulevard in Theodore, Alabama. At all times relevant to this action, Mobile Paint was a large quantity generator of hazardous waste, 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, as amended.
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 AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On December 9, 2015, a representative of the Department's Industrial Hazardous Waste Branch, accompanied by a representative of EPA Region 4, conducted a compliance evaluation inspection (CEI) of Mobile Paint. The purpose of the CEI was to determine compliance with all applicable requirements of Division 14 of the ADEM Administrative Code. The CEI and a review of Mobile Paint's compliance revealed the following:

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 to 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.

Mobile Paint stored four 55-gallon drums and one 5-gallon container of hazardous waste on site for more than 90 days, yet did not comply with the requirements of Chapters 335-14-5 and 335-14-8. At the time of the CEI, three of the 55-gallon drums were dated "8/25/15" (106 days) and the fourth drum was dated "8/27/15" (104 days). The 5-gallon container was dated "8/14/15" (116 days). Mobile Paint neither requested an extension of the 90-day limit nor obtained a hazardous waste storage facility permit from the Department.

5. 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 VIOLATIONS:** The Department noted one violation of the ADEM Admin. Code div. 335-14. In arriving at the civil penalty, the Department considered the general nature and magnitude of the violation along with the available evidence of irreparable harm to the environment or threat to the public.

(b) **THE STANDARD OF CARE:** In considering the standard of care manifested by Mobile Paint, the Department noted that the violation listed above was avoidable and, consequently, 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 Mobile Paint as a result of the violation 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 violation.

(e) **HISTORY OF PREVIOUS VIOLATIONS:** Based on a review of Department records, Mobile Paint does not have a documented history of noncompliance with respect to ADEM Admin. Code div. 335-14.

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

(g) **OTHER FACTORS:** The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, and has concluded that the civil penalty herein is appropriate for the violation (see Attachment A, which is made a part of the Department's Contentions).

6. The Department neither admits nor denies Mobile Paint'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.

MOBILE PAINT'S CONTENTIONS

7. On December 9, 2015, a waste related inspection occurred at our facility. An ADEM and EPA representative performed the inspection. The following statements of contention are related to the inspection outcome.

Mobile Paint Manufacturing Company's management team is dedicated to protecting the environment. We take very seriously our role as a responsible member of our community; therefore, protecting the environment extends to our community as well.

Continual Improvement programs have established check and balance measures to ensure compliance and environmental protection. Again, we continually seek ways to increase the protection of our environment and maintain compliance with the local, state, and federal regulations.

8. Mobile Paint neither admits nor denies the Department's contentions. Mobile Paint 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, Mobile Paint, 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 and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Mobile Paint agree to enter into this Special Order by Consent with the following terms and conditions:

A. Mobile Paint agrees to pay to the Department a civil penalty in the amount of \$11,000 in settlement of the violations alleged herein within forty-five days of 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. Mobile Paint 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 methods of payment 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 Consent Order shall reference Mobile Paint's name and address, and the ADEM Administrative Order number of this action.

C. Mobile Paint agrees that, independent of this Consent Order, Mobile Paint shall comply with all terms, conditions, and limitations of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. The Department and Mobile Paint (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 alleged violations cited in this Consent Order.

F. Mobile Paint 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, Mobile Paint 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; Mobile Paint 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 Mobile Paint 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 Mobile Paint'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 Mobile Paint of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**MOBILE PAINT MANUFACTURING
COMPANY OF DELAWARE, INC. D/B/A
MOBILE PAINT MFG. CO., INC.**

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**



(Signature of Authorized Representative)

Philip Moes

(Printed Name)

Technical Director

(Printed Title)

6/7/16

(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A

**Mobile Paint Manufacturing Company of Delaware, Inc.
 dba Mobile Paint Mfg. Co., Inc.
 Theodore, Mobile County
 EPA Identification Number ALD008163115**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to obtain an AHWMA permit for storage	1	\$10,000	\$1000	\$0	
TOTAL PER FACTOR		\$10,000	\$1,000	\$0	\$11,000

Adjustments to Amount of Initial Penalty*		Economic Benefit (+)*	\$0
Mitigating Factors (-)	\$0	Amount of Initial Penalty	\$11,000
Ability to Pay (-)	\$0	Total Adjustments (+/-)	\$0
Other Factors (+/-)	\$0	FINAL PENALTY	\$11,000
Total Adjustments (+/-)	\$0		

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.