

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
P O Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700

PROPOSED CONSENT ORDER

Account Code: 421

Pursuant to the provisions of the Alabama Environmental Management Act, the Alabama Department of Environmental Management is proposing to issue an **Order to Maxwell Air Force Base** (MAFB) for their facility in Montgomery County, Alabama.

The violations listed in the order consist of: (1) failure to minimize the possibility of fire, explosion, or any unpermitted sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or groundwater which could threaten human health or the environment, (2) failure to remedy any deterioration or malfunction of equipment or structures which the inspection reveals on a schedule which ensures that the problem does not lead to an environmental or human health hazard, (3) failure to attempt to make the required arrangements with ADEM Field Operations Division.

The Department is proposing a civil penalty in the amount of \$19,125.00. MAFB shall be required to: (1) comply with all terms, conditions, and limitations of the Alabama Hazardous Wastes Management and Minimization Act, and (2) pay to the Department a civil penalty in the amount of \$19,125.00.

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: Mr. 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: www.adem.state.al.us or may be obtained by written request to the above address. A nominal fee for copying may be charged.

This notice is hereby given September____, 2014, by authorization of the Alabama Department of Environmental Management.

Lance R. Lefleur
Director

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF

**United States Department of the Air Force
Maxwell Air Force Base
US Hwy. 31
Maxwell AFB, AL 36112**

Consent Order NO. 14-XX-CHW

USEPA ID NUMBER ALO 570 024 182

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") and Maxwell Air Force Base (hereinafter "MAFB" or "Operator"), pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (AHWMMA), Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the ADEM Administrative Code, promulgated thereunder.

STIPULATIONS

1. Maxwell Air Force Base (MAFB) is owned and operated by the United States Department of the Air Force. MAFB is used by the Air Force for training and flight operation purposes. MAFB also performs airplane maintenance procedures that support the flight operations. MAFB is located in Montgomery, AL in Montgomery County. MAFB is assigned EPA Identification Number ALO 570 024 182.

2. The Alabama Department of Environmental Management 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, 42 U.S.C. §§ 6901 to

6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.).

Department's Contentions

4. On August 20, 2013, a Compliance Evaluation Inspection (CEI) was conducted by the Governmental Compliance & Enforcement Unit. During this CEI at MAFB, the following violations of the ADEM Administrative Code were observed.

A. ADEM Admin. Code r. 335-14-3-.03(5)(a)4, incorporating ADEM Admin. Code r. 335-14-6-.03(2) states that facilities must be maintained and operated to minimize the possibility of fire, explosion, or any unpermitted sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or groundwater which could threaten human health or the environment. While operating a bead blasting unit in the paint shop at MAFB, spent bead blasting waste was released from the unit onto the concrete pad and soil that surrounds the unit. Analysis of the spent bead blast shows that the material is a hazardous waste.

B. ADEM Administrative Code r. 335-14-3-.03(5)(a)4, incorporating ADEM Admin. Code r. 335-14-6-.02(6)(c), states that the owner or operator must remedy any deterioration or malfunction of equipment or structures which the inspection required by ADEM Administrative Code r. 335-14-6-.02(6)(a) reveals, on a schedule which ensures that the problem does not lead to an environmental or human health hazard. Where a hazard is imminent or has already occurred, remedial action must be taken immediately. Additionally ADEM Administrative Code r. 335-14-6-.02(6)(a)2 states that the owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment. MAFB failed to remedy the bead blast unit in the paint shop which led to the release of the spent bead blast waste to the environment.

C. ADEM Administrative Code r. 335-14-3-.03(5)(a)4., incorporating ADEM Admin. Code r. 335-14-6-.03(8)(a)3, states that the owner or operator must attempt to make the following arrangements, as appropriate for the type of waste handled at this facility and the potential need for the services of these organizations: Agreements with ADEM Field Operations Division, emergency response contractors and equipment suppliers. MAFB failed to attempt to make an arrangement with ADEM Field Operations Division seeking its services for the type of waste handled at the facility.

5. As a result of the inspection, the Department issued a Notice of Violation on September 24, 2013, that cited violations of the ADEM Administrative Code.

6. 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 violations, 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 violations 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 VIOLATION: The violations involved the failure of MAFB to adhere to the ADEM Administrative Code. These violations resulted in a release of hazardous waste to the environment.

B. THE STANDARD OF CARE: By committing these violations, MAFB did not exhibit a standard of care sufficient to prevent the violations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that there was no economic benefit gained by MAFB as a result of the violations referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Upon discovery of this release, MAFB immediately initiated efforts to prevent future releases from the bead blasting unit.

E. HISTORY OF PREVIOUS VIOLATIONS: MAFB has received one Warning Letter since August 2003.

F. THE ABILITY TO PAY: The Operator 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 (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$19,125 is appropriate and consistent with the historical penalty range imposed by the Department for similar violations.

7. The Department neither admits nor denies the Operator's contentions, which are set forth below. 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.

OPERATOR'S CONTENTIONS

8. MAFB has a robust and thorough environmental management program with an outstanding record of compliance. The circumstances that led to the bead blast waste on the concrete pad were unique and atypical of the meticulous approach MAFB takes regarding protection of the environment. MAFB immediately reacted to the bead blast waste when discovered during the inspection, and made significant changes to the operational procedures

to ensure that a condition like this does not occur again. On the day of the inspection, MAFB's environmental management team conducted tests on the soil adjacent to the concrete pad that showed results of non-detect for any hazardous constituents. Further, MAFB instituted secondary containment for the collection barrel, even though this is not standard or required. In addition, the bead blast unit was replaced with a new unit at a cost of \$53,000.00. MAFB takes our environmental responsibilities very seriously and devotes substantial resources to ensure it remains in compliance, and protects the health and safety of our people.

9. MAFB neither admits nor denies the Department's contentions. MAFB consents to abide by the terms of this Consent Order.

ORDER

Therefore, MAFB, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to the Department and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18) (2006 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 MAFB agree to enter into this Consent Order with the following terms and conditions:

A. That, immediately upon receipt of this Order and continuing thereafter, MAFB shall comply with all terms, conditions, and limitations of the Alabama Hazardous Wastes Management and Minimization Act, Ala. Code §§ 22-30-1 to 22-30-24 (2006 Rplc. Vol.), and the regulations promulgated thereto.

B. That, not later than sixty (60) days from the date of receipt of this Consent Order, MAFB shall pay to the Department a civil penalty in the amount of **\$19,125** for the violations cited in this Order. Said penalty due pursuant to this 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, AL 36130-1463**

Any payment submitted to the Department pursuant to this order shall reference MAFB's name and address, and the ADEM Administrative Order number of this action.

C. 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.

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

E. For purposes of this Consent Order only, MAFB 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. MAFB reserves the right to request removal under federal law.

F. MAFB anticipates that all obligations arising under this order will be fully funded. However, any requirement for the payment or obligation of funds by MAFB established by the terms of this order shall be subject to the availability of funds, and no provision herein shall be interpreted to require obligation of funds in violation of the Anti-Deficiency Act (ADA), 31 USC sec. 1341. In cases where payment or obligation of funds would constitute a violation of the ADA, the dates established requiring the payment or obligations of such funds shall be appropriately adjusted.

G. 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; MAFB agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order that address new matters not raised in this Consent Order.

H. The Department and MAFB 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 MAFB hereby waives any hearing on the terms and conditions of same.

I. The Department and MAFB agree that this Consent Order shall not affect the Operator's obligation to comply with any federal, State, or local laws or regulations.


J. The Department and MAFB 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 herein shall remain in full force and effect.

K. The Department and MAFB agree that any modifications of this Consent Order must be agreed to in writing and signed by both parties.

L. The Department and MAFB 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 MAFB of its obligations to comply in the future with any permit coverage.

Executed in duplicate, with each part being an original.

United States Department of the Air Force
Maxwell Air Force Base



Andrea D. Tullos
Colonel, USAF
Commander, 42d Air Base Wing

Alabama Department of
Environmental Management

Lance R. Lefleur
Director

Date Signed: 28 Aug 14

Date Signed: _____

ATTACHMENT A

Penalty Synopsis Worksheet

Maxwell Air Force Base
US EPA ID NUMBER ALO 570 024 182

Violation*	Number of Violations *	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
MAFB failed to properly operate a bead blast unit in the paint shop to prevent the release of the spent bead blasting waste.	1	\$10000	\$10000	\$00
MAFB failed to maintain the bead blast unit to prevent the release of the spent bead blasting waste.	1	\$2500	\$2500	\$00
MAFB failed to submit a copy of their current contingency plan to the ADEM Field Operations Division.	1	\$250	\$250	\$00

Economic Benefit*:	\$00
Mitigating Factors:	\$00
Ability to Pay*:	\$00
Other Factors:	\$6375
Total Civil Penalty:	\$19,125