

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

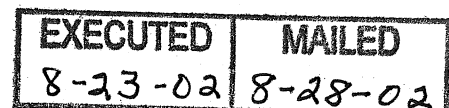
BAILEY PVS OXIDES, LLC
830 TIN MILL ROAD
FAIRFIELD, ALABAMA
USEPA ID NUMBER ALD980600456

CONSENT ORDER NO. 02-226-CHW

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 Management and Minimization Act, Code of Alabama (1975), §§ 22-30-1 through 22-30-24, as amended, the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code R.") promulgated pursuant thereto, and the federal Solid Wastes Disposal Act, 42 U.S.C. §§ 6901 through 6992k, as amended, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Alabama Department of Environmental Management (hereinafter "the Department") makes the following FINDINGS:

1. Bailey PVS Oxides, LLC (hereinafter "BPO") operates a facility in Fairfield, Alabama, which has been assigned EPA ID Number ALD980600456. BPO generates less than 100 kilograms of hazardous waste in a month.



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 hazardous waste regulations in accordance with the federal Solid Waste Disposal Act, 42 U.S.C. §§ 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. 335-14-8-.01(1)(c) of Alabama's Hazardous Wastes Management and Minimization Act (AHWMMA) requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in ADEM Admin. Code R. 335-14-2.

6. An inspection of the BPO facility at 830 Tin Mill Road , Fairfield, Alabama was conducted by ADEM on July 13, 2001 to determine compliance with the requirements of ADEM Admin. Code R. 335-14. BPO management was not present at the time of the inspection. A BPO maintenance employee, Mr. Glenn Carter was present at the time of the inspection.

7. As a result of the inspection, BPO was issued a Preliminary Inspection Report, dated July 13, 2001, that included observations that methyl ethyl ketone (MEK), a hazardous

waste (F005) when spent, which was used to clean paint spray guns and waste paint, had been burned on-site and that MEK used to flush the paint gun had been sprayed into the acid sump. The burning and spraying into the acid tank of the MEK are methods that were intended to render the waste non-hazardous or less hazardous and, as such, constitute "treatment" as defined by ADEM Admin Code 335-14-1-.02(1).

8. BPO's September 19, 2001 response to the ADEM's July 13, 2001 Preliminary Inspection Report indicated that "The use of MEK at the facility has been completely eliminated."

9. A brief follow-up visit to the BPO facility at 830 Tin Mill Road, Fairfield, Alabama was conducted by ADEM on October 19, 2001 with Mr. Keith Bialko, BPO Vice President of Operations, present at the time of the visit. BPO was issued a Preliminary Inspection Report, dated October 19, 2001, indicating concerns about the MEK disposal and the possible release/contamination of the environment.

10. BPO's March 22, 2002 response to the ADEM's October 19, 2001 Preliminary Inspection Report indicated that "five locations were identified by plant personnel as being most likely to have been contaminated with MEK. Samples were collected from these areas and analyzed using EPA Method 8260 by Guardian Systems, Inc. MEK levels in all five samples were below detection limits. Also as stated earlier, the use of MEK at this facility has been completely discontinued." Chain of Custody records and the laboratory analysis for the samples were attached.

11. On August 13, 2002, ADEM issued a Notice of Violation (NOV) for failure to make a hazardous waste determination and treatment of hazardous waste without a permit. A

copy of the Notice of Violation was faxed to BPO by ADEM. BPO was then telephoned to verify that it had been received

12. BPO has the ability to pay the penalty ordered in this matter.

13. BPO neither agrees nor disagrees with the Findings presented in this Consent Order, but, in an effort to cooperate with the Department and to comply with the provisions of the Alabama Hazardous Wastes Management and Minimization Act, has consented to the terms of this Consent Order.

14. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Consent Order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-30-19(a) and (b), and 22-30-20, as amended, and with the consent of BPO, it is hereby ORDERED:

A. That, immediately upon the effective date of this Consent Order and continuing thereafter, BPO must ensure that solid waste generated at its facility receives a proper hazardous waste determination in accordance with ADEM Admin. Code R. 335-14-3-.01(2).

B. That, immediately upon receipt of this Order and continuing thereafter, BPO must not treat hazardous waste without first obtaining a hazardous waste permit as required by ADEM Admin. Code R. 335-14-8-.01(1)(c).

C. That BPO shall, within thirty (30) days of the effective date of this Consent Order, provide to the Department a written plan describing in detail the actions to be taken to prevent the violations described in this Consent Order from occurring in the future.

D. That BPO shall pay to the Department a civil penalty in the amount of Three Thousand Dollars (\$3,000) not later than thirty (30) days after the effective date of this Consent Order.

E. That 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
P.O. Box 301463
Montgomery, Alabama 36130-1463

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

F. 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.

G. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

H. That BPO is not relieved from any liability if it fails to comply with any provision of this Consent Order.

I. That, for purposes of this Consent Order only, BPO agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. BPO also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, BPO shall be limited to the defenses of *Force Majeure*, compliance with this Agreement, and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of BPO, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to be beyond the reasonable control of BPO) and which delays or prevents performances by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of thirty (30) days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control

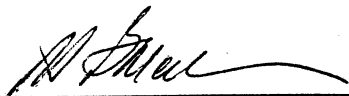
and without the fault of BPO, the Department may extend the time as justified by the specific circumstances.

J. 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 concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations shall 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, and BPO shall not 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.

K. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and BPO does hereby waive any hearing on the terms and conditions of same.

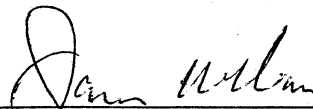
BAILEY PVS OXIDES, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



Richard A. Barcelona

President



James W. Warr

Director

Date Signed: 8/19/02

Date Signed: 23 AUG 2002