

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**KMG-Bernuth, Inc.  
Tuscaloosa, Tuscaloosa County, Alabama  
EPA Identification Number ALD981923832**

Consent Order No. 20-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 KMG-Bernuth, Inc. (hereinafter “KMG-Bernuth”) 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. KMG-Bernuth operates a pentachlorophenol wood treatment chemical processing and distribution facility with EPA Identification Number ALD981923832, located at 2901 3rd Street in Tuscaloosa, Tuscaloosa County, Alabama. KMG-Bernuth, as a result of its operations at the facility, was a large quantity generator, as that term is defined in ADEM Admin. Code Div. 14, at all times relevant to this action.

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), 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 September 19, 2019, representatives of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection (hereinafter "CEI") of KMG-Bernuth to determine compliance with all applicable requirements of Division 14 of the ADEM Administrative Code. The CEI and a review of KMG-Bernuth's compliance revealed the following:

- (a) ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste" as identified or listed in Chapter 335-14-2. ADEM Admin. Code r. 335-14-3-.01(7)(a)1. provides in pertinent part that a large quantity generator may accumulate hazardous waste for no more than 90 days without a permit.

KMG-Bernuth stored twelve 1-cubic yard containers of hazardous waste (F027) on site for longer than 90 days without first obtaining an accumulation time limit extension or a hazardous waste storage permit.

- (b) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv)a., a large quantity generator accumulating hazardous waste, must maintain the job title for each position at the facility related to hazardous waste management, and the name of the employee filling each job.

KMG-Bernuth failed to maintain records of the job titles for each position at the facility engaged in hazardous waste management.

- (c) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv)b., a large quantity generator accumulating hazardous waste, must maintain a written job description for each position listed under 335-14-3-.01(7)(a)7.(iv)a (positions related to hazardous waste management).

KMG-Bernuth failed to maintain records of the written job description for each position at the facility engaged in hazardous waste management.

- (d) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv)c., a large quantity generator accumulating hazardous waste must maintain a written description of

the type and amount of both introductory and continuing training that will be given to each person filling a position listed under 335-14-3-.01(7)(a)7.(iv)a (hazardous waste management).

KMG-Bernuth failed to maintain a written description of the type and amount of both introductory and continuing training for each position at the facility engaged in hazardous waste management.

- (e) Pursuant to pertinent provisions of ADEM Admin. Code r. 335-14-3-.01(7)(a)10.(ii), a large quantity generator accumulating hazardous waste, must prevent unknowing entry, and minimize the possibility for unauthorized entry, of persons or livestock into the central accumulation area. Unless exempt under 335-14-3-.01(7)(a)10., a sign with the legend, "Danger--Unauthorized Personnel Keep Out", must be posted at each entrance to the central accumulation area, and at other locations, in sufficient numbers to be seen from any approach.

KMG-Bernuth failed to post the required warning signs at the entrances to both the 7-block dissolver and 10-block dissolver central accumulation areas.

- (f) Pursuant to ADEM Admin. Code rs. 335-14-3.01(7)(a)1.(viii) and 335-14-6-.09(6)(b), a large quantity generator's container storage area must be designed and operated with a base which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed.

5. KMG-Bernuth failed to maintain a containment system such that it was free of cracks and gaps. The concrete floor for the central accumulation area in the 7-block dissolver building had cracks near the bay door entrance.

6. On October 4, 2019, the Department issued to KMG-Bernuth a Notice of Violation citing violations of the hazardous waste program regulations that were observed or existed at the time of the September 19, 2019, CEI.

7. On January 1, 2020, the Department received KMG-Bernuth's response to the November 14, 2019, Notice of Violation.

8. Pursuant to Ala. Code § 22-22A-5(18), 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 this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATIONS:** In arriving at the civil penalty, the Department considered the general nature and magnitude of the violations along with the 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 KMG-Bernuth, the Department noted that the violations described above were non-technical and easily avoidable. Consequently KMG-Bernuth has failed to exhibit a standard of care commensurate with the 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 KMG-Bernuth 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 violations referenced herein.

(e) **HISTORY OF PREVIOUS VIOLATIONS:** Based on a review of Department records, KMG-Bernuth has no history of previous violations.

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

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

9. The Department neither admits nor denies KMG-Bernuth'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.

#### **FACILITY'S CONTENTIONS**

10. KMG-Bernuth asserts the company exercised due care and worked in good faith at all times applicable to this Order to manage F027 hazardous wastes in a compliant manner at the Facility. KMG self-reported the potential noncompliance situation to ADEM seeking an extension of the 90-day accumulation time limit upon notice from the permitted offsite disposal facility, Swan Hill Treatment Centre in Edmonton, Alberta, Canada, of its inability to accept the wastes in a timely manner.

11. KMG-Bernuth asserts that the limited exceedance of the 90-day onsite waste storage limit for certain F027 hazardous wastes resulted from circumstances beyond the company's control involving short term, unanticipated storage capacity and site logistical issues at the permitted offsite disposal facility. KMG-Bernuth further asserts that to the best of its knowledge no other options were available to meet the 90-day onsite storage limit.

12. KMG-Bernuth asserts the company took immediate action to address the violations detailed in ADEM's NOV as confirmed in the company's written communications to ADEM dated November 14, 2019 and December 12, 2019 including offsite shipment of certain F027 hazardous waste to the permitted offsite disposal facility.

13. KMG-Bernuth has worked diligently to respond to the fire incident at the Facility and to collaborate with all governmental authorities and the community to address all fire-related impacts in a compliant manner.

14. KMG-Bernuth enters into this Consent Order to fully resolve all noncompliance matters identified herein without any admission of liability on the part of the company.

15. KMG-Bernuth neither admits nor denies the Department's contentions. KMG-Bernuth consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein.

### **ORDER**

Therefore, without admitting that it has violated any statutes or regulations, KMG-Bernuth, 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 KMG-Bernuth agree to enter into this Special Order by Consent with the following terms and conditions:

A. KMG-Bernuth agrees to pay to the Department a civil penalty in the amount of **\$14,600** in settlement of the violations alleged herein within forty-five days of the effective date of this Special Order by Consent. 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. KMG-Bernuth agrees that all penalties due pursuant to this Special Order by Consent 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 Special Order by Consent shall reference KMG-Bernuth's name and address, and the ADEM Administrative Order number of this action.

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

F. KMG-Bernuth agrees that it is not relieved from any liability if it fails to comply with any provision of this Special Order by Consent.

G. For purposes of this Special Order by Consent only, KMG-Bernuth 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 Special Order by Consent 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 Special Order by Consent, 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; KMG-Bernuth agrees

not to object to such future orders, litigation, or enforcement action based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement action address new matters not raised in this Special Order by Consent.

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

J. The parties agree that this Special Order by Consent shall not affect KMG-Bernuth's obligation to comply with any federal, State, or local laws or regulations.

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

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

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



Executed in duplicate, with each part being an original.

**FACILITY**

*KM6-Bernuth, Inc.*

*[Handwritten Signature]*

(Signature of Authorized Representative)

*Charles T. Leen*

(Printed Name)

*Vice President*

(Printed Title)

*2/10/20*

(Date Signed)

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**

\_\_\_\_\_  
Lance R. LeFleur  
Director

\_\_\_\_\_  
(Date Executed)

**Attachment A**  
 KMG-Bernuth, Inc.  
 Tuscaloosa, Tuscaloosa  
 Facility ID No. ALD981923832

<b>Violation</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violation*</b>	
Unpermitted storage of hazardous waste	1	\$10,000	\$1,000	\$0	
Failure to document the job titles for each position at the facility engaged in hazardous waste management	1	\$100	\$50	\$0	
Failure to maintain a written job description for each position at the facility engaged in hazardous waste management	1	\$100	\$50	\$0	
Failure to document introductory and continuing training for each position at the facility engaged in hazardous waste management	1	\$1,000	\$500	\$0	
Failure to post the required warning signs at the entrances to the two hazardous waste central accumulation areas	1	\$200	\$100	\$0	
Failure to maintain a hazardous waste containment system free of cracks and gaps	1	\$1,000	\$500	\$0	<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		\$12,400	\$2,200	\$0	\$14,600

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	\$0
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$14,600
Other Factors (+/-)	\$0	Total Adjustments (+/-)	\$0
<b>Total Adjustments (+/-) Enter at Right</b>	<b>\$0</b>	<b>FINAL PENALTY</b>	<b>\$14,600</b>

Footnotes

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