

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Aerostar Industries, Inc.
Huntsville, Madison County, Alabama
EPA Identification Number ALD983191776**

Consent Order No. 19-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 Aerostar Industries, Inc. (hereinafter “Aerostar”) 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. Aerostar Industries, Inc. (hereinafter “Aerostar”), a foreign corporation, operates a metal finishing facility with EPA Identification Number ALD983191776, located at 215 Wholesale Avenue in Huntsville, Madison County, Alabama. Aerostar, as a result of its operations at the facility, was a small 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 February 8, 2019, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection (hereinafter "CEI") of Aerostar. The CEI and a review of Aerostar's compliance showed the following:

- (a) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(d), a small quantity generator who accumulates hazardous waste for more than 180 days is subject to the requirements of 335-14-5 through 9, unless it has been granted an extension to the 180-day period. 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.

Aerostar stored approximately 19 containers of hazardous waste onsite for more than 180-days without obtaining a permit and had not been granted an extension to the 180-day period.

- (b) Pursuant to ADEM Admin. Code r. 335-14-3-.01(2), a person who generates a solid waste, as defined in 335-14-2-.01(2), must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable AHWMMMA regulations.

Aerostar failed to make a hazardous waste determination on solid wastes generated at the facility.

- (c) Pursuant to ADEM Admin. Code r. 335-14-3-01(6)(b)6.(i)a, a small quantity generator must mark or label its containers of hazardous waste with the Words "Hazardous Waste."

Aerostar failed to label nineteen 55-gallon drums located in the paint shop with the words "Hazardous Waste."

- (d) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)6.(i)c, a small quantity generator must mark or label its containers of hazardous waste with the date upon which each period of accumulation begins clearly visible for inspection on each container.

Aerostar failed to mark accumulation start dates on nineteen 55-gallon drums located in the painting shop.

- (e) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)4., satellite accumulation containers holding hazardous waste must be closed unless adding or removing waste.

Aerostar failed to keep closed a 55 gallon satellite accumulation drum holding hazardous waste located at the painting booth and a 35 gallon satellite accumulation drum holding hazardous waste located at the distiller.

- (f) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)5., satellite accumulation containers must be labeled with the words "Hazardous Waste" and an indication of the hazards of the contents.

Aerostar failed to properly label a 55 gallon satellite accumulation drum holding hazardous waste located at the painting booth and a 35 gallon satellite accumulation drum holding hazardous waste located at the distiller.

- (g) Pursuant to ADEM Admin. Code r. 335-14-3-.01(2)(f)4., A small or large quantity generator must maintain sufficient documentation to demonstrate the quantity of hazardous waste generated each calendar month.

Aerostar failed to maintain documentation of the amount of hazardous waste generated each month.

- (h) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)2.(iv), a small quantity generator must inspect the central accumulation area at least weekly.

Aerostar failed to conduct weekly inspections of the central accumulation area.

- (i) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)10., facility personnel whose duties have a direct effect on hazardous waste management and/or hazardous waste accumulation must receive training.

Aerostar failed to provide hazardous waste training to employees that handle hazardous waste.

- (j) Pursuant to ADEM Admin. Code r. 335-14-3-.01(6)(b)8.(vi)b., a small quantity generator shall maintain records documenting the arrangements with the local fire department as well as any other organization necessary to respond to an emergency.

Aerostar failed to maintain documentation of arrangements with emergency responders.

- (k) Pursuant to ADEM Admin. Code r. 335-14-3-.01(8)(d)1., a small quantity generator must submit a correct and complete ADEM Form 8700-12 reflecting current waste activities to the Department annually.

Aerostar failed to submit an ADEM Form 8700-12 annually. The last notification received was 2013.

5. On February 21, 2019, the Department issued a Notice of Violation to Aerostar, which cited violations of the hazardous waste program regulations that were documented during the February 8, 2019, CEI.

6. On March 20, 2019, the Department received Aerostar's response to the February 21, 2019, Notice of Violation.

7. 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 AeroStar, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, AeroStar 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 AeroStar 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, AeroStar has no history of previous violations.

(f) THE ABILITY TO PAY: AeroStar 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).

8. The Department neither admits nor denies AeroStar'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

9. AeroStar neither admits nor denies the Department's contentions. AeroStar

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, AeroStar, 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 AeroStar agree to enter into this Special Order by Consent with the following terms and conditions:

A. AeroStar agrees to pay to the Department a civil penalty in the amount of \$13,000 in settlement of the violations alleged herein within one hundred eighty days of the issuance of this Special Order by Consent. Failure to pay the civil penalty within this timeframe may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. AeroStar 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 AeroStar's name and address, and the ADEM Administrative Order number of this action.

C. Aerostar agrees that, independent of this Special Order by Consent, Aerostar 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 Aerostar (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. Aerostar 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, Aerostar 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; Aerostar 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 Aerostar 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 Aerostar'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 Aerostar of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

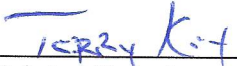
FACILITY

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT




(Signature of Authorized Representative)

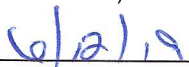
Lance R. LeFleur
Director



(Printed Name)



(Printed Title)



(Date Signed)

(Date Executed)

Attachment A

Aerostar Industries, Inc.

Huntsville, Madison County

Facility ID No. ALD983191776

| Violation | Number of Violations* | Seriousness of Violation* | Standard of Care* | History of Previous Violation* | |
|---|------------------------------|----------------------------------|--------------------------|---------------------------------------|-------------------------------|
| Failure to obtain a permit prior to storing hazardous waste on-site for greater than 90 days. | 1 | \$10,000 | \$1,000 | \$0 | |
| Failure to make a hazardous waste determination on all wastes generated at the facility. | 1 | \$1,000 | \$100 | \$0 | |
| Failure to label hazardous waste containers with the words "Hazardous Waste". | 1 | \$100 | \$100 | \$0 | |
| Failure to mark hazardous waste containers with accumulation start dates. | 1 | \$100 | \$100 | \$0 | |
| Failure to keep closed hazardous waste satellite accumulation containers. | 1 | \$100 | \$100 | \$0 | |
| Failure to label satellite accumulation containers as required. | 1 | \$100 | \$100 | \$0 | |
| Failure to document the amount of hazardous waste generated each month. | 1 | \$100 | \$100 | \$0 | |
| Failure to conduct weekly inspections of the central accumulation area. | 1 | \$500 | \$250 | \$0 | |
| Failure to provide hazardous waste training to employees that handle hazardous waste. | 1 | \$1,000 | \$500 | \$0 | |
| Failure to maintain documentation of arrangements with emergency responders. | 1 | \$100 | \$100 | \$0 | |
| Failure to make annual notification (ADEM Form 8700-12) since 2013. | 1 | \$100 | \$100 | \$0 | |
| TOTAL PER FACTOR | | \$13,200 | \$2,550 | \$0 | Total of Three Factors |
| | | | | | \$15,750 |

Adjustments to Amount of Initial Penalty

| | | | |
|---|-------------------|---------------------------|-----------------|
| Mitigating Factors (-) | \$0 | Economic Benefit (+) | \$0 |
| Ability to Pay (-) | \$0 | Amount of Initial Penalty | \$15,750 |
| Other Factors (+/-) | \$(-2,750) | Total Adjustments (+/-) | \$(-2,750) |
| Total Adjustments (+/-) Enter at Right | \$(-2,750) | FINAL PENALTY | \$13,000 |

Footnotes

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