

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Benjamin Moore and Company
Pell City, St. Clair County, Alabama
USEPA ID Number ALD981472798**

Consent Order No. 23-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and Benjamin Moore and Company (“Benjamin Moore”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (“AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Benjamin Moore operates a paint and coating manufacturing facility (the “Facility”) with EPA Identification Number ALD981472798, located at 109 Bamberg Drive in Pell City, St. Clair County, Alabama. Benjamin Moore, as a result of its operations at the Facility, was a large quantity generator of hazardous waste and a small quantity handler of universal waste, as those terms are 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-17, 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 November 17, 2022, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection ("CEI") of Benjamin Moore. The CEI and a review of Benjamin Moore's compliance showed the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)2., if waste is placed in tanks, a large quantity generator must comply with the applicable requirements of 335-14-6-.28, which incorporates by reference 40 CFR, Part 265, Subpart BB [including 40 CFR 264.1052 through 1057, which require, in part, the owner or operator to perform leak detection and repair monitoring].

Benjamin Moore failed to perform required leak detection and repair monitoring of all ancillary equipment associated with the hazardous waste storage tank.

(b) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)2., if waste is placed in tanks, a large quantity generator must comply with the applicable requirements of 335-14-6-.28, which incorporates by reference 40 CFR, Part 265, Subpart BB [including 40 CFR 265.1050(c), which requires each piece of equipment subject to Subpart BB to be marked in such a manner that it can be distinguished readily from other pieces of equipment].

Benjamin Moore failed to mark all subject pieces of ancillary equipment connected to the hazardous waste storage tank.

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)2., if waste is placed in tanks, a large quantity generator must comply with the applicable requirements of 335-14-6-.29, which incorporates by reference 40 CFR, Part 265, Subpart CC [including 40 CFR 265.1089(a), which requires the owner or operator to inspect and monitor air emission control equipment].

Benjamin Moore failed to perform required leak detection and repair monitoring of all tank vents connected to the hazardous waste storage tank.

(d) 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.

Benjamin Moore failed to provide a waste determination on two 55-gallon containers of material located at the Reclamation Area.

(e) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)4., a container holding hazardous waste must be closed at all times except when adding, removing or consolidating waste.

Benjamin Moore failed to keep closed one 55-gallon satellite accumulation drum located at the Reclamation Area.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)5.(i), a generator must mark or label its container with the words "Hazardous Waste".

Benjamin Moore failed to mark or label the following satellite accumulation containers with the words "Hazardous Waste":

- One 55-gallon container located at the Reclamation Unit,
- Four 55-gallon containers located at the Low Flash Large Batch Filling Area, and
- Ten 55-gallon containers located at the Low Flash Small Batch Filling Area.

(g) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)5.(ii), a generator must mark or label its container with an indication of the hazards of the contents.

Benjamin Moore failed to mark or label the following satellite accumulation containers with an indication of the hazards of the contents:

- One 55-gallon container located at the Reclamation Unit, and
- Ten 55-gallon containers located at the Low Flash Small Batch Filling Area.

(h) Pursuant to ADEM Admin. Code r. 335-14-3-.01(5)(a)6.(iii), a generator who accumulates either acute hazardous waste or non-acute hazardous waste in excess of the amounts listed in 335-14-3-.01(5)(a) at or near any point of generation must mark or label the container(s)

holding the excess accumulation of hazardous waste with the date the excess amount began accumulating.

Benjamin Moore failed to mark or label the following satellite accumulation containers with the date the excess amount began accumulating:

- Four 55-gallon containers located at the Low Flash Large Batch Filling Area, and
- Ten 55-gallon containers located at the Low Flash Small Batch Filling Area.

(i) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(i)c., a large quantity generator must mark or label its containers with the date upon which each period of accumulation begins clearly visible for inspection on each container.

Benjamin Moore failed to mark one 55-gallon container of hazardous waste located in the central hazardous waste accumulation area with an accumulation start date.

(j) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(iv)b., the large quantity generator must maintain records of the written job description for each position listed under 335-14-3-.01(7)(a)7.(iv)a. This description may be consistent in its degree of specificity with descriptions for other similar positions in the same company location or bargaining unit, but must include the requisite skill, education, or other qualifications, and duties of facility personnel assigned to each position.

Benjamin Moore failed to include a description of the waste management duties personnel holding each position would be required to perform in the job descriptions for employees that handle hazardous waste at BMC.

(k) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)2., which references 335-14-6-.10(6)(b)2., a generator must inspect at least once each operating day aboveground portions of the tank system to detect corrosion or releases of waste.

Benjamin Moore failed to conduct tank inspections once each operating day, including weekends and holidays.

5. On January 20, 2023, the Department issued a Notice of Violation to Benjamin Moore, which cited violations of the hazardous waste regulations that were discovered during the CEI and subsequent record review.

6. On February 27, 2023, the Department received Benjamin Moore's response to the aforementioned 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 determining the seriousness of the violations, 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) **STANDARD OF CARE:** In considering the standard of care manifested by Benjamin Moore, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Benjamin Moore 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 Benjamin Moore 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 alleged violations.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Benjamin Moore has a history of similar violations and the penalty reflects that history.

(f) ABILITY TO PAY: The Department does not have any evidence indicating that Benjamin Moore is unable 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 Benjamin Moore'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. Following the CEI, Benjamin Moore answered each of the Department's contentions.

10. Specifically, by letter dated February 24, 2023, Benjamin Moore detailed all actions taken to address each of the Department's contentions.

11. None of the conditions cited by the Department currently exist at Benjamin Moore's Pell City Plant.

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

A. Benjamin Moore agrees to pay to the Department a civil penalty in the amount of \$31,080 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. Benjamin Moore 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 Benjamin Moore's name and address, and the ADEM Administrative Order number of this action.

C. Benjamin Moore agrees that, independent of this Special Order by Consent, Benjamin Moore 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 Benjamin Moore (“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. Benjamin Moore 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, Benjamin Moore 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 actions as may be appropriate. Benjamin Moore agrees not to object to such future orders, litigation, or enforcement actions based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement actions 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 Benjamin Moore 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 Benjamin Moore'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 is 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 Benjamin Moore of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

BENJAMIN MOORE AND COMPANY

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Adam M Power

(Printed Name)

Director of Manufacturing

(Printed Title)

5/8/23

(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A

Benjamin Moore and Company
 Pell City, St. Clair County
 Facility ID No. ALD981472798

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*
Failure to perform leak detection and repair monitoring of ancillary equipment	1	\$10,000	\$2,500	\$1,000
Failure to mark ancillary equipment	1	\$2,500	\$1,250	\$1,000
Failure to perform leak detection and repair monitoring of tank vents	1	\$10,000	\$2,500	\$1,000
Failure to perform waste determinations	1	\$2,500	\$250	\$250
Failure to keep satellite accumulation containers closed	1	\$200	\$100	\$100
Failure to mark or label satellite accumulation containers with the words "Hazardous Waste"	1	\$200	\$100	\$100
Failure to mark or label satellite accumulation containers with an indication of the hazards of the contents	1	\$200	\$100	\$0

Failure to mark satellite accumulation containers with accumulation start dates within three days of exceeding 55 gallons	1	\$200	\$100	\$0	
Failure to mark containers of hazardous waste with an accumulation start date	1	\$200	\$100	\$0	
Failure to include all required information in written job descriptions	1	\$200	\$100	\$100	
Failure to inspect hazardous waste storage tanks daily	1	\$1,000	\$500	\$500	Total of Three Factors
TOTAL PER FACTOR		\$27,200	\$7,600	\$4,050	\$38,850

Adjustments to Amount of Initial Penalty

Economic Benefit (+)	\$0
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	-\$7,770

Amount of Initial Penalty	\$38,850
Total Adjustments (+/-)	-\$7,770
FINAL PENALTY	\$31,080

Footnotes

* See the "FINDINGS" portion of the Order for a detailed description of each violation and the penalty factors.