

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF _____

PEMCO AEROPLEX, INC.

)
)
) ORDER NO. 96-140-CHW
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)

FINDINGS OF FACT

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 of 1978, ("AHWMMA"), Code of Alabama 1975, §§ 22-30-1 through 22-30-20, as amended, the Alabama Department of Environmental Management ("ADEM" or "the Department") makes the following FINDINGS OF FACT:

1. PEMCO Aeroplex, Inc. is a large aircraft refurbishing facility that is a large quantity generator of hazardous waste solvent, paint, and paint related material in Jefferson County, Alabama.

2. Personnel from the Alabama Department of Environmental Management performed a compliance evaluation inspection at PEMCO on August 30, 1995 that resulted in a Notice of Violation ("NOV") dated December 8, 1995. On April 30, 1996, a follow-up inspection was performed by ADEM personnel. The facility had repeat generator violations during this follow-up. These disposal violations were documented in a May 30, 1991 NOV from the RCRA Compliance Branch, in an April 13, 1994 NOV from the RCRA Compliance Branch, again in a December 8, 1995 NOV from the RCRA Compliance Branch, and were documented again during the April 30, 1996 follow-up inspection. The RCRA Compliance Branch issued PEMCO a letter dated May 29, 1996, documenting their noncompliance and informing them of the

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Department's intent to issue formal enforcement action against the company.

3. The following is a list of alleged violations by PEMCO documented by ADEM:

a. ADEM Admin. Code R. 335-14-3-.03(5)(a)1.(i) requires that all hazardous waste satellite accumulation containers are to be kept closed except when waste is being added to or removed from the container. Three satellite accumulation containers were observed open during the follow-up inspection on April 30, 1996. The hopper near the primary clarifier was open during the follow-up inspection on April 30, 1996.

b. ADEM Admin. Code R. 335-14-3-.03(5)(a)2 requires containers holding hazardous waste to be labeled with an accumulation start date. The hopper at the PEMCO facility containing F002 and D007 hazardous waste primary clarifier skimmings did not have an accumulation start date.

c. ADEM Admin. Code R. 335-14-3-.03(5)(a)3 requires that any container used to hold hazardous waste must be labeled as "HAZARDOUS WASTE". The container must also be labeled with the appropriate EPA waste identification numbers. The hopper at the PEMCO facility containing F002 and D007 hazardous waste primary clarifier skimmings was not marked "HAZARDOUS WASTE" and was not marked with the appropriate EPA waste numbers.

d. ADEM Admin. Code R. 335-14-3-.03(5)(b) requires a generator who accumulates hazardous waste for more than ninety (90) days is subject to the requirements for a permitted storage facility unless he has requested and received an extension of the ninety (90) day period. PEMCO had a 55-gallon drum of hazardous waste rags with a start accumulation date of August 8, 1995 in their ninety (90) day hazardous waste accumulation area. PEMCO had neither requested nor received an extension of the ninety (90) day accumulation limitation for this waste.

e. ADEM Admin. Code R. 335-14-8-.01(1)(c)2.(x)(VII) requires generators to treat as hazardous waste the following: on-site generated hazardous waste treated in tanks or containers, by physical or mechanical processes, solely for the purpose of reducing the bulk volume of the waste, provided that the treatment does not result in the emission or discharge of hazardous wastes or hazardous constituents. During the inspection a partially compacted bale of hazardous waste paint filters was found in the compactor. The compactor was not attended, and not being operated during this time.

f. ADEM Admin. Code R. 335-14-8-.01(1)(a)2.(c) requires the generator to obtain a permit for the "treatment", "storage", or "disposal" of any "hazardous waste" as identified or listed in ADEM Admin Code R. 335-14-2. Hazardous and potentially hazardous waste paint related materials were disposed in the dumpster outside of the North Paint Canopy. PEMCO has repeatedly disposed of hazardous waste paint and hazardous waste paint contaminated material in their industrial waste stream.

4. Although PEMCO does not agree with certain Findings in this Consent Order, it does agree in the spirit of cooperation and with the desire to amicably resolve this matter with ADEM, not to contest same. In view of the above and its desire to comply with the provisions of the Act, PEMCO also agrees to the terms of this Consent Order.

5. Likewise, the Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein. 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 OF FACT and pursuant to Code of Alabama 1975, §§ 22-22A-5(10), 22-22A-5(18), 22-30-20 and 22-30-19(a) and (b) as amended, it is hereby

ORDERED:

A. That PEMCO shall immediately and continuing thereafter implement a training program intended to ensure that its employees understand basic hazardous waste management requirements, such as keeping containers closed and labeling.

B. That PEMCO shall immediately and continuing thereafter cease accumulating hazardous waste in excess of ninety (90) days except as permitted by applicable statute or regulation. ADEM Rule 335-14-3-.03(5)(b) limits the hazardous waste accumulation time for generators to ninety (90) days or less.

C. That PEMCO shall immediately and continuing thereafter cease disposing of solid waste determined to be hazardous waste in their industrial solid waste dumpsters. This activity violates ADEM Rule 335-14-8-.01(1)(a)2.(c).

D. That PEMCO shall immediately and continuing thereafter keep all hazardous waste satellite accumulation containers closed except when adding or removing waste from the container as stated in ADEM Rule 335-14-3-.03(5)(a)1.(i).

E. That PEMCO shall immediately and continuing thereafter label all hazardous waste containers with an accumulation start date as stated in ADEM Rule 335-14-3-.03(5)(a)3.

F. That PEMCO shall immediately and continuing thereafter label all hazardous waste containers with the words "HAZARDOUS WASTE" and the correct EPA waste identification numbers as stated in ADEM Rule 335-14-3-.03(5)(a)3.

G. That PEMCO shall immediately and continuing thereafter comply with the notification requirements for generators treating on-site generated hazardous waste in tanks or containers by physical or mechanical processes outlined in ADEM Rule 335-14-8-.01(1)(c)2.(x).

H. That a PEMCO official will certify in writing seven (7) days after receipt of this order that the relief requested in items (A) through (G) of this section has been accomplished.

I. That within thirty (30) days from the date of execution of this Consent Order PEMCO shall pay to the Department a civil penalty in the amount of Forty Thousand Dollars (\$40,000) for violations contained herein.

J. That PEMCO shall perform the requirements under this Consent Order within the time limits set forth or approved or established herein unless the performance is prevented or delayed by events which constitute a force majeure. A force majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of PEMCO, including its consultants and contractors, 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 PEMCO) and which delays or prevents performances by a date required by this 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.

K. 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.

L. 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 past violations which are referenced in this Consent Order.

M. That PEMCO is not relieved from any liability if it fails to comply with any provisions of this Consent Order.

N. That for the purposes of this Consent Order only, PEMCO agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court for Montgomery County. PEMCO also agrees that in any action brought by the Department to compel compliance with the terms of this Consent Order, PEMCO shall be limited to the defenses of Force Majeure, compliance with this Consent Order, and physical impossibility.

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 in the FINDINGS. Should additional facts and circumstances be discovered in the future concerning PEMCO which would constitute possible violations not referenced in this Consent Order, or if the violations noted herein continue, then such future violations shall be addressed in Administrative Orders as may be issued by the Department, litigation initiated by the Department, or such other enforcement action as may be appropriate, and PEMCO shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order. ADEM agrees to advise PEMCO in writing when the requirements of this Consent Order have been fully satisfied.

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

ORDERED and ISSUED this 23rd day of September, 1996.

Pemco Aeroplex, Inc.

By: 

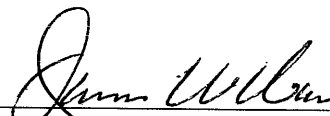
Raymond J. Hauck

Its:

General Manager

19 September 1996

Date



James W. Warr, Director

Alabama Department of

Environmental Management

Post Office Box 301463

Montgomery, Alabama 36130-1463

(334) 271-7700

23 Sep 96

Date