

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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IN THE MATTER OF )  
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CHEMICAL WASTE MANAGEMENT, INC. )  
EMELLE, ALABAMA )  
USEPA ID# ALD 000 622 464 )  
\_\_\_\_\_ )

CONSENT ORDER NO. 96-060-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 of 1978, Code of Alabama 1975, §§ 22-30-1 through 22-30-24, as amended, and without adjudication of any issues of fact or law, but upon the consent of the parties, the Alabama Department of Environmental Management ("the Department") makes the following FINDINGS:

1. Chemical Waste Management, Inc. ("CWM") operates a commercial hazardous waste treatment, storage, and disposal facility in Emelle, Alabama.

2. Pursuant to § 22-22A-4(n), Code of Alabama, 1975, as amended, the Department is the State agency responsible for the promulgation and enforcement of hazardous waste regulations in accordance with the Solid Waste Disposal Act, 42 U.S.C. 3251 et. seq., as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, §§ 22-30-1 through 22-30-24, Code of Alabama 1975, as amended.

3. On September 8, 1995, CWM received, pursuant to State Manifest Document Number CWMA793447, forty-one (41) containers (drums) of waste chemicals with numerous small containers packaged inside larger containers. Thirty-seven (37) items in nine of the drums included in this shipment were potentially hazardous waste (U- and P-listed). All of these materials were classified by the generator as exempted household hazardous waste or non-regulated chemicals. The material was identified in Section 11a of the manifest as Waste Profile BG4664, which had been approved as a nonhazardous waste stream (non-regulated chemicals and household hazardous waste). A Departmental investigation later revealed that the items in question were generated by commercial farming and nursery operations, rather than by households, and thus were not entitled to the household hazardous waste exemption. Further, neither CWM nor the generator produced sufficient evidence that the thirty-seven (37) items were not regulated hazardous waste.

4. ADEM Admin. Code R. 335-14-9-.04(1) requires hazardous waste to meet the requirements found in the table "Treatment Standards for Hazardous Wastes" prior to land disposal.

5. CWM placed nine (9) drums of the hazardous waste directly into the landfill. Unless these wastes are entitled to a regulatory exemption (such as that for household hazardous waste), then disposal without prior treatment according to applicable Land Disposal Restriction requirements is in violation of ADEM Admin. Code R. 335-14-9-.04(1).

6. ADEM Admin. Code R. 335-14-6-.21(1) requires that each waste stream disposed in a commercial hazardous waste disposal facility must have preapproval from the Department.

7. Because the waste, as received and disposed, was not correctly identified in the Request For Disposal for Waste Profile BG4664, it was not approved by the Department for

disposal, in violation of ADEM Admin. Code R. 335-14-6-.21(1).

8. On November 9, 1995, CWM received, pursuant to State Manifest Document Number CWMA762931, twelve (12) containers (drums) of waste chemicals with numerous smaller containers packaged inside the twelve larger containers. All of these materials were classified by the generator as exempt household hazardous waste or non-regulated chemicals. Twelve (12) items in seven (7) of the drums included in this shipment were potentially hazardous waste (P- and U-listed). Neither CWM nor the generator produced sufficient evidence that the items were not regulated hazardous waste (i.e., generated as household hazardous waste or by a conditionally exempt small quantity generator), therefore, the Department considers each of these as regulated hazardous waste in accordance with ADEM Admin. Code R. 335-14-2-.01(2)(f). The material was identified in Section 11b of the manifest as Waste Profile BG4664, which had been approved for disposal as a nonhazardous waste stream (non-regulated chemicals and household hazardous waste). The Departmental investigation later revealed that the items in question were generated by commercial farming and nursery operations rather than by households, and thus not entitled to the household hazardous waste exemption.

9. CWM placed the seven (7) drums of hazardous waste directly into the landfill. Unless these wastes are entitled to a regulatory exemption (such as that for a conditionally exempt small quantity generator or household hazardous wastes), then disposal of these wastes without prior treatment according to applicable Land Disposal Restriction requirements is in violation of ADEM Admin. Code R. 335-14-9-.04(1). Subsequently, the drums in question were exhumed by CWM and returned to the generator.

10. Because the waste, as received and disposed, was not correctly identified in the Request For Disposal for Waste Profile BG4664, it was not approved by the Department for

disposal, in violation of ADEM Admin. Code R. 335-14-6-.21(1).

11. On January 2, 1996, CWM received, pursuant to State Manifest Document Number CWMA793271, one (1) container of cadmium-contaminated debris, a hazardous waste. The material was identified in Section 11a of the manifest as Waste Profile K78556 which had been approved for disposal as a nonhazardous waste stream. Other entries of information on Manifest CWMA793271 and the accompanying Land Disposal Notification and Certification Form indicated, however, that the material identified in Section 11a was a hazardous waste (Waste Profile K78557) which required treatment prior to disposal.

12. ADEM Admin. Code R. 335-14-6-.02(4)(a)3(ii) requires an owner or operator, when the receiving analysis indicates that the waste received does not match the waste designated on the accompanying manifest, to repeat the initial detailed chemical and physical analysis required by ADEM Admin. Code R. 335-14-6-.02(4)(a)1.

13. The waste received did not match the waste designated by Waste Profile K78556 on Manifest CWMA793271. CWM did not repeat its initial detailed chemical and physical analysis of this waste stream in violation of ADEM Admin. Code R. 335-14-6-.02(4)(a)3(ii).

14. ADEM Admin. Code R. 335-14-6-.02(7)(a)1 requires facility personnel to successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of Chapter 335-14-6.

15. CWM's review of these documents failed to determine that the waste was a hazardous waste. This failure in the acceptance process, which demonstrates a need for enhanced employee training, resulted in CWM accepting restricted hazardous waste for direct landfill. This need for enhanced employee training is in violation of ADEM Admin. Code R. 335-14-6-

.02(7)(a)1.

16. ADEM Admin. Code R. 335-14-9-.04(6) requires hazardous debris to be treated prior to land disposal.

17. CWM placed the hazardous waste directly into the landfill on January 2, 1996. Disposal of this waste without prior treatment according to applicable Land Disposal Restriction requirements is in violation of ADEM Admin. Code R. 335-14-9-.04(6).

18. Because the waste was not properly treated prior to disposal, it was not approved by the Department for disposal, in violation of ADEM Admin. Code R. 335-14-6-.21(1) [refer to paragraph 6].

19. Although CWM 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, CWM also agrees to the terms of this Consent Order.

20. 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 upon the foregoing FINDINGS 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, and with the consent of CWM, it is hereby ORDERED:

A. That in view of the above alleged violations and agreements, not later than thirty (30) days following the execution of this Order, unless CWM chooses the alternative payment

method below, CWM will pay to the Department Fifty-Six Thousand Dollars (\$56,000) for violations specified in paragraphs 5, 7, 9, and 10 and Forty-Four Thousand Dollars (\$44,000) for violations specified in paragraphs 13, 15, 17, and 18.

As an alternative payment method, CWM may pay to the Department, not later than thirty (30) days following the execution of this Order, the sum of Five Thousand Dollars (\$5,000.00) and thereafter over the next year, characterize, package, remove, transport, and treat/dispose of certain hazardous materials which are located in specified schools across the state. A list of the schools involved and the hazardous materials located at each school was previously provided to CWM by the Department. This list is attached to this Order as "Exhibit A" and is incorporated as if fully set out herein. For the purposes of this Order only, no additional locations will be added to the list. Completion of this alternative payment method will also serve to fulfill the requirements of the two outstanding orders, Consent Order Nos. 94-084-CHW and 95-073-CHW.

B. That, beginning on the day of execution of this Order and continuing thereafter, CWM will take all appropriate measures to prohibit the recurrence of the violations noted herein.

C. That, within thirty (30) days of the execution of this Order, CWM will provide to the Department a detailed description of the flow of documents which begins upon receipt of a shipment of waste at the facility. This description should include, but is not limited to, identification of the documents supplied by the transporter, identification of the documents generated by CWM, the person (by job title) who reviews each document, and what decisions are made at each step in the process.

D. That, in conjunction with the description required above, CWM will identify and report in writing to the Department how the errors were made which contributed to the violations

cited herein, and actions to be taken to prevent recurrence.

E. That, within thirty (30) days of the execution of this Order, CWM will submit for the Department's review a proposed internal procedure for ensuring that the disposal of labpacks is in compliance with all applicable regulations.

F. That following the Department's receipt of said internal procedure, ADEM will submit recommendations for further revision, if necessary, on the written internal procedure to CWM.

G. That immediately following CWM's receipt of the Department's written comments, CWM will revise the written internal procedure accordingly, and continuing thereafter CWM will implement and follow said revised internal procedure. The revised internal procedure will be submitted to ADEM within fifteen (15) days of CWM's receipt of the Department's comments. CWM may dispute ADEM's recommendations by objecting to the recommendations in writing within ten (10) calendar days of receipt. CWM's objection, which shall be mailed or delivered to the Chief of the RCRA Compliance Branch of the Land Division of ADEM, shall set out specifically what it disputes and the basis for such dispute. CWM will have thirty (30) days from the date ADEM receives notice of the dispute to informally resolve the dispute with ADEM. CWM's failure to attempt to informally resolve the dispute shall constitute a waiver of its right to resort to the dispute resolution process set out in this paragraph. If the dispute is not resolved informally during the thirty-day period, then the Department's revisions become binding.

H. That, within thirty (30) days of the execution of this Order, CWM will provide refresher training on waste identification methods and procedures for all waste approval personnel presently responsible for the acceptance of waste at the Emelle Facility.

I. That, within forty (40) days of the execution of this Order, CWM will submit documentation that said training has been accomplished and submit a copy of the refresher training program to the Department.

J. That, for a period of one hundred twenty (120) days following the execution of this Order, CWM will open and visually inspect each labpack received for land disposal to verify that the container is indeed a labpack and that it is at least ninety (90) percent full. In addition, for one hundred twenty (120) days, five (5) percent of the labpacks received from each generator on each shipment for land disposal will be opened and the entire contents checked against the approved written drum inventory. Compliance with ADEM Admin. Code R. 335-14-6-.14(17) will also be verified on the containers selected for the detailed inspection.

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 cited in this Order. Further, should CWM elect the alternate method of penalty payment as described in paragraph A above, this Consent Order is intended to operate as a full resolution of past violations which are cited in previous Consent Orders 94-084-CHW and 95-073-CHW in addition to the resolution of those violations cited in this Order.

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



N. That for the purposes of this Order only, CWM 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. CWM also agrees that in any action brought by the Department to compel compliance with the terms of this Order, CWM shall be limited to the defenses of Force Majeure, compliance with this Order, and physical impossibility.

O. 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 regarding possible violations of this Order not addressed herein, or if the alleged violations noted herein continue, then such future violations arising from the circumstances underlying this Order shall be addressed in Orders as may be issued by the Department, litigation initiated by the Department, or such other enforcement action as may be appropriate, and CWM shall not object to such future Orders, litigation, or enforcement action based on the issuance of this Consent Order. ADEM agrees to advise CWM in writing when the requirements of this Consent Order have been fully satisfied.

P. 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 CWM does hereby waive any administrative hearing on terms and conditions of same.

Chemical Waste Management, Inc.

By: *Poddy Henson*

Its: *Division President*

Date: *4/23/96*

*James W. Warr for*

James W. Warr, Director  
Alabama Department of  
Environmental Management

Date: *4/24/96*

SYSTEM	SCHOOL
1. Marion County	Hamilton High
2. Crenshaw County	Brantley High
3.	Luverne High
4. Lamar County	Lamar County High
5.	South Lamar
6.	Sulligent High
7. Geneva County	Coffee Springs
8.	Geneva County High
9. Elmore County	Holtville High
10.	Stanhope Elmore High
11.	Wetumka High
12. Limestone County	Ardmore High
13.	Clements High
14.	East Limestone High
15.	West Limestone High
16. Geneva City	
17. Enterprise City	Enterprise High
18. Blount County	Appalachian High
19.	Cleveland
20.	Hayden High
21.	Locust Fork High
22.	Susan Moore High
23. Butler County	Greenville High
24.	McKenzie High
25. Tuscaloosa County	Brookwood High
26.	Hillcrest High
27.	Northport Jr. High
28. Dekalb County	Collinsville High
29.	Crossville High
30.	Fyffe High
31.	Geraldine
32.	Plainview High
33.	Sylvania High
34. Talladega City	Talladega High
35. Montgomery County	Capitol Heights Jr. High
36. Hale County	Akron Elementary
37.	Akron High
38.	Greensboro East
39.	Greensboro West
40.	Hale County High
41.	Sunshine High
42. Talladega County	Winterboro High
43. Franklin County	Red Bay High

SYSTEM	SCHOOL
44. Bullock County	Bullock County High
45. Jefferson County	Bagley Jr. High
46.	Brighton High
47.	Corner High
48.	Erwin High
49.	Gardendale High
50.	Hewitt-Trussville
51.	Leeds Jr. High
52.	McAdory High
53.	Minor High
54.	Mortimer Jordan High
55.	Oak Grove High
56.	Pinson Valley High
57.	Pleasant Grove High
58.	Shades Valley High
59.	Shades Valley RLC
60. Scottsboro City	Scottsboro High
61.	Scottsboro Jr. High
62. Andalusia City	Andalusia High
63.	Andalusia Middle
64. Covington County	Red Level High
65.	Straughn High
66. Lawrence County	East Lawrence High
67. Jasper City	Walker High
68. Cherokee County	
69. Russell County	
70. Opp City	Opp High
71. Bessemer City	
72. Greene County	Eutaw High
73. Walker County	Oakman High
74. Eufaula City	Moorer Middle
75. Hartselle City	
76. Clarke County	Clarke County High
77. Winston County	Winston County High
78. Chambers County	LaFayette High
79.	Valley High
80. Sylacauga City	Sylacauga High
81. Marengo County	Sweet Water High
82. Marshall County	Boaz High
83.	Douglas High
84.	Kate Duncan Smith DAR
85. Madison County	Hazel Green High
86.	Sparkman High
87. Opelika City	

SYSTEM	SCHOOL
88. Sumter County	Sumter County High
89. Decatur City	Austin High
90. Houston County	Cottonwood High
91.	Wicksburg High
92. Dale County	
93. Huntsville City	Butler High
94.	Grissom High
95.	Huntsville High
96.	Johnson High
97.	Lee High
98. Mountain Brook City	Mountain Brook High
99. Demopolis City	Demopolis High
100.	Demopolis Jr. High
101. Coffee County	Kinston High