

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF

MDA MANUFACTURING, INC.  
905 STATE DOCKS ROAD  
DECATUR, ALABAMA

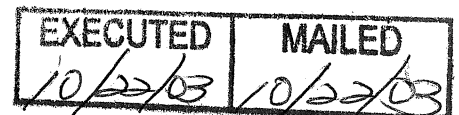
USEPA ID NUMBER ALD983192246

CONSENT ORDER NO. 04-004-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 Minimization Act of 1978, Code of Alabama 1975, §§ 22-30-1 through 22-30-24, as amended, and the ADEM Administrative Code, promulgated thereunder, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following FINDINGS:

1. MDA Manufacturing, Inc. (hereinafter "MDA"), a Delaware corporation operates a facility in Decatur, Alabama, which has been assigned EPA ID Number ALD 983192246. MDA is located on State Docks Road, Decatur, Alabama and shares the same physical address as Daiken America. MDA is a large quantity generator of hazardous waste.
2. The Alabama Department of Environmental Management is a duly constituted department of the state of Alabama pursuant to §§22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended.
3. Pursuant to Code of Alabama (1975), § 22-22A-4(n), as amended, 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, 42 U.S.C. 3251, et.seq. as amended, including §§ 6901 through 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, Code of Alabama (1975), §§ 22-30-1 through 22-30-24, as amended.

4. ADEM and EPA Region 4 jointly conducted an inspection of MDA in two portions on September 25, 2002 and September 26, 2002. As a result of the inspection, MDA was issued a Notice of Violation (NOV) dated October 25, 2002 which notified the company that it had violated various hazardous waste regulations. More specifically, the violations were described in part, as follows:

(a) Ten (10) 55-gallon containers of hazardous waste were found open in the hazardous waste storage area. ADEM Admin. Code R. 335-14-3-.03(5)(a)1(i) provides that a generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, provided that the waste is placed in containers that are kept closed during storage except when adding or removing waste [as required by ADEM Admin. Code R. 335-14-6-.09(4)].

(b) Aisle spacing in the hazardous waste storage area was inadequate to allow for unobstructed movement of people or equipment. ADEM Admin. Code R. 335-14-3-.03(5)(a)4 provides that a generator may accumulate hazardous waste which is generated on-site for 90 days or less, provided the owner or operator maintains aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility operation in an emergency [as required by ADEM Admin. Code 335-14-6-.03(6)].

(c) Connections associated with the pipes and valves of the waste methanol storage tank were not uniquely marked for identification purposes. ADEM Admin. Code R. 335-14-3-.03(5)(a)1(ii) and 14-6-.28(1) which incorporates 40 CFR, Part 265.1050(c), together state that a generator may accumulated hazardous waste generated on-site for 90 days or less provided that

the waste placed in tanks have each piece of equipment (including flanges and other connectors) be marked in such a manner that it can be distinguished readily from other pieces of equipment.

5. ADEM received correspondence from MDA dated November 22, 2002 describing corrective actions that had been taken in response to the October 25, 2002 Notice of Violation. The corrections noted appeared to be adequate pursuant to requirements of Division 14 of the ADEM Administrative Code.

6. ADEM and EPA Region 4 jointly conducted another inspection of MDA on April 8, 2003. As a result of the inspection, MDA was issued a Notice of Violation (NOV) dated May 21, 2003 which notified the company that it had violated various hazardous waste regulations. More specifically, the violations were described in part, as follows:

(a) MDA's hazardous waste storage area contained three (3) 300-gallon totes (numbered 34, 35, and 36) of waste methanol that were not closed as required. Waste was not being added nor removed at the time of the observation. ADEM Admin. Code R 335-14-3-.03(5)(a)1(i) / 335-14-6-.09(4)(a) requires that a container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

(b) A blind flange on the waste methanol tank was found not marked with a unique number. ADEM Admin. Code R 335-14-3-.03(5)(a)1(ii) / 335-14-6-.28(1) / 40 CFR, Part 265.1050(c), Subpart BB states except as provided in 335-14-3-.03(5)(d), (e), and (f), a generator may accumulate hazardous waste which is generated on-site for 90 days or less without a permit or without having interim status, provided that the waste is placed in tanks and each piece of equipment shall be marked in such a manner that it can be distinguished readily from other pieces of equipment.

7. ADEM received correspondence dated June 12, 2003, from MDA describing corrective actions that had been taken in response to the May 27, 2003 Notice of Violation. Additional information further addressing those violations was received August 25, 2003:

- MDA has implemented a procedure to torque all lids in accordance with container specifications and DOT requirements, and the use of plastic tie wraps to secure the tote lids once they have been torqued.
- MDA has implemented procedures to ensure that missing or damaged tags on equipment are readily addressed, and has re-trained and re-emphasized with all affected personnel the importance of keeping all equipment tags properly secured.
- MDA has re-drawn painted lines in the 90-day accumulation area specifying the location for waste containers, and has provided supplemental training to ensure that all personnel are familiar with the aisle space requirement.

8. The assessment of civil penalties for violations of the Department's rules and regulations, and for violations of any order, permit condition, license, certification or variance issued by the Department is authorized by Code of Alabama 1975, § 22-22A-5(18), as amended. The statute also authorizes that the penalty amount may range from \$100 to \$25,000 per day for each violation, so long as the penalty amount does not exceed \$250,000 in any given order. Each day a violation continues constitutes a separate violation. In addition to the foregoing "findings", the Department has considered the factors detailed in the aforementioned statute in determining the appropriate penalty amount in this particular instance. Those factors are listed as follows:

- A. The seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public;
- B. The standard of care manifested by the respondent;

C. The economic benefit which delayed compliance may have conferred upon the respondent;

D. The nature, extent, and degree of success of the respondent's efforts to minimize or mitigate the effects of such violations upon the environment;

E. The respondent's history of previous violations; and

F. The respondent's ability to pay the assessed penalty.

9. MDA neither agrees nor disagrees with the Findings presented in this Consent Order, but, in an effort to cooperate with the Department and to comply with the provisions of the Alabama Hazardous Wastes Management and Minimization Act, has consented to the terms of this Consent Order.

10. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Consent Order, and 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 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, immediately upon receipt of this Order and continuing each and every day thereafter, MDA shall ensure that containers holding hazardous waste are closed during storage, except when it is necessary to add or remove waste in accordance with ADEM Admin. Code R. 335-14-3-.03(5)(a)1.(i) and ADEM Admin. Code R. 335-14-6-.09(4)(a).

B. That, immediately upon receipt of this Order and continuing each and every day thereafter, MDA shall ensure that tanks containing hazardous waste and each piece of equipment associated with the tank is marked in such a manner that it can be distinguished readily from other pieces of equipment in accordance with ADEM Admin. Code R 335-14-3-.03(5)(a)1(ii) / 335-14-6-.28(1) and 40 CFR, Part 265.1050(c), Subpart BB.

C. That, immediately upon receipt of this Order and continuing each and every day thereafter, MDA shall ensure that aisle space within hazardous waste storage areas is adequate to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of the facility operation in an emergency in accordance with ADEM Admin. Code R. 335-14-3-.03(5)(a)4.

D. That, not later than forty-five (45) days from the effective date of this Order, MDA shall pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500). All penalties due pursuant to this Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

**Office of General Counsel  
Alabama Department of Environmental Management  
Post Office Box 301463  
Montgomery, AL 36130-1463**

All checks shall reference MDA's name and address, and the ADEM Administrative Order number of this action.

F. 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.

G. 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 the violations which are cited in this Consent Order.

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

I. That, for purposes of this Consent Order only, MDA agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. MDA also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, MDA shall be limited to the defenses of *Force Majeure*, compliance with this Agreement, and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of MDA, including its contractors and consultants, 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 MDA and which delays or prevents performances by a date required by the 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*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of 15 days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of

conditions beyond the control and without the fault of MDA, the Department may extend the time as justified by the specific circumstances.

J. 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 herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations shall 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, and MDA shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future Orders, litigation or other enforcement action address new matters not raised in this Consent Order.

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

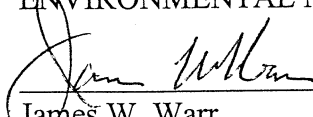
MDA MANUFACTURING, INC.

  
(Name of Authorized Representative)

  
(Title of Authorized Representative)

Date Signed: 9-4-03

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

  
James W. Warr

Director

Date Signed: 22 Oct 2003