



Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

December 19, 2017

CERTIFIED MAIL # 91 7199 9991 7037 0385 5983

Mr. Jerome McQueen, P.E.
Division Environmental Manager
McWane Inc., Tyler Union Foundry
PO Box 309
Anniston, Alabama 36202

Dear Mr. McQueen:

RE: **Consent Order No. 18-023-CHW**
Tyler Union Foundry, Calhoun County
EPA Identification Number ALD047158266

Enclosed is a copy of the Consent Order No. 18-023-CHW, which constitutes an agreement between McWane Inc., Tyler Union Foundry and the Alabama Department of Environmental Management. This Order requires McWane Inc., Tyler Union Foundry to take certain actions at the facility in regard to alleged violations of the Alabama Hazardous Wastes Management and Minimization Act of 1978. This Order became effective December 19, 2017. As described in Order Item A, McWane Inc., Tyler Union Foundry has forty-five days from that date to pay the assessed civil penalty.

Should you have any questions, please feel free to contact Linda Knickerbocker at 334-271-7896.

Sincerely,

Vernon H. Crockett, Chief
Industrial Hazardous Waste Branch
Land Division

VHC/LK/nbf

Enclosure

CC via email: Larry Lamberth, EPA Region 4
Paula Whiting, EPA Region 4
Jerome Hand, ADEM Office of Public Affairs
Chris Sasser, ADEM Office of General Counsel

12658 ALD047158266 015 20171219 EHCO 18-023-CHW

EXECUTED - 12/19/2017

MAILED - 12/19/2017



**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**McWane, Inc.
Tyler Union Foundry
Anniston, Calhoun County, Alabama
USEPA ID NUMBER ALD047158266**

Consent Order No. 18-023-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 Tyler Union Foundry, a division of McWane, Inc. (hereinafter “Tyler Union”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, (2015 Rplc. Vol.), and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter “AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, (2015 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Tyler Union operates an iron foundry with EPA Identification Number ALD047158266, located at 1501 West 17th Street in Anniston, Calhoun County, Alabama. Tyler Union, as a result of its operations at the facility, was a large quantity generator, as defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)153., 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, (2015 Rplc. Vol.).
3. Pursuant to Ala. Code § 22-22A-4(n), (2015 Rplc. Vol.), 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 AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, (2015 Rplc. Vol.).

DEPARTMENT'S CONTENTIONS

4. Pursuant to ADEM Admin. Code r. 335-14-8-.01(1)(c), the AHWMMMA requires a permit for the "treatment" of any "hazardous waste" as identified or listed in Chapter 335-14-2. Under ADEM Admin. Code r. 335-14-1-.02(1)(a) 287, treatment means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste, or so as to render such waste non-hazardous or less hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it non-hazardous or less hazardous.

5. On August 23, 2017, Tyler Union notified the Department that it had engaged in treatment of hazardous waste without a permit. The relevant components of the notification are summarized below:

Tyler Union notified the Department that it had engaged in prohibited dilution by mixing hazardous waste containing barium in amounts exceeding its toxicity characteristic level (100 parts per million or "ppm") with other wastes generated at the facility prior to off-site disposal. Specifically, spent refractory waste containing 210 ppm of barium (D005 characteristic hazardous waste) was mixed with other wastes resulting in a non-hazardous waste that contained 2.1 ppm barium.

6. On August 28, 2017, the Department issued a Notice of Violation to Tyler Union for treating a hazardous waste without a permit.

7. On September 21, 2017, the Department received Tyler Union's response to the August 28, 2017, Notice of Violation

8. Pursuant to Ala. Code § 22-22A-5(18)c., (2015 Rplc. Vol.), 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 VIOLATION:** In arriving at the civil penalty, the Department considered the general nature and magnitude of the violation 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 Tyler Union, the Department noted that the violation described above is non-technical and easily avoidable. Consequently Tyler Union 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 Tyler Union 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, Tyler Union does not have a history of similar violations.

(f) THE ABILITY TO PAY: Tyler Union 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).

9. The Department neither admits nor denies Tyler Union'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

10. Tyler Union has performed quarterly sampling of its waste streams for over 10 years in order to establish that such waste streams meet the disposal requirements for foundry wastes set forth in ADEM Admin. Code R. 335-13-4-.26(3). In no prior quarterly sample of the spent refractory waste stream has barium ever exceeded the specified level in order for the waste stream not to be disposed as foundry waste. Given this history, Tyler Union had no reason to anticipate that the sample that is the subject of this Consent Order to be any different.

11. Upon receiving the unexpected analytical result, Tyler Union immediately began collecting and segregating the spent refractory waste stream. Following a detailed review of its operations, Tyler Union discovered an alloy used only in the manufacture of one specific product contained barium. As production of this product had increased, the associated increased usage of the subject alloy resulted in the elevated barium in the sample at issue.

12. Tyler Union self-disclosed the issue to the Department and ceased using the alloy in its production process.

13. Tyler Union neither admits nor denies the Department's contentions. Tyler Union 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, Tyler Union, 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., (2015 Rplc. Vol.), 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 Tyler Union agree to enter into this Special Order by Consent with the following terms and conditions:

A. Tyler Union agrees to pay to the Department a civil penalty in the amount of \$10,000 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. Tyler Union 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 Tyler Union's name and address, and the ADEM Administrative Order number of this action.

C. Tyler Union shall comply with all terms, conditions, and limitations of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, (2015 Rplc. Vol.), and the regulations promulgated pursuant thereto.

D. The Department and Tyler Union (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. Tyler Union 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, Tyler Union 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; Tyler Union 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 Tyler Union 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 Tyler Union'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.

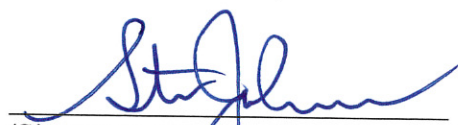
M. The parties agree that any modifications of this Special Order by Consent must be agreed to in writing signed by both parties.

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 Tyler Union 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)

Steve Johnson
(Printed Name)

Assistant GM
(Printed Title)

10/27/17
(Date Signed)


Lance R. LeFleur
Director

12/19/17
(Date Executed)

Attachment A

Tyler Union
Anniston, Calhoun County
Facility ID No. ALD047158266

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Treatment of a hazardous waste via dilution without first notifying the Department or obtaining a permit to do so.	1	\$10,000	\$2,500	\$0	Total of Three Factors
TOTAL PER FACTOR		\$10,000	\$2,500	\$0	\$12,500

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	\$0
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$12,500
Other Factors (+/-)	\$0	Total Adjustments (+/-)	(\$2,500)
Total Adjustments (+/-) Enter at Right	\$0	FINAL PENALTY	\$10,000

Footnotes

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