

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

SOLUTIA, INC.)

U.S. EPA No. ALD 006 320 774)

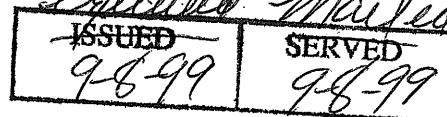
DECATUR, ALABAMA)

CONSENT ORDER NO. 98-113-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 Waste Management and Minimization Act of 1978, Code of Alabama 1975, §§ 22-30-1 through 22-30-24, as amended, the Alabama Department of Environmental Management ("ADEM" or "the Department") with the consent of Solutia makes the following FINDINGS:

1. Solutia, Inc. ("Solutia") operates a synthetic fiber manufacturing facility located on Highway 20 in Decatur, Alabama.
2. Solutia is a large quantity hazardous waste generator.
3. ADEM is the state agency responsible for the administration of the Alabama Hazardous Waste Management and Minimization Act and is authorized by the U.S. Environmental Protection Agency to operate state hazardous waste programs in lieu of a federal program.
4. Between January 22, 1998 and February 25, 1998, Solutia made nine (9) shipments, totaling 781 drums, of a cadmium-containing waste described as "NSQ Nal-Wet Solids" to the Chemical Waste Management ("CWM") hazardous waste landfill located in Emelle, Alabama. Based on past evaluation and analysis, Solutia classified this waste as non-hazardous.
5. On January 22, 1998, Solutia supplied Envirite with a sample of its cadmium-containing waste. Envirite analyzed the waste utilizing various testing methods, including the toxic characteristic



leaching procedure ("TCLP"). On or about February 17, 1998, Envirite submitted its analytical results to Solutia. Envirite's TCLP results indicated that the waste exhibited a cadmium concentration of 38 ppm.

6. Pursuant to ADEM Admin. Code R. 335-14-2-.03(5), a solid waste that exhibits a cadmium concentration exceeding 1 ppm using the TCLP test method is classified as a hazardous waste exhibiting the characteristic of toxicity and is assigned the EPA hazardous waste code D006.

7. On February 19, 1998, Solutia supplied Mid-South Testing, Inc. ("Mid-South") with a sample of its cadmium-containing waste. Mid-South analyzed the sample utilizing the TCLP test method and, on February 23, 1998, reported to Solutia that the waste exhibited a cadmium concentration of 4.08 ppm.

8. Pursuant to EPA's "Policy on Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 60 Fed. Reg. 66706 (Dec. 22, 1995), on February 25, 1998 Solutia provided verbal notification of possible regulatory violations arising from the improper classification of hazardous waste to Dave Davis of ADEM's Hazardous Waste Branch. Solutia provided written notification of such potential violations in a letter from Tony Corley (Solutia) to Gerald Hardy (ADEM's Hazardous Waste Branch) dated February 27, 1998.

9. On February 25, 1998, Solutia provided written notification of the potential improper classification of hazardous waste to CWM in a letter from Terrence McMillan (Solutia) to Steve Hequembourg (CWM).

10. On February 19, 1998, Solutia submitted another sample of its cadmium-containing waste to Mid-South for TCLP analysis. On March 5, 1998, Mid-South reported to Solutia that this waste sample exhibited a cadmium concentration of 0.495 ppm.

11. Since February 25, 1998, Solutia has managed and disposed of its waste described as "NSQ Nal-Wet Solids" as a hazardous waste exhibiting the characteristic of toxicity for cadmium (D006).

12. The Department issued a Notice of Violation to Solutia on May 12, 1998 citing, among others, the following violations of the Hazardous Wastes Management Act of 1978 and its implementing regulations:

- a. ADEM Admin. Code R. 335-14-3-.01(2) requires that a person who generates a solid waste must determine if that waste is a hazardous waste using one of the identified procedures. Solutia failed to properly determine whether its waste described as "NSQ Nal-Wet Solids" was a hazardous waste. As a result of the inadequate hazardous waste determination for this waste stream, between January 22, 1998 and February 25, 1998 Solutia offered as much as 781 drums of D006 hazardous waste for disposal as a non-hazardous waste.
- b. ADEM Admin. Code Rs. 335-14-3-.03(5)(d)(4.), 335-14-9-.01(7), and 40 C.F.R. § 268.7(1) require a generator to determine if he is managing a hazardous waste subject to land disposal restrictions. Each shipment of hazardous waste subject to land disposal restrictions must be accompanied by a land disposal notification. From January 22, 1998 to February 25, 1998, Solutia failed to properly determine whether its waste described as "NSQ Nal-Wet Solids" was subject to land disposal restrictions. Solutia shipped as much as 781 drums of this waste stream to CWM's Emelle facility without making required land disposal notifications, or providing the information necessary to ensure that the waste, when disposed, met land disposal restriction requirements.

13. The Department, Environmental Protection Agency Region IV, Solutia and CWM have reviewed the final disposition of the improperly manifested waste shipments generated by Solutia between January 22, 1998 and February 25, 1998 and disposed of at CWM's hazardous waste landfill. These entities have agreed to allow the improperly identified waste to remain in place in the CWM hazardous waste landfill.

14. Although Solutia 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 the Department, not to contest the same. In view of the above and its desire to comply with the provisions of the Act, Solutia also agrees to the terms of this Consent Order.

15. 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 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 within thirty (30) days from the effective date of this Consent Order, Solutia shall submit to the Department a written waste analysis plan for its "NSQ Nal-Wet Solids" waste stream. The plan shall describe the procedures which Solutia will carry out to comply with ADEM Admin. Code R. 335-14-3-.01(2). Upon receipt of written notification that the plan has been reviewed and approved by the Department, Solutia shall implement the plan consistent with its obligations pursuant to ADEM Admin. Code R. 335-14-3-.01(2).

B. That within 30 days from the date of execution of this Consent Order, Solutia shall pay to the Department a civil penalty in the amount of **seventy-eight thousand one hundred dollars (\$78,100)** for violations contained herein. This penalty shall be made payable by certified or cashier's check to ADEM and shall be remitted to:

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

C. That upon both Solutia's receipt of the approved waste analysis plan described in the above Paragraph A and the Department's receipt of the civil penalty described in the above Paragraph B, Solutia and the Department shall have met their obligations under this Consent Order and this Consent Order shall terminate.

D. 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.

E. 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.

F. That Solutia is not relieved of any liability if it fails to comply with any provision of this Consent Order.

G. That Solutia 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 Solutia, 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 Solutia) 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. In such a case, the performance date may be extended by the Department for a time commensurate with

that caused by the force majeure, if Solutia requests said extension in writing prior to the performance date.

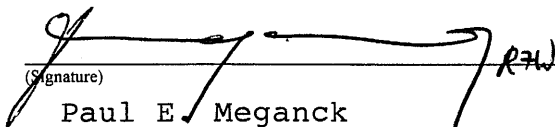
H. That for the purposes of this Consent Order only, Solutia agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court for Montgomery County. Solutia also agrees that in any action brought by the Department to compel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

I. That the sole purpose of this Consent Order is to dispose of all allegations and contentions stated herein concerning the factual circumstance referenced in the FINDINGS. Should additional facts and circumstances be discovered in the future concerning Solutia which 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 Solutia shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order.

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


SOLUTIA, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature)
Paul E. Meganck
(Print Name of Authorized Officer)

Site Manager
(Print Title of Authorized Officer)

9/3/98
(Date)


James W. Warr

Director

8 Sep 98
(Date)