

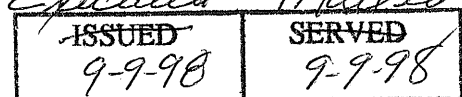
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF)	
)	
JIM BISHOP CABINETS, INC.)	CONSENT ORDER NO. 98-114-CHW
U.S. EPA No. ALD 981 923 659)	
)	
MONTGOMERY, ALABAMA)	

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") makes the following FINDINGS:

1. Jim Bishop Cabinets, Inc. ("JBCI") operates a facility located in Montgomery, Alabama that assembles, paints, and coats wooden kitchen cabinets.
2. 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.
3. Personnel from the Department performed a compliance evaluation inspection at the JBCI facility on February 5, 1998. Also, a follow-up inspection was conducted on August 5, 1998, focusing on areas cited as violations during the February 5, 1998 inspection.
4. The Department issued a Notice of Violation to JBCI on March 6, 1998 citing, among others, the following violations of the Hazardous Waste Management and Minimization Act of 1978 and its implementing regulations:
 - a) ADEM Admin. Code Rs. 335-14-3-.03(5)(a)(4.) and 335-14-5-.02(5)(a) require that a hazardous waste generator shall "prevent the unknowing entry, and minimize the possibility for unauthorized entry, of persons . . . onto the active portion of the facility." On February 5, Department personnel observed that the 90-day accumulation area was within the fenced



boundary of the facility accessible to all employees, including those not trained in hazardous waste management. These conditions demonstrate that JBCI operated a 90-day accumulation area without preventing the unknowing entry or minimizing the possibility for unauthorized entry of persons onto the accumulation area. During the August 5 follow-up inspection, JBCI appears to have corrected this violation by placing signs stating "Danger - Unauthorized Personnel Keep Out" at the entrance to active portions of the facility.

- b) ADEM Admin. Code Rs. 335-14-3-.03(5)(a)(4.) and 335-14-5-.02(5)(c) require that a hazardous waste generator post signs, legible from a distance of 25 feet, with the legend "Danger - Unauthorized Personnel Keep Out" at each entrance to the active portion of the facility, and at other locations, in sufficient numbers to be seen from any approach to the active portion." On February 5, Department personnel observed that the 90-day accumulation area did not have the required "Danger – Unauthorized Personnel Keep Out" signs. During the August 5 follow-up inspection, JBCI appears to have corrected this violation by posting the necessary signs at all entrances to the active portion of the facility.
- c) ADEM Admin. Code Rs. 335-14-3-.03(5)(a)(4.) and 335-14-5-.03(5)(a) require "[w]henver hazardous waste is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation must have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee." On February 5, Department personnel observed no alarms or emergency communication devices accessible from the 90-day accumulation area. During the August 5 follow-up inspection JBCI appears to have corrected this violation by instructing employees to carry hand-held radios in the hazardous waste containment area. Also, JBCI has a telephone in the maintenance area that is in close proximity of the hazardous waste containment area.
- d) ADEM Admin Code Rs. 335-14-3-.03(5)(a)(4.) and 335-14-5-.02(8)(a) require that a hazardous waste generator must take precautions to prevent accidental ignition of ignitable

waste. Ignitable wastes must be separated and protected from sources of ignition, smoking must be confined to specifically designated locations, and "No Smoking" signs must be placed in conspicuous locations where there is a hazard from ignitable waste. On February 5, Department personnel observed no "No Smoking" signs or other precautions or controls to prevent accidental ignition of ignitable waste at the accumulation area. During the August 5 follow-up inspection, JBCI appears to have corrected this violation by posting signs that state "No Smoking" at the entrance to areas accumulating ignitable waste.

- e) ADEM Admin. Code Rs. 335-14-3-.03(5)(a)(1.) (i) and 335-14-5-.09(4)(a) require that "[a] container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste." On February 5, Department personnel observed four containers of hazardous waste in the accumulation area that were not closed. This violation was not observed during the August 5 follow-up inspection since there were no hazardous waste containers accumulating onsite due to an off-site shipment earlier on August 5.
- f) ADEM Admin. Code R. 335-14-3-.03(5)(a)(2.) requires that each container of hazardous waste be clearly marked with the date upon which each period of accumulation begins. On February 5, Department personnel observed 121 containers in the accumulation area that were not marked with the accumulation date. JBCI subsequently determined that 89 of these containers were filled with hazardous waste. This violation was not observed during the August 5 follow-up inspection since there were no hazardous waste containers accumulating onsite due to an off-site shipment prior to the follow-up inspection.
- g) ADEM Admin. Code R. 335-14-3-.03(5)(a)(3.) requires that each container of hazardous waste be "labeled or marked clearly with the words "Hazardous Waste" and the EPA hazardous waste number." On February 5, Department personnel observed 121 containers in the accumulation area that were not labeled or marked clearly with the words "Hazardous Waste" or the EPA hazardous waste number. JBCI subsequently determined that 89 of these containers were filled with hazardous waste. This violation was not observed during the

August 5 follow-up inspection since there were no hazardous waste containers accumulating onsite due to an off-site shipment prior to the follow-up inspection.

- h) ADEM Admin. Code Rs. 335-14-3-.03(5)(a)(1.) (i) and 335-14-6-.09(6)(a)-(c) require that hazardous waste container storage areas have a containment system. The “containment system must be designed and operated as follows: (1) [a] base must underlie the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed, (2) [t]he base must be sloped or containment system must be otherwise designed and operated to drain and remove liquids resulting from leaks, spills, or precipitation, unless the containers are elevated or are otherwise protected from contact with accumulated liquids, (3) [t]he containment system must have sufficient capacity to contain 10% of the volume of the containers or the volume of containers or the volume of the largest container, whichever is greater. Containers that do not contain free liquids need not be considered in this determination, and (4) [r]un-on into the containment system must be prevented unless the collection system has sufficient excess capacity in addition to the required 10% to contain any run-on which might enter the system.” For storage areas that store containers holding only wastes that do not contain free liquids, a containment system is not required provided that either (1) “[t]he storage area is sloped or is otherwise designed and operated to drain and remove liquid resulting from precipitation, or (2) [t]he containers are elevated or are otherwise protected from contact with accumulated liquid.” On February 5, Department personnel observed 121 containers in an accumulation area consisting of a concrete pad without a containment system. JBCI subsequently identified 89 of these containers as hazardous waste. Some of the containers held hazardous waste without free liquids and other containers held hazardous wastes with free liquids. The base of the accumulation area was not sufficiently impervious to contain leaks, spills, and accumulated precipitation. The accumulation area was not designed to remove liquids resulting from leaks, spills, or

precipitation in a controlled manner; and drums were not elevated or otherwise protected from contact with accumulated liquids. The accumulation area did not have a containment system with sufficient capacity to contain 10% of the volume of containers holding free liquids. The accumulation area was not designed to prevent run-on. The accumulation area was not sloped otherwise designed to remove liquid from precipitation. These conditions demonstrate that JBCI stored hazardous waste without meeting the requirements of Rules 335-14-3-.03(5)(a)(1)(i) and 335-14-6-.09(6)(a)-(c). These violations were not observed during the August 5, 1998 follow-up inspection due to corrections implemented by JBCI. A new hazardous waste container storage area with a proper containment system has been constructed since the initial inspection on February 5.

- i) ADEM Admin. Code Rs. 335-14-3-.03(5)(a)(1)(i), 335-14-5-.09(5), and 335-14-5-.02(6)(d) require that a hazardous waste generator shall inspect areas where containers are stored at least every seven days. Records of these inspections must be kept for at least three years from the date of the inspection and must include the following information: “(1) the date and time of the inspection, (2) the name of the inspector, (3) a notation of observations made, and (4) the date and nature of any repairs or other remedial actions.” On February 5, JBCI did not have records of weekly inspections. The August 5 follow-up inspection revealed that inspections of hazardous waste accumulation areas have been conducted and documented in a manner corresponding to the regulations of large quantity generators of hazardous waste since the initial inspection on February 5. Two exceptions were observed during the August 5 inspection including two instances of exceeding the seven-day time limit for conducting inspections. Inspections were not conducted between the dates of June 2, 1998 and June 17, 1998; and were not conducted between the dates of July 6, 1998 and July 15, 1998.
- j) ADEM Admin. Code Rs. 335-14-3-.03(5)(a)(4.), 335-14-5-.04(2)(a), and 335-14-5-.04(4) require a hazardous waste generator shall “have a contingency plan for his facility. The

contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.” A copy of the contingency plan, all revisions to the plan, and documentation that the contingency plan has been submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services must be maintained at the facility. On February 5, JBCI did not have a contingency plan or other required records. JBCI has designed, documented, and coordinated a hazardous waste contingency plan for its facility. During the August 5 follow-up inspection, Department personnel reviewed a contingency plan at the JBCI facility. This plan did not contain specific procedures for responding to the release of a hazardous waste at the facility. On September 3, the Department received a revised contingency plan from JBCI that satisfies the deficiencies identified during the August 5 follow-up inspection.

- k) ADEM Admin. Code Rs. 335-14-3-.03(5)(a)(4.) and 335-14-5-.02(7) require a hazardous waste generator to establish and conduct personnel training to ensure that facility personnel holding a position related to hazardous waste management be trained to perform their duties in a way to ensure compliance with the requirements of ADEM Administrative Code Chapter 14. A hazardous waste generator must maintain the following hazardous waste training documents at its facility: (1) “[t]he job title for each position at the facility related to hazardous waste management, and the name of each employee filling each job,” (2) a job description for each position related to hazardous waste management, (3) a description of the type and amount of hazardous waste training that will be given to each person at the facility filling a position related to hazardous waste management, and (4) records demonstrating that the specified training has been given to, and completed by, each person at the facility filling a position related to hazardous waste management. Training records must be maintained for current personnel and for former employees who have worked at the facility within the last

three years. On February 5, JBCI did not have a hazardous waste training program in place and JBCI did not have hazardous waste training records. These violations were observed to be partially corrected during the August 5 follow-up inspection. On August 5, training records did not demonstrate that the hazardous waste trainer had been properly trained in hazardous waste management procedures. The follow-up inspection also indicated that a warehouser position needs to be added to the list of positions requiring hazardous waste training.

5. Although JBCI 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, JBCI also agrees to the terms of this Consent Order.

6. 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 upon execution of this Consent Order, JBCI shall continue to provide security measures to prevent the unknowing entry, and minimize the possibility for unauthorized entry, of persons onto the hazardous waste accumulation area as required by ADEM Admin. Code R. 335-14-5-.02(5)(a).

B. That upon execution of this Consent Order, JBCI shall continue to maintain signs with the legend "Danger - Unauthorized Personnel Keep Out" at the hazardous waste accumulation area as required by ADEM Admin. Code R. 335-14-5-.02(5)(c).

C. That upon execution of this Consent Order, JBCI shall continue to provide all personnel involved in the pouring, mixing, spreading, or handling of hazardous waste with access to an internal alarm or emergency communication device as required by ADEM Admin. Code 335-14-5-.03(5).

D. That upon execution of this Consent Order, JBCI shall continue to take precautions to prevent accidental ignition of ignitable waste as required by ADEM Admin. Code 335-14-5-.02(8)(a) and document compliance as required by ADEM Admin. Code 335-14-5-.02(8)(c).

E. That upon execution of this Consent Order, JBCI shall continue to keep all containers holding hazardous waste closed during storage, except when necessary to add or remove waste, as required by ADEM Admin. Code R. 335-14-5-.09(4)(a).

F. That upon execution of this Consent Order, JBCI shall continue to clearly mark on each hazardous waste container the date upon which each period of accumulation begins, as required by ADEM Admin. Code 335-14-3-.03(5)(a)(2.).

G. That upon execution of this Consent Order, JBCI shall continue to clearly mark on each hazardous waste container the words "Hazardous Waste" and the EPA hazardous waste number as required by ADEM Admin. Code 335-14-3-.03(5)(a)(3.).

H. That immediately upon execution of this Consent Order, and continuing thereafter, JBCI shall inspect areas where hazardous wastes are stored at least every seven days and maintain inspection records as required by ADEM Admin. Code Rs. 335-14-5-.09(5) and 335-14-5-.02(6)(d).

I. That upon execution of this Consent Order, JBCI shall continue to maintain a containment system for its hazardous waste accumulation area that complies with the requirements of ADEM Admin. Code R. 335-14-6-.09(6).

J. That upon execution of this Consent Order, JBCI shall continue to maintain a contingency plan and shall update its contingency plan when necessary in accordance with ADEM Admin. Code Rs. 335-14-5-.04(2)(a), 335-14-5-.04(4), and 335-14-5-.04(5).

K. That within ninety (90) days from the date of execution of this Consent Order, JBCI shall establish a hazardous waste training program as required by ADEM Admin. Code R. 335-14-5-.02(7). JBCI shall maintain such hazardous waste training records as required by ADEM Admin. Code R. 335-14-5-.02(7), except that JBCI shall only be required to maintain records of hazardous waste training conducted on or after the date of this Consent Order.

L. That within thirty (30) days from the date of execution of this Consent Order, JBCI shall pay to the Department a civil penalty in the amount of **seven thousand five hundred dollars (\$7,500)** for the violations cited 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 3014633
Montgomery, Alabama 36130-1463**

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

M. JBCI shall pay to the Department, upon demand, stipulated penalties for each day it fails to meet any of the milestone dates established in this Consent Order. The stipulated penalties for failure to meet each milestone date shall be as follows:

<u>Period of Noncompliance</u>	<u>Penalty per Day per Violation</u>
1 st to 5 th day	\$ 100
6 th to 10 th day	\$ 200
11 th to 15 th day	\$ 300
16 th to 30 th day	\$ 400
After 30 Days	\$ 500

If, after 90 days, JBCI has yet to meet any of the milestone dates set in this Order, the Department may, at its discretion, proceed wither to a unilateral order revoking this Consent Order and/or imposing fines or may proceed directly to litigation to seek fines and/or injunctive relief.

N. That upon satisfactory completion of the requirements specified in the above Paragraphs (J), (K), and (L), the Department will notify JBCI in writing that these conditions of this Consent Order have been fulfilled.

O. 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.

P. That, subject to the terms of these presents and subject to the 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.

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

R. That JBCI 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 rising from causes that are not foreseeable and are beyond the reasonable control of JBCI, 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 JBCI) 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 JBCI requests said extension in writing prior to the performance date.

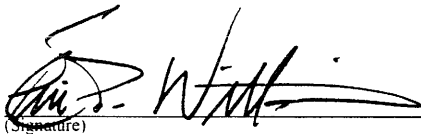
S. That for the purposes of this Consent Order only, JBCI agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court for Montgomery County. JBCI also agrees that in any action brought by the Department to compel compliance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

T. That the sole purpose of this Consent Order is to 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 JBCI 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. JBCI shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order.

U. 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 JBCI does hereby waive any administrative hearing on the terms and conditions of same.

JIM BISHOP CABINETS, INC.

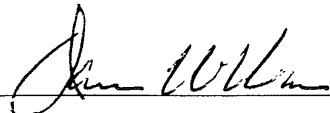

(Signature)

Eric S. Williams
(Print Name of Authorized Officer)

V.P.
(Print Title of Authorized Officer)

9/9/98
(Date)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature)

James W. Warr

Director

9 Sep 98
(Date)