

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF )

KEY BATTERY, INC. )

US EPA ID NO. ALR 000 006 916 )

ADMINISTRATIVE ORDER NO. 98-058-HW

FINDINGS OF FACT

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, ("AHWMMA"), Code of Alabama 1975, §§ 22-30-1 through 22-30-20, as amended, the Alabama Department of Environmental Management ("ADEM" or "the Department") makes the following FINDINGS OF FACT:

1. Key Battery, Inc. ("Key Battery") recycles "junk batteries" and is a large quantity handler of universal waste batteries. The business is located at 1109 Finley Avenue North in Birmingham, Alabama.
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. Personnel from ADEM performed a compliance evaluation inspection in response to a citizen complaint at Key Battery on September 10, 1997 which resulted in a Noncompliance Warning dated September 10, 1997, and a letter dated September 17, 1997, to be issued to Key Battery by ADEM. Five (5) violations were identified during the September 10, 1997 inspection, including failure to notify of universal waste activity.



4. Key Battery failed to respond to the Noncompliance Warning issued September 10, 1997 or the letter dated September 17, 1997. As a result, personnel from ADEM performed a follow-up inspection at Key Battery on October 30, 1997. The follow-up inspection resulted in a Preliminary Inspection Report dated October 30, 1997, and a Notice of Violation ("NOV") dated November 12, 1997. Six (6) violations were observed during the October 30, 1997, inspection. Five (5) of the violations were repeat violations of those observed in the September 10, 1997, Noncompliance Warning and the September 17, 1997, letter.

5. The following is a list of alleged violations by Key Battery observed by ADEM:

a. During the September inspection a 55-gallon drum of burned wire and other materials was observed. During the October inspection the same container was observed lying on its side. Key Battery was advised to cease burning industrial wastes, make a hazardous waste determination in accordance with ADEM Admin. Code R. 335-14-3-.01(2), and then to dispose of said waste appropriately.

b. At the time of the September inspection approximately one thousand (1,000) "junk" batteries were observed (approximately thirteen thousand (13,000) Kg.). A notification form was mailed to Key Battery September 17, 1997. During the October inspection greater than one thousand (1,000) waste batteries were observed, and Key Battery's Bills of Lading indicated that Key Battery had shipped three (3) times in October. Approximately forty-nine thousand (49,000) pounds were shipped each time. A second notification form was mailed to Key Battery with the November 12, 1997 NOV.

c. Batteries with cracked cases were observed during the September 10, 1997 and October 30, 1997 inspections which were not containerized as required by ADEM Admin. Code R. 335-14-11-.03(4)(a)1.

d. During the September 10, 1997 and the October 30, 1997 inspections, numerous batteries were observed which were not labeled or marked clearly with any one of the following phrases: "Universal Waste Battery(ies)", or "Waste Battery(ies)", or "Used Battery(ies)" as required by ADEM Admin. Code R. 335-14-11-.03(5)(a).

e. During the September 10, 1997 and the October 30, 1997 inspections, records of each shipment of universal waste received at the facility documenting the name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent, the quantity of each type of universal waste received, and the date of receipt of the shipment of universal waste was not maintained as required by ADEM Admin. Code R. 335-14-11-.03(10)(a).

f. Oil-stained soils were observed during the September 10, 1997 and the October 30, 1997 inspections. The oil-stained soils were not removed as required by ADEM Admin. Code R. 335-14-17-.03(3)(d).

ORDER

Based on the foregoing FINDINGS OF FACT 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 date of receipt of notice of this Order, Key Battery shall pay to the Department a civil penalty in the amount of Five Hundred Dollars (\$500) for violations contained herein.

B. That Key Battery shall, immediately upon receipt of notice of this Order, make a hazardous waste determination on the contents of the containers cited in the Findings above, in accordance with ADEM Admin. Code R. 335-14-3-.01(2). Key Battery shall test it for metals using the toxicity characteristic leaching process ("TCLP"). The results of the test shall be submitted to ADEM within fifteen (15) days from the date of receipt of notice of this Order. If the results of the test indicate the material is hazardous, Key Battery shall dispose it in accordance with ADEM Admin. Code R. 335-14-3-.08 within thirty (30) days from the date of notice of this Order.

C. Key Battery shall, immediately upon receipt of notice of this Order and continuing thereafter, cease burning all industrial wastes on-site.

D. That Key Battery shall, immediately upon receipt of notice of this Order and continuing thereafter, contain any universal waste battery that exhibits evidence of leakage, spillage, or damage that could cause leakage under reasonably foreseeable conditions in a container in accordance with ADEM Admin. Code R. 335-14-11-.03(4)(a)1. Any containers on-site should remain closed, be structurally sound, compatible with the contents of the battery, and shall lack evidence of leakage, spillage, or damage.

E. That Key Battery shall, immediately upon receipt of notice of this Order and continuing thereafter, label or mark clearly each battery, or container, or tank in which waste batteries are contained with any one of the following phrases: "Universal Waste Battery(ies)", or "Waste Battery(ies)", or "Used Battery(ies)" within twenty-four (24) hours after receipt of such battery(ies), in accordance with ADEM Admin. Code R. 335-14-11-.03(5)(a). If batteries are palletized and shrink wrapped, a single label per pallet will suffice.

F. That Key Battery shall, immediately upon receipt of notice of this Order and continuing thereafter, keep a record of each shipment of universal waste received at the facility, in accordance with ADEM Admin. Code R. 335-14-11-.03(10)(a). The record may take the form of a log, invoice, manifest, bill of lading, or other shipping document. The record for each shipment of universal waste received must include the following information:

1. The name and address of the originating universal waste handler or foreign shipper from whom the universal waste was sent;
2. The quantity of each type of universal waste received;
3. The date of receipt of the shipment of universal waste.

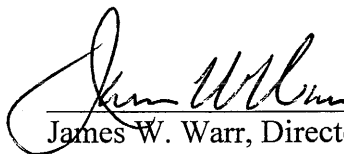
G. Key Battery shall, immediately upon receipt of notice of this Order and continuing thereafter, also keep a record of each shipment of waste batteries from Key Battery to the destination facility in accordance with ADEM Admin. Code R. 335-14-11-.03(10)(b).

H. That Key Battery shall, immediately upon receipt of notice of this Order, remove oil-stained soils and dispose them appropriately in accordance with ADEM Admin. Code R. 335-14-17-.03(3)(d). Key Battery shall continue thereafter upon detection of a release of used oil to the environment stop the release, contain it, and remove and properly dispose contaminated soils.

I. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Key Battery for the violations cited herein.

J. That failure to comply with the provisions of this Order shall constitute cause for commencement of legal action by the Department against Key Battery for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 5<sup>th</sup> day of February, 1998.



James W. Warr, Director  
Alabama Department of  
Environmental Management  
1751 Cong. W. L. Dickinson Drive  
Montgomery, AL 36109-2608  
(334) 271-7700

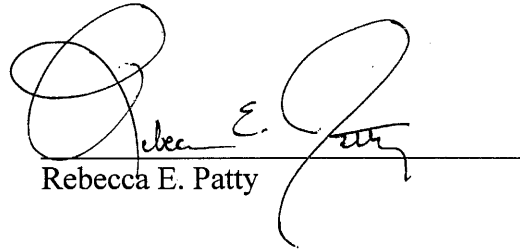
CERTIFICATE OF SERVICE

I, Rebecca E. Patty, hereby certify that I have served Administrative Order No. 98-058-HW upon Key Battery, Inc. by sending the same, postage paid, through the United States Mail, as Certified Mail, with instructions to forward and return receipt requested to:

CERTIFIED MAIL NO. P 591 992 046

Mr. Jimmy Key  
Key Battery, Inc.  
1109 North Finley Avenue  
Birmingham, AL 35204

DONE this 5<sup>th</sup> day of February, 1998.



Rebecca E. Patty