

Hw/ ENF PM Resources
(Bridgeton)

MISSOURI
CIRCUIT COURT OF
ST. LOUIS COUNTY

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY, MISSOURI

'99 NOV 22 A9:50

STATE OF MISSOURI ex rel.)
JEREMIAH W. (JAY) NIXON,)
the Attorney General of Missouri)
and the MISSOURI DEPARTMENT)
OF NATURAL RESOURCES,)

Plaintiff)

v.)

Cause No. 98CC-003995

PM Resources, Inc.,)

Defendants.)

W. L. SMALL
CLERK

CONSENT JUDGMENT

This action was commenced by the State of Missouri at the relation of Jeremiah W.e(Jay) Nixon, Attorney General of Missouri, the Hazardous Waste Commission ande the Missouri Department of Natural Resources, alleging violations of Missouri's Hazardous Waste Management Law and regulations. The State of Missouri and the defendant, P.M. Resources, Inc., by and through their attorneys, have agreed to the entry of this Judgment. The stipulated facts contained herein shall be findings of fact by this court and the conclusions herein shall be conclusions of law by this court.

I. STIPULATION OF USE

The parties stipulate that this Consent Judgment is entered into for the purpose of settlement only, and that none of the facts stipulated herein shall be used for any purpose whatsoever, including without limitation, use in any case in which both of these parties are not joined. Further, the parties hereto agree that nothing contained herein shall constitute nor be construed as an admission or denial by PMR of any of

the claims or alleged violations set forth in this Consent Judgment or Plaintiff's Petition for Preliminary Injunction, Permanent Injunction and Civil Penalties ("Petition").

II. STATEMENT OF FACTS

1. Jeremiah W. (Jay) Nixon is the duly elected, qualified and acting Attorney General for the State of Missouri.
2. The Missouri Department of Natural Resources ("MDNR") is a duly authorized state agency created by § 640.010, RSMo. 1994, to, in part, interpret and enforce the Missouri Hazardous Waste Management Law, §§ 260.350 through 260.430, RSMo., and its regulations.
3. Defendant, PM Resources, Inc., ("PMR") is a registered corporation in the state of Missouri which formulates, blends and packages animal health care products, disinfectants and pesticides, and maintains its principal place of business at 13001 St. Charles Rock Road, Bridgeton, St. Louis County, Missouri, (the "facility").
4. At all times relevant herein, PMR has been and is an owner and operator of a hazardous waste storage facility within the meaning of the Missouri Hazardous Waste Management Law and regulations.
5. At all times relevant herein, PMR has been and is a registered generator of hazardous waste as that term is defined by the Missouri Hazardous Waste Management Law and regulations.

6. The relevant facts and allegations, as alleged herein, occurred and continue to occur in St. Louis County, Missouri.
7. The facility is a hazardous waste facility as defined by § 260.360(12), RSMo.
8. Venue is proper in St. Louis County pursuant to § 260.425.
9. With respect to its operation of the facility, PMR is required to comply with all applicable state laws and regulations and the terms of the hazardous waste management storage Permit No. MOD085908259 issued by the MDNR to the facility's preceding owner and operator, Purina Mills, on May 26, 1987, and subsequently modified on August 21, 1991 and December 7, 1993. Permit No. MOD085908259 and MDNR's modifications thereto are hereinafter referred to as the "facility permit" or the "permit."
10. The facility permit, in part, defines the types of hazardous waste streams that PMR may handle and store and the areas ("units") where PMR may handle and store them. PMR is authorized to store its designated waste streams in a container storage area and an underground storage tank with a capacity of 16,000 gallons ("16,000 gallon UST") and any other area authorized by Missouri Hazardous waste Management Law and regulations.
11. In addition to the above-mentioned permitted units, hazardous waste has also been collected in a 1,200 gallon UST (the "catchment basin") and a 2,000 gallon

above ground storage tank ("2,000 gallon AST" or "AST"), and treated in a boiler and industrial furnace ("BIF") under PMR's Resource Recovery Certification.

12. On or about May 13 & 14, 1993, an MDNR representative conducted a hazardous waste compliance inspection at the facility and concluded that PMR had violated the Missouri Hazardous Waste Management Law and regulations. PMR asserts that it was not the owner or operator of the facility at the time of this inspection. The parties agree that MDNR's alleged violations from that inspection include that:

- a. PMR had failed to keep all hazardous waste containers closed, except to add or remove hazardous waste, in violation of 10 CSR 25-5.262(2)(C)1, 40 CFR 262.34(a)(1) and 40 CFR 265.173(a).
- b. PMR operated an unpermitted hazardous waste storage area in that it had stored and burned hazardous waste which was not included in and authorized by the facility permit in violation of its permit and § 260.390(1), RSMo.;
- c. PMR had failed to mark and date hazardous waste containers in violation of 10 CSR 25-5.262(2)(C), 40 CFR 260.32(a)(2) & (b);
- d. PMR had failed to protect hazardous waste containers from accumulated liquids during the storage and accumulation of hazardous waste in violation of 10 CSR 25-5.262(2)(C)2.B(III);
- e. PMR had failed to develop an adequate hazardous waste training plan for its personnel in violation 10 CSR 25-7.264(1) and 40 C.F.R. 264.16(d)(1);

f. PMR had failed to retain land disposal notifications in violation of 10 CSR 25-7.268(1) and 40 CFR 268.7(a);

g. PMR had stored specific hazardous waste for more than one (1) year without providing proof that such storage is required to facilitate proper disposal, recovery or treatment, in violation of 10 CSR 25-7.268(1) and 40 CFR 268.7(a);

h. PMR had failed to inspect and provide secondary containment for overhead pipes conveying hazardous waste in violation of 10 CSR 25-7.265(1) and 40 CFR 265.193(f);

i. PMR had failed to update financial assurance for closure and manifest violations in violation of 10 CSR 25-7.264(1) and 40 CFR 264.143(f).

13. On or about March 28 through 30, 1994, an MDNR representative conducted a hazardous waste compliance inspection at the facility and concluded that PMR had violated the Missouri Hazardous Waste Management Law and regulations. The parties agree that MDNR's alleged violations from that inspection include that:

a. PMR had failed to determine if solid waste it was storing was hazardous waste in violation of 10 CSR 25-5.262(1), and 40 CFR 262.11;

b. PMR had failed to keep all hazardous waste containers closed, except to add or remove hazardous waste, in violation of 10 CSR 25-5.262(2)(C)1, 40 CFR 264.173(a), 10 CSR 25-5.262(2)(C)(1) and 40 C.F.R. 264.34(a)(1);

- c. PMR had failed to operate and maintain the facility to minimize the possibility of an emergency in violation of 10 CSR 25-7.264(1) and 40 C.F.R. 264.31;
- d. PMR was operating a hazardous waste storage facility - a 2,000 gallon above ground storage tank - not authorized by its permit in violation of its permit and § 260.390(1);
- e. PMR had failed to provide adequate security for its hazardous waste storage areas in violation of 10 CSR 25-7.264(1) and 40 C.F.R. 264.14;
- f. PMR had failed to make arrangements with local emergency authorities to deal with and respond to a potential hazardous waste emergency at the facility in violation of 10 CSR 25-7.264(1).;
- g. PMR had failed to properly identify and place accumulation dates on satellite hazardous waste containers in violation of 10 CSR 25-5.262(2)(C)3 and 40 C.F.R. 262.34;
- h. PMR had stored hazardous waste for over ninety (90) days in violation of 10 CSR 25-5.262(1) and 40 CFR 262.34(a);
- i. PMR had failed to comply with the hazardous waste storage conditions of its facility permit in violation of 10 CSR 25-7.270(1) and 40 CFR 270.4;
- j. PMR failed to provide its employees access to communications or alarms in the facility's hazardous waste storage and shipping areas in violation of 10 CSR 25-5.262(1), 40 CFR 262.34(a)(4) and 40 CFR 265.34;

- k. PMR failed to provide its employees access to communications or alarms in the facility's hazardous waste sample retention area in violation of 10 CSR 25-7.264(1) and 40 CFR 264.34;
- l. PMR failed to mark and date hazardous waste containers in violation of 10 CSR 25-5.262(1), and 40 CFR 262.32(a)2;
- m. PMR failed to post "No Smoking" signs in hazardous waste storage and handling areas in violation of 10 CSR 25-5.262(2)(C)2.D.II;
- n. PMR failed to adequately inspect and remediate hazardous waste violations in the facility in violation of 10 CSR 25-7.264(1) and 40 CFR 264.15;
- o. PMR failed to develop an adequate emergency contingency plan in violation of 10 CSR 25-7.264(1) and 40 C.F.R. 264.31;
- p. PMR had failed to develop an adequate hazardous waste training plan for its personnel in violation 10 CSR 25-7.264(1) and 40 C.F.R. 264.16

14. As a result of the alleged violations noted in paragraphs 12 and 13 relating to the above-mentioned inspections, MDNR issued to PMR its Notice of Violation (NOV) #3209 which specified the various violations. A true and accurate copy of NOV #3209 is attached to the Petition as Exhibit A and is incorporated herein by this reference.

15. On or about November 27, 1994, the MDNR issued to PMR its Notice of Order to Abate Violations No. 94-HWC-006 (the "Order"). The Order referenced the findings of the May 13 & 14, 1993, inspection and the March 28 through 30, 1994

inspection and concluded that PMR had committed numerous violations of the Missouri Hazardous Waste Management Law and regulations with respect to its handling and storage of hazardous waste. The Order required PMR to take corrective actions to remedy the noted violations. A true and accurate copy of the Order is attached to the Petition as Exhibit B and is incorporated herein by this reference.

16. On or about December 7, 1995, an MDNR representative inspected the facility and concluded that PMR was maintaining an additional, unpermitted underground hazardous waste storage tank (designated by MDNR as LU#5011). MDNR alleged numerous violations of the Hazardous Waste Management Law and regulations with respect to LU#5011 and issued its Notice of Violation ("NOV") #3681 to PMR on December 21, 1995. A true and accurate copy of NOV #3681 is attached to the Petition as Exhibit C and is incorporated herein by this reference.

17. MDNR also concluded that PMR was storing hazardous waste in an unpermitted above ground storage tank ("AST"), with a capacity of 2,000 gallons, appurtenant to its permitted BIF unit.

18. In a letter dated December 22, 1994, PMR, through its attorney, responded to the Order and requested MDNR to modify PMR's facility permit to include the additional waste streams, the unpermitted 2,000 gallon AST.

19. On or about June 13 and 14, 1995, a representative of MDNR conducted a compliance inspection of PMR at the site, in part to determine if PMR had taken the

corrective actions required by the Order, and concluded that PMR had violated the Missouri Hazardous Waste Law and regulations in that:

- a. PMR had not placed "No Smoking" signs in a hazardous waste storage area in violation of 10 CSR 25-5.262(2)(C)2.(D)(II);
- b. PMR had failed to develop an adequate hazardous waste training plan for its personnel in violation 10 CSR 25-7.264(1) and 40 C.F.R. 264.16;
- c. PMR had failed to list the "specific gravity" of its hazardous wastes on a manifest in violation of 10 CSR 25-5.262(2)(B)2.I;
- d. PMR had failed to place the accumulation date on a satellite storage container in violation of 10 CSR 25-5.262(2)(C)3.

20. As a result of the June 13 and 14, 1995 compliance inspection, MDNR issued its Letter of Warning - L.O.W. #95-SL.035 - on June 29, 1995. A true and accurate copy of L.O.W. #95-SL.035 (the "Letter of Warning") is attached to the Petition as Exhibit D and is incorporated herein by this reference.

21. The parties agree that, in anticipation and partial performance of this Consent Judgment, PMR has expended considerable resources to correct violations of the Missouri Hazardous Waste Management Law and regulations at its facility.

22. PMR asserts it has completed closure activity at its container storage area and the BIF. However, MDNR has not yet accepted a closure certification report for those units.

23. Additional closure action is necessary for the 2,000 gallon AST, the 1,200 gallon UST and the 16,000 gallon permitted UST.

24. PMR acknowledges its receipt of Plaintiff's Petition for Preliminary Injunction, Permanent Injunction and Civil Penalties and waives service of summons and submits to the court's jurisdiction herein.

III. APPLICABILITY

25. This Judgment applies to and is binding upon MDNR and PMR and their successors, assigns, agents, subsidiaries, affiliates and lessees, including the officers, agents, servants, corporations and any persons acting under, through, or for the parties hereto.

IV. COVERED MATTERS

26. This Judgment covers matters alleged in Plaintiff's Petition for Preliminary Injunction, Permanent Injunction and Civil Penalties. This Judgment does not cover claims based on PMR's failure to comply with this Judgment or PMR's liability for past and/or future violations not referenced in Plaintiff's Petition herein.

VI. COMPLIANCE WITH OTHER LAWS AND REGULATIONS

27. This Judgment in no way affects the responsibility of PMR to comply with any federal, state or local statutes, ordinances and regulations not referenced herein.

28. Nothing herein shall be construed to exclude any units or areas from post-closure or corrective action requirements under the Federal Resource Conservation and Recovery Act.

VII. FINAL DECREE

29. This Court finds that it has jurisdiction over the parties and subject matter and that the parties have waived appearance and, having considered the Plaintiff's petition and being fully advised in the premises, finds the following relief appropriate:

IT IS HEREBY ORDERED AND ADJUDGED:

30. The effective date of this Judgment shall be the date upon which the Judgment is signed by the court.

31. PMR, in compromise and satisfaction of the allegations or claims relating to the above-referenced violations, shall pay a civil penalty in the amount of Twenty Thousand Dollars (\$20,000) in the following manner. First, within thirty (30) days of this Judgment, PMR shall pay Ten Thousand Dollars (\$10,000). The remaining Ten Thousand Dollars shall be suspended on the condition that PMR fully comply with the Missouri Hazardous Waste Management Law and/or regulations during the one year period following this Judgment and completes the closure of all units referenced herein. If PMR either violates the Hazardous Waste Management Law and/or regulations during that one year period or fails to complete closure of the units as set forth in this Consent Judgment, PMR shall be liable for and pay the aforementioned Ten Thousand Dollars (\$10,000.00) within ten (10) days of its receipt of written

demand by the Missouri Attorney General's Office. However, if PMR does not violate the Missouri Hazardous Waste Management Law and/or regulations during that one year period and completes closure of its units (exclusive of PMR's post-closure responsibilities) under this Consent Judgment, its liability for the suspended Ten Thousand Dollars (\$10,000.00) shall cease.

32. PMR agrees to and shall be liable for an additional \$100,000 suspended penalty. Said penalty shall be suspended on the condition that, within two years of the date of this Consent Judgment, PMR expends at least \$200,000 for closure activity for the BIF, the 2,000 gallon AST, the 1,200 gallon UST and the 16,000 gallon permitted UST - as such expenditures are approved by MDNR. MDNR and PMR contemplate that MDNR-approved closure expenditures incurred prior to the date of this Consent Judgment will be considered towards satisfaction of the \$200,000. If, after two years from the date of this Consent Judgment, PMR has expended less than \$200,000 towards approved closure activity for the BIF, the 2,000 gallon AST, the 1,200 gallon UST and the 16,000 permitted UST, then the difference between the \$200,000 and the amount actually expended will offset the suspended \$100,000 penalty at the rate of one dollar of penalty for every two dollars of approved closure expenditures. (e.g., If, after two years, PMR has expended \$170,000 on MDNR-approved closure activities, then it will owe \$15,000 of the suspended \$100,000 penalty). PMR shall pay the amount of suspended penalty which has not been offset by approved expenses within thirty (30) days of receipt of written demand therefor.

33. All payments required under this Judgment shall be in the form of a certified or cashier's check made payable to the "St. Louis County Treasurer as Trustee for the St. Louis County School Fund" and delivered to:

Barry A. Gilbert
Assistant Attorney General
P.O. Box 899
Jefferson City, Missouri 65102-0899

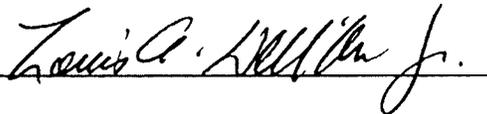
34. PMR shall complete the closure of all permitted or unpermitted, hazardous waste treatment and greater-than-ninety-day hazardous waste storage units at the facility, in compliance with 10 CSR 25-7.264 and 7.265 (incorporating by reference 40 CFR 264 and 265), by at least the following:

- a. Within one hundred and eighty (180) days of MDNR's approval of a closure plan, PMR shall complete closure of each unit in accordance with the approved plan.
- b. Within sixty (60) days of its completion of approved closure activities, PMR shall submit to MDNR for its acceptance, a closure certification report, signed by the owner or operator, and an independent, professional engineer registered in the State of Missouri.

35. This Court shall retain jurisdiction over this matter to ensure compliance with the foregoing provisions and until such time as all duties to be performed by the parties have been completed.

36. PMR's failure to perform under this Consent Judgment may be excused only to the extent such failure is directly attributable to war, strike, riot, catastrophe or act of God and so long as PMR makes all reasonable attempts to mitigate the frustrating event. PMR shall bear the burden of proving such excuse.**SO AGREED:**

P.M. RESOURCES, INC.

BY:  DATE: 11-15-99

(Approved as to form)
BERG, BORGMANN, TRAEGER, WILSON & WOLK, LLC

BY:  DATE: 11-15-99
John W. Traeger

MISSOURI DEPARTMENT OF NATURAL RESOURCES

BY: John A. Young
John A. Young, Director
Division of Environmental Quality

DATE: Nov. 17, 1999

**JEREMIAH W. (JAY) NIXON
ATTORNEY GENERAL OF MISSOURI**

BY: Barry A. Gilbert
Barry A. Gilbert
Assistant Attorney General

DATE: 11-16-99

SO ORDERED:

Patrick Clifford
Patrick Clifford
CIRCUIT JUDGE

DATE: 11-22-99