

**BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY**

**MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY**

COMPLAINANT

VS.

NO. 5987 11

**BONNER ANALYTICAL TESTING COMPANY, INC.,
AND DR. MICHAEL BONNER
2703 OAK GROVE ROAD
HATTIESBURG, MISSISSIPPI 39402**

RESPONDENTS

ORDER

The above styled cause came on for hearing before the Hearing Officer, Honorable J. D. Woodcock, Special Assistant Attorney General, hearing the matter on behalf of the Mississippi Commission on Environmental Quality ("Commission") on April 19, 2011, pursuant to Miss. Code Ann. §§ 49-17-31 through 49-17-33 (Rev. 2003). The Hearing Officer heard argument and testimony from both the Mississippi Department of Environmental Quality ("MDEQ") and Dr. Michael Bonner and Bonner Analytical Testing Company, Inc., (collectively "Bonner") for approximately three (3) hours, along with the submission of some fourteen (14) exhibits. After considering all relevant evidence, testimony and argument, and being fully advised in the premises regarding this administrative enforcement case, including the recommendation of the Hearing Officer, the Commission finds as follows:

I. Procedural History

Dr. Michael Bonner is the owner of Bonner Analytical Testing Company, Inc. (Transcript at Exhibit 1; Tr. at pp. 22-23). The MDEQ officially recognized Bonner Analytical Testing Company, Inc., as a Small Quantity Generator of hazardous waste on August 5, 2003, and having been designated as such, Bonner was charged by MDEQ to become familiar with, and comply with, the Commission's Hazardous Waste Management Regulations ("MHWMR"). (Ex. 2; Tr. at pp. 22-24). Mr. Wayne Stover, a Geologist with twenty-five years MDEQ experience, who works with MDEQ's Environmental Compliance and Enforcement Division, inspected the Bonner Analytical Testing Company facility on December 15, 2009. (Tr. at pp. 20-21).

During that inspection, (Ex. 3), Mr. Stover discovered four (4) violations of the MHWMR §§ 262.11, 265.173(a), 262.34(c) (1) (ii), and 265.171. (Exs. 4, 5; Tr. at pp. 31-45). On January 28, 2010, Mr. Stover, on behalf of MDEQ, sent a Notice of Violation to Mr. Glenn Jones, a representative of Bonner Analytical Testing Company, Inc., which cited the violations discovered during the inspection and initiated a formal administrative enforcement action. (Ex. 5; Tr. at pp. 45-46).

On April 1, 2010, Mr. Stover sent a Notice of Violation/Administrative Conference to Bonner, (Ex. 6), again reciting the alleged violations and setting an administrative settlement conference for April 5, 2010. (Tr. at pp. 46-49).

On April 20, 2010, Dr. Bonner responded to the allegations in a letter to MDEQ. (Ex. 8; Tr. at pp. 49-56). Based on the information provided by Bonner, MDEQ, through Mr. Stover, rescinded the alleged violation of MHWMR 262.11. (Ex. 9; Tr. at pp. 49-50). MDEQ continued to assert the other violations and noted the hazardous characteristics of the substances in

question. (Ex. 13; Tr. at pp. 56-59). The parties were unable to reach an agreed resolution of the enforcement action.

MDEQ's Executive Director, Dr. Trudy Fisher, by letter dated March 8, 2011, issued a Notice of Hearing, (Ex. 11), detailing the three (3) alleged violations and setting the matter for hearing. (Tr. at pp. 62-63). Bonner received this Notice of Hearing on March 9, 2011. (Ex. 11). MDEQ's General Counsel, Roy Furrh, sent another Notice of Hearing to Bonner on April 4, 2011, advising that the hearing would go forward at that originally set time and date of April 19, 2011, at 9:00 a.m. (Ex. 12). Bonner received this correspondence on April 5, 2011. (Ex. 12).

At the hearing, MDEQ, through Mr. Stover, presented evidence as to the rationale of the amount of the MDEQ recommended penalty, (Ex. 14; Tr. at pp. 63-78), which was calculated at \$30,000.00. Mr. Stover characterized the violations as clear and flagrant. (Tr. at pp. 78-79). On cross-examination, Mr. Stover admitted that this was the only environmental laboratory he had ever inspected. (Tr. at p. 80). He also testified that the compound and storage areas were locked and secured, and the drum storage area had a concrete pad with containment. (Tr. at pp. 89-91). There was also testimony about the manner in which the severity of the violations were attributed and how the penalty was calculated. (Tr. at pp. 93-97).

Dr. Bonner, who represented himself and Bonner Analytical Testing Company, Inc., *pro se*, (Tr. at pp. 5-6), then presented his case-in-chief and largely did not dispute the MDEQ findings of the violations. (Tr. at pp. 105-113). Dr. Bonner did testify to his problems in securing adequate storage containers. (Tr. at pp. 105-107). Dr. Bonner also testified that his facility had a secure, locked containment area, complete with a concrete drainage pad. (Tr. at pp. 107-108). Dr. Bonner contended that the drums were adequately labeled. (Tr. at pp. 120-121).

Further, Dr. Bonner vigorously denied the fairness of the amount of the fine. (Tr. at pp. 111-113). On cross-examination by counsel for MDEQ, Mr. Roy Furrh, and the Hearing Officer, Dr. Bonner did not deny the violations as charged by MDEQ. (Ex. 8; Tr. at pp. 105, 106, 114-122).

II. Findings of Fact and Conclusions of Law

The Hearing Officer conducted the April 2011 hearing pursuant to the authority of Miss. Code Ann. § 17-17-1, *et seq.* and § 49-17-1, *et seq.* (Rev. 2003). The Commission finds that the parties received proper notice of the hearing as provided by law. Miss. Code Ann. § 49-17-31 (Rev. 2003). The Commission has jurisdiction over the parties and subject matter pursuant to Miss. Code Ann. §§ 17-17-27; 17-17-29; 49-17-17; 49-17-29; 49-17-31; 49-17-33; 49-17-41; and 49-17-43 (Rev. 2003).

The evidence clearly showed that when Mr. Stover conducted the inspection of the storage area, which he characterized as sloppy, (Tr. at p. 39), he found three drums that were open and were not in the process of being used. (Tr. at p. 37). Dr. Bonner admitted that one of the drum caps, or threaded-metal bongs, was loose, and the two others were completely off the respective drums, (Tr. at p. 116) which are violations of MHWMR 265.173(a).

MHWMR 262.34(c)(1)(ii) requires a facility to label hazardous-waste containers using the words “hazardous waste” or other words that identify its contents. (Ex. 4; Tr. at p. 38). The underlying purpose of this regulation is to protect and inform emergency responders, along with other parties that may come into contact with the hazardous substances, so they are able to better protect themselves, bystanders, and the environment from the dangerous consequences that can accompany hazardous wastes. (Tr. at pp. 38-40, 52, 116-118). The facility failed to properly label the drums that Mr. Stover was able to see. (Tr. at pp. 35, 37-39). Labeling was not visible on the remaining drums that were grouped in a corner, (Ex. 3 at Figure 2), and the inadequate

aisle space and the unsafe conditions, prevented Mr. Stover from confirming this observation. (Tr. at pp. 39-41).

The drum containing methylene chloride was not in good condition. (Tr. at p. 36). Methylene chloride rusted the top of the drum, creating a large hole. (Ex. 1 at Figs. 2, 3, 5; Tr. at p. 115). Similarly, it corroded the side of the same drum, approximately two-thirds of the way down, which caused this hazardous waste to empty out of the drum, to a point just below the hole, leak to ground, and stain the side of the drum and the floor a dark red color. (Tr. at pp. 36, 41, 44, 81, 107, and 115). The United States Environmental Protection Agency has classified methylene chloride as a probable human carcinogen, (Ex. 13 at p. 6), and found that humans acutely exposed to methylene chloride experience adverse effects of the central nervous system and the heart. (Ex. 13 at p. 4). The drum that was not in good condition and leaking constitutes a violation of MHWMR 265.171.

Therefore, the Commission finds that the Respondent committed the following violations of the MHWMR:

- 1) The facility had three containers of hazardous waste in the hazardous waste storage area that were not closed and were not actively being used, which is a violation of MHWMR 265.173(a);
- 2) The facility failed to mark containers holding hazardous waste in the hazardous waste area with the words "Hazardous Waste" or other words to identify the contents of the container, which is a violation of MHWMR 262.34(c)(1)(ii); and
- 3) The facility had one drum in the hazardous waste storage area that was not in good condition and leaking, which is a violation of MHWMR 265.171.

Miss. Code Ann § 17-17-29 (Rev. 2003), (Ex. 14), authorizes a penalty of \$25,000.00 for each violation. Therefore, the three (3) violations, allow for a maximum penalty of \$75,000.00 as authorized by Miss. Code Ann § 17-17-29(1) (Rev. 2003). (Tr. at p. 68).

MDEQ, through Mr. Stover, recommended a \$30,000.00 penalty, apportioned as follows, (Tr. at pp. 69-79):

- 1) Open containers of hazardous waste not actively being used (MHWMR 265.173(a), 3/10 severity rating (10/10 being the most severe);
 $\$25,000.00 \times .3 = \$7,500.00$
- 2) Hazardous waste container not properly labeled (MHWMR 262.34(c)(1)(ii), 3/10 severity rating; and
 $\$25,000.00 \times .3 = \$7,500.00$
- 3) Hazardous waste container leaking or in poor condition (MHWMR 265.171), 6/10 severity rating.
 $\$25,000.00 \times .6 = \$15,000.00$

MDEQ Recommended Penalty: \$30,000.00

In considering the penalty to be assessed for the violations found by the Commission, the Commission has considered all evidence submitted and has reviewed the penalty factors discussed in Miss. Code Ann. § 17-17-29(7) (Rev. 2003). The Commission adopts the following findings:

1) The Willfulness Of The Violation(s);

The Commission finds that there was a degree of willfulness in this violation and these violations were readily identifiable and easily remediated. The Commission also finds that Dr. Bonner has been in business some thirty years, (Tr. at p. 64), and poorly managed the hazardous waste storage area, while having knowledge of the dangerous nature of the chemicals. (Tr. at pp. 40-41).

2) Any Damage to Air, Water, Land Or Other Natural Resources of the State or Their Uses;

There was no evidence of any wildlife deaths or remedial or clean-up costs associated with these violations. The Commission finds the damage to the environment to be minimal, if any.

3) Costs of Restoration and Abatement;

The Commission finds any costs of restoration and/or abatement to be minimal, if any.

4) Economic Benefit as a Result of Noncompliance;

The Commission finds the economic benefit accruing to Bonner for non-compliance to be minimal, if any.

5) The Seriousness of the Violations, Including any Harm to the Environment and Any Hazard to the Health, Safety and Welfare of the Public;

The Commission will not disturb the severity or seriousness ratings assigned by MDEQ and adopts the agency's severity assessment, deferring to their expertise in that area, particularly related to the potential harm to the environment and any hazard to the health, safety, and welfare of the public. Open drums, drums not properly labeled, and drums in poor condition, can create dangerous conditions for first responders, employees, and inspectors who could be exposed to the hazardous wastes through spills and inhalation. (Tr. at pp. 38, 40, and 52).

6) Past Performance History;

The Commission finds that this enforcement action involves the only violations with which this facility has been charged by MDEQ. (Tr. at p. 111). Bonner also took steps to remediate the violations (Tr. at pp. 69-72).

7) Whether the Noncompliance was Discovered and Reported as a Result of a Voluntary Self-Evaluation;

None of the violations here cited were discovered through a voluntary self-evaluation by the Bonner. The violations were discovered by MDEQ inspection.

The Hearing Officer's recommendation adopts the MDEQ's severity assessment but recommends that it be applied to a penalty of \$12,500.00 for each violation, which is a reduction of the \$25,000.00 per-violation maximum allowed by statute. Bonner's violations relate to serious violations of hazardous waste management regulations. However, based on the evidence presented and the findings of facts detailed above, including existing mitigating factors (e.g., first inspection, (Tr. at p. 114), and drums being stored in a locked and secured area with a concrete containment pad, (Ex. 3 at p. 2; Tr. at p. 34)), as well as Bonner's initiatives after the inspection, (e.g., closing the open containers, (Tr. at p. 37), storing the methylene chloride in a proper container, (Ex. 8; Tr. at pp. 106-107), and adequately labeling the drums, (Ex. 8)), the Commission accepts the Hearing Officer's recommendation. Therefore, the total penalty amount determined by the Commission is as follows:

- 1) Open containers of hazardous waste not actively being used (MHWMR 265.173(a), 3/10 severity rating (10/10 being the most severe);
 $\$12,500.00 \times .3 = \$3,750.00$
 - 2) Hazardous waste container not properly labeled (MHWMR 262.34(c)(1)(ii), 3/10 severity rating; and
 $\$12,500.00 \times .3 = \$3,750.00$
 - 3) Hazardous waste container leaking or in poor condition (MHWMR 265.171), 6/10 severity rating.
 $\$12,500.00 \times .6 = \$7,500.00$
- Total Penalty: \$15,000.00**

The Commission hereby assesses a total penalty of \$15,000.00 against Bonner Analytical Testing Company, Inc., and Dr. Michael Bonner.

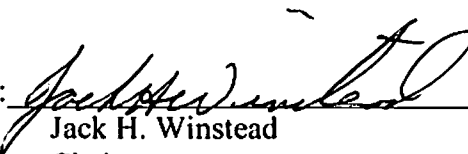
IT IS THEREFORE ORDERED AND ADJUDGED that Bonner Analytical Testing Company, Inc. and Dr. Michael Bonner are hereby assessed a penalty in the amount of \$15,000.00, which shall be paid to the Commission within thirty (30) days of the date of issuance of this Order.

This is a final Order of the Commission appealable according to the provisions of Miss. Code Ann. §§ 17-17-27; 17-17-29; 17-17-45; 49-17-41; and 49-17-43 (Rev. 2003). The amount of the appeal cost bond is set at \$500.00.

SO ORDERED AND ADJUDGED, this the 23rd day of June, 2011.

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

BY:



Jack H. Winstead
Chairman