

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Hydro-Vac Industrial Services, Inc.
McIntosh, Washington County, Alabama
USEPA ID NUMBER ALR000059956**

Consent Order No. 18-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and Hydro-Vac Industrial Services, Inc. (hereinafter "Hydro-Vac"), a foreign corporation, pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter "AHWMMA"), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Hydro-Vac is a permitted transporter of hazardous waste with EPA Identification Number ALR000059956, located at 4301 US Highway 43, Suite A1 in McIntosh, Washington County, Alabama (hereinafter "the Site"). Hydro-Vac, as a result of its operations at the site, was Large Quantity Generator and a Hazardous Waste Transporter, as those terms are defined in ADEM Admin. Code Div. 14, at all times relevant to this action.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to

6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On December 18, 2017, Department staff conducted a compliance evaluation inspection (hereinafter "CEI") of the Hydro-Vac facility located in McIntosh. The CEI and a review of other related documentation found the following:

- (a) ADEM Admin. Code r. 335-14-3-.01(2) states that a person who generates a solid waste, as defined in 335-14-2-.01(2), must determine if that waste is hazardous. ADEM Admin. Code r. 335-14-2-.01(7)(a)3. states that residues removed from an empty container are solid wastes subject to the requirements of 335-14-3-.01(2).

Hydro-Vac failed to perform a hazardous waste determination on both waste that was washed out of returned hazardous waste vacuum boxes and on contaminated soil excavated from the area surrounding the container wash area that was shipped off for disposal.

- (b) ADEM Admin. Code r. 335-14-6-.02(3)(c)1. states that a facility owner or operator must submit a correct and complete ADEM Form 8700-12 reflecting current waste activities to the Department annually.

Hydro-Vac failed to notify the Department of their correct generator status using ADEM Form 8700-12. In its most recent Notification of Regulated Waste Activity (ADEM Form 8700-12), dated October 9, 2017, Hydro-Vac notified the Department that it was a transporter of hazardous waste, but that it did not generate or store hazardous waste at its facility or operate a transfer facility. Based on information obtained during this investigation, Hydro-Vac generated and/or stored hazardous waste at the facility.

- (c) ADEM Admin. Code r. 335-14-6-.03(2) states that facilities must be maintained and operated to minimize the possibility of a fire, explosion, or any unpermitted sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, surface water, or groundwater which could threaten human health or the environment. Hydro-Vac employees cleaned hazardous waste vacuum boxes that had been used to transport hazardous waste in the container wash area in the lay down yard. The bermed mat used was insufficient to prevent release of the rinse water to the environment.
- (d) ADEM Admin. Code r. 335-14-8-.01(1)(c) states that the AHWMMMA requires a permit for the "treatment", "storage", and "disposal" of any "hazardous waste". Hydro-Vac employees disposed of hazardous waste rinse water onto the ground in the facility's lay down yard without first obtaining a permit from the Department.
- (e) ADEM Admin. Code r. 335-14-3-.02(1)(a) states that a generator who transports hazardous waste for off-site treatment, storage, or disposal must prepare a manifest. Hydro-Vac placed excavated contaminated soil from the container wash area into a roll-off container holding KO61 listed hazardous waste that it was transporting for another facility. Hydro-Vac did not prepare a new hazardous waste manifest for the excavated contaminated soil.
- (f) ADEM Admin. Code r. 335-14-8-.11(1)(a)1.(i) states that material and substantial alterations to the operations of the permittee which occurred after issuance of the permit (i.e., the addition of a new transfer facility for used oil or hazardous waste) is cause for a permit modification. ADEM Admin. Code r. 335-14-1-.02(1)(a)281 defines the term "Transfer facility" to mean any transportation-related facilities including loading docks, parking areas, storage areas, and other related areas where shipments of hazardous waste or hazardous secondary materials are held for more than 24 hours and not longer than 10 days during the normal course of transportation. Hydro-Vac failed to submit an AHWMMMA transporter permit modification for the inclusion of a transfer facility located at 4301 US Highway 43, Suite A1, McIntosh,

Alabama 36553. Hazardous waste roll-offs and vacuum boxes were held in Hydro-Vac's lay down yard at the above referenced address for more than twenty-four hours.

5. On January 24, 2018, the Department issued to Hydro-Vac a Notice of Violation citing violations of the hazardous waste program regulations that were observed or existed at the time of the December 18, 2017, CEI.

6. On February 9, 2018, the Department received a response to the January 24, 2017, Notice of Violation.

7. Pursuant to Ala. Code § 22-22A-5(18), as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation(s) upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATIONS:** In arriving at the civil penalty, the Department considered the general nature and magnitude of the violations along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

(b) **THE STANDARD OF CARE:** In considering the standard of care manifested by Hydro-Vac, the Department noted that the violations described above were non-technical and easily avoidable. Consequently Hydro-Vac has failed to exhibit a standard of care commensurate with the applicable regulatory standards.

(c) ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that there was no significant economic benefit gained by Hydro-Vac as a result of the violations referenced herein.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no known environmental effects as a result of the alleged violations because an assessment of the site to determine possible contamination has not been conducted by Hydro-Vac.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Hydro-Vac has no history of previous violations.

(f) THE ABILITY TO PAY: Hydro-Vac has not alleged an inability to pay the civil penalty.

(g) OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty that is warranted in the spirit of cooperation and the desire to resolve this matter amicably without incurring the unwarranted expense of litigation (see Attachment A, which is made a part of the Department's Contentions).

8. The Department neither admits nor denies Hydro-Vac's contentions, which are set forth below. The Department has agreed to the terms of this Special Order by Consent in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Special Order by Consent are in the best interest of the citizens of Alabama.

FACILITY'S CONTENTIONS

9. Hydro-Vac neither admits nor denies the Department's contentions. Hydro-Vac consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, Hydro-Vac, along with the Department, desires to resolve and settle the alleged violations cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Hydro-Vac agree to enter into this Special Order by Consent with the following terms and conditions:

A. Hydro-Vac agrees to pay to the Department a civil penalty in the amount of \$36,000 in settlement of the violations alleged herein within forty-five days of the effective date of this Special Order by Consent. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Hydro-Vac agrees that all penalties due pursuant to this Special Order by Consent shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or other payment methods acceptable to the Department and shall be remitted to:

Office of General Counsel

Alabama Department of Environmental Management

P.O. Box 301463

Montgomery, Alabama 36130-1463

Any payment submitted to the Department pursuant to this Special Order by Consent shall reference Hydro-Vac's name and address, and the ADEM Administrative Order number of this action.

C. Hydro-Vac agrees that, independent of this Special Order by Consent, Hydro-Vac shall comply with all terms, conditions, and limitations of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. That, within sixty (60) days of execution of this Order, Hydro-Vac shall submit to the Department a complete Remediation Plan for the lay down yard and any associated areas where unauthorized waste disposal occurred or that may have been impacted by these activities. This plan should be prepared in accordance with the requirements of section 5.3 of the Alabama Environmental Investigation and Remediation Guidance (AEIRG) manual. The plan shall include a schedule for completion of all activities and shall be implemented upon approval by the Department.

E. That, within sixty (60) days of completion, Hydro-Vac shall submit a report detailing all approved plan implementation activities at the site, including but not limited to the volume of wastes generated and/or removed from the site, a listing of waste transportation entities utilized, and a listing of facilities where waste was sent off-site for management.

F. The Department and Hydro-Vac (hereinafter the "parties") agree that this Special Order by Consent 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 Special Order by Consent certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Special Order by Consent, to execute the Special Order by Consent on behalf of the party represented, and to legally bind such party.

G. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Special Order by Consent is intended to operate as a full resolution of the alleged violations cited herein.

H. Hydro-Vac agrees that it is not relieved from any liability if it fails to comply with any provision of this Special Order by Consent.

I. For purposes of this Special Order by Consent only, Hydro-Vac agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County.

J. The parties agree that the sole purpose of this Special Order by Consent is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future which would constitute possible violations not addressed in this Special Order by Consent, then such future violations may be addressed in orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate; Hydro-Vac agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement action address new matters not raised in this Special Order by Consent.

K. The parties agree that this Special Order by Consent shall be considered final and effective immediately upon signature of all parties. This Special Order by Consent shall not be appealable, and Hydro-Vac does hereby waive any hearing on the terms and conditions of this Special Order by Consent.

L. The parties agree that this Special Order by Consent shall not affect Hydro-Vac's obligation to comply with any Federal, State, or local laws or regulations.

M. The parties agree that final approval and entry into this Special Order by Consent are subject to the requirements that the Department give notice of proposed orders to the public, and that the public have at least thirty days within which to comment on the order.

N. The parties agree that, should any provision of this Special Order by Consent be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

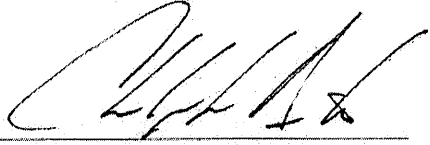
O. The parties agree that any modifications of this Special Order by Consent must be agreed to in writing signed by both parties.

P. The parties agree that, except as otherwise set forth herein, this Special Order by Consent is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State, or local law, and shall not be construed to waive or relieve Hydro-Vac of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

HYDRO-VAC INDUSTRIAL SERVICES, INC.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Christopher H. Daniels

(Printed Name)

COO

(Printed Title)

5-16-18

(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A

**Hydro-Vac Industrial Services, Inc.
McIntosh, Washington County
Facility ID No. ALR000059956**

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Failure to perform a hazardous waste determination on solid wastes generated at the facility.	2	\$5,000	\$2,500	\$0	
Failure to submit an accurate annual waste activity notification to the Department.	1	\$1,000	\$500	\$0	
Failure to maintain and operate in such a way as to minimize the possibility of a fire, explosion, or any unpermitted sudden or non-sudden release of hazardous waste.	1	\$10,000	\$1,000	\$0	
Unauthorized disposal of hazardous waste.	1	\$15,000	\$10,000	\$0	
Failure to prepare a hazardous waste manifest prior to transporting hazardous waste.	1	\$1,000	\$500	\$0	
Failure to submit an AHWMA transporter permit modification for the inclusion of a transfer facility.	1	\$1,000	\$500	\$0	Total of Three Factors
TOTAL PER FACTOR		\$33,000	\$15,000	\$0	\$48,000

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$48,000
Other Factors (+/-)	(\$12,000)	Total Adjustments (+/-)	(\$12,000)
Total Adjustments (+/-) Enter at Right	(\$12,000)	FINAL PENALTY	\$36,000

Footnotes

* See the "DEPARTMENT'S CONTENTIONS" portion of the Order for a detailed description of each violation and the penalty factors.