

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

HEPACO, LLC
Birmingham, Jefferson County, Alabama
EPA Identification Number NCD986194306

Consent Order No. 16-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 HEPACO, LLC (hereinafter "HEPACO") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, 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. HEPACO, which operates an equipment storage facility in Birmingham, Alabama, is a hazardous waste transporter with EPA Identification Number NCD986194306 located at 2711 Burch Drive in Charlotte, Mecklenburg County, North Carolina. HEPACO's equipment storage facility (also known as "the Birmingham office") is located at 5649 Miller Industrial Boulevard in Birmingham, Jefferson County, Alabama. At all times relevant to these findings, HEPACO was a permitted transporter of hazardous waste with no transfer facilities in Alabama.
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), (2006 Rplc. Vol.), 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 AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On October 21, 2015, ARCADIS U.S., Inc. (Arcadis) submitted written notification to the Department regarding the shipment of four 55-gallon steel drums containing spent carbon from the Former USBI Facility located at 130 Sparkman Drive in Huntsville, Alabama to the HEPACO waste staging facility in Birmingham, Alabama. In the notification, Arcadis informed the Department that the drums were transported by a licensed hazardous waste transporter [HEPACO] while waste characterization analytical was pending, and without a hazardous waste profile and transportation manifest. The four carbon drums were sampled by HEPACO for waste characterization purposes on September 15, 2015 with a composite sample of the carbon being submitted to Sutherland Environmental Company, Inc. (Sutherland) in Birmingham, Alabama. On September 25, 2015, Sutherland issued the laboratory analytical report for the waste characterization sample. The laboratory results showed that 1,1-dichloroethylene (1,1 -DCE) was detected at 20 mg/L and exceeded the Toxicity Characteristic Leaching Procedure (TCLP) regulatory action limit for 1,1 - DCE of 0.7 mg/L. Based on this result, the carbon in the four drums was considered a hazardous waste (EPA hazardous waste number D029).

5. On November 2, 2015, representatives of the Department conducted a compliance evaluation inspection (CEI) of HEPACO to determine compliance with all applicable requirements of Division 14 of the ADEM Administrative Code. The CEI and a review of HEPACO's compliance revealed the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-4-.02(1)(a)1., a transporter may not accept hazardous waste from a generator unless the transporter is also provided with a manifest signed in accordance with the requirements of ADEM Admin. Code r. 335-14-3-.02(4).

On September 23, 2015, HEPACO accepted four 55-gallon drums containing spent carbon, a hazardous waste (D029), from the former USBI facility in Huntsville, Alabama to its Birmingham office without obtaining a uniform hazardous waste manifest from the generator.

(b) ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the "storage" of any "hazardous waste" as identified or listed in Chapter 335-14-2.

HEPACO operated as a storage facility without first obtaining a permit from the Department. HEPACO stored off-site generated spent carbon hazardous waste (D029) in a trailer at its Birmingham office from September 23, 2015 until November 9, 2015, a period of forty-eight days.

6. Pursuant to Ala. Code § 22-22A-5(18)c., 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:** The Department noted two violations of ADEM Admin. Code div. 335-14. In arriving at the civil penalty, the Department considered the general nature and magnitude of the violations along with the lack of any available evidence of irreparable harm to the environment or threat to the health and safety of the public.

(b) **THE STANDARD OF CARE:** In considering the standard of care manifested by HEPACO, the Department noted that the violations listed above were easily

avoidable. Consequently, HEPACO did not exhibit a standard of care commensurate with 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 HEPACO 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 to mitigate as a result of the alleged violations.

(e) **HISTORY OF PREVIOUS VIOLATIONS:** HEPACO does not have a documented history of previous violations of Division 14 of the ADEM Administrative Code.

(f) **THE ABILITY TO PAY:** HEPACO has not alleged an inability to pay the civil penalty.

(g) **OTHER FACTORS:** It should be noted that this Consent Order 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. The Department has determined that the terms contemplated in this Consent Order are in the best interest of the citizens of Alabama. (See Attachment A, which is made a part of Department's Contentions).

HEPACO'S CONTENTIONS

7. HEPACO neither admits nor denies the Department's contentions. HEPACO 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, HEPACO, 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 HEPACO agree to enter into this Special Order by Consent with the following terms and conditions:

A. HEPACO agrees to pay to the Department a civil penalty in the amount of \$12,500 in settlement of the violations alleged herein within forty-five days of the effective date of this Consent Order. 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. HEPACO agrees that all penalties due pursuant to this Consent Order 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 Consent Order shall reference HEPACO's name and address, and the ADEM Administrative Order number of this action.

C. HEPACO agrees that, independent of this Consent Order, HEPACO shall comply with all terms, conditions, and limitations of its Permit and the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. The Department and HEPACO (hereinafter the "parties") agree 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.

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

F. HEPACO agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, HEPACO 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.

H. The parties agree that the sole purpose of this Consent Order 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 Consent Order, 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; HEPACO agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action address new matters not raised in this Consent Order.

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

J. The parties agree that this Consent Order shall not affect HEPACO's obligation to comply with any Federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Consent Order 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.

L. The parties agree that, should any provision of this Consent Order 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.

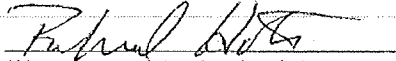
M. The parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

N. The parties agree that, except as otherwise set forth herein, this Consent Order 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 HEPACO of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

HEPACO, LLC

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**



(Signature of Authorized Representative)

Richard Horton

(Printed Name)

Vice President

(Printed Title)

12/29/2015

(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A

HEPACO LLC
Birmingham, Jefferson County, Alabama
EPA Identification Number NCD986194306

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Transportation of hazardous waste without a manifest	1	\$1,000	\$500	\$0	
Storage of hazardous waste without a permit	1	\$10,000	\$1,000	\$0	Total of Three Factors
TOTAL PER FACTOR		\$11,000	\$1,500	\$0	\$12,500

Adjustments to Amount of Initial Penalty*		Economic Benefit (+)*	\$0
Mitigating Factors (-)	\$0	Amount of Initial Penalty	\$12,500
Ability to Pay (-)	\$0	Total Adjustments (+/-)	\$0
Other Factors (+/-)	\$0	FINAL PENALTY	\$12,500
Total Adjustments (+/-)	\$0		

Footnotes

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