

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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ONIS "TREY" GLENN, III, P.E.

DIRECTOR

BOB RILEY

GOVERNOR

April 6, 2007

CERTIFIED MAIL # 7005 3110 0000 9536 2619
RETURN RECEIPT REQUESTED

Mr. Bruce Head
Hyco Alabama, LLC
218 Arad Thompson Rd
Arab, AL 35016

Dear Mr. Head:

RE: **Consent Order**
Hyco Alabama, LLC
USEPA Identification Number ALD072099690



Facsimiles: (334)
Administration: 271-7950
General Counsel: 394-4332
Communication: 394-4383
Air: 279-3044
Land: 279-3050
Water: 279-3051
Groundwater: 270-5631
Field Operations: 272-8131
Laboratory: 277-6718
Mining: 394-4326

Enclosed are an original copy of the Consent Order on Consent between Hyco Alabama, LLC and the Alabama Department of Environmental Management and the installment agreement for payment of civil penalty. The Order requires Hyco Alabama to take certain actions at the facility in regard to alleged violations of the Alabama Hazardous Wastes Management and Minimization Act of 1978. This Order was signed by ADEM's Director and became effective as of March 27, 2007.

Should you have any questions, please feel free to contact Sekou Brevett at (334) 394-4337 or by email at sbrevett@adem.alabama.gov

Sincerely,

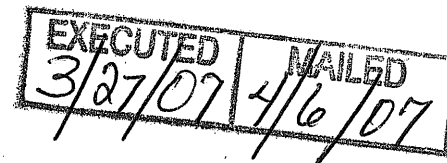
for

Wm. Gerald Hardy, Chief
Land Division

WGH/sk/set:Z:

Enclosures

cc: Jerome Hand, ADEM Office of Public Affairs (email)
Steve Spencer, Field Operations Div.—Birmingham Branch (email)



Birmingham Branch
110 Vulcan Road
Birmingham, Alabama 35209-4702
(205) 842-6168
(205) 841-1603 [Fax]

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, Alabama 35603-1333
(256) 353-1713
(256) 340-9359 [Fax]

Mobile Branch
2204 Perimeter Road
Mobile, Alabama 36615-1131
(251) 450-3400
(251) 479-2593 [Fax]

Mobile - Coastal
4171 Commanders Drive
Mobile, Alabama 36615-1421
(251) 432-6533
(251) 432-6598 [Fax]



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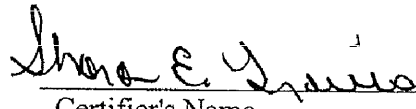
CERTIFICATE OF SERVICE

I, SHARON E. TRAVIS, hereby certify that I have served the foregoing Special Order by Consent upon Hyco Alabama, LLC 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. 7005 3110 0000 9536 2619

Mr. Bruce Head
Environmental Manager
Hyco Alabama, LLC
218 Arad Thompson Rd
Arab, AL 35061-

Done this 6th day of April, 2007.



Certifier's Name

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Hyco Alabama, LLC
Arab, AL**

USEPA ID NUMBER ALD072099690

ORDER NO. 07-092-CAW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and Hyco Alabama, LLC (hereinafter “the Operator”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (1997 Rplc. Vol. and 2005 Cum. Supp.), and the Alabama Hazardous Wastes Management and Minimization Act of 1978, Ala. Code §§ 22-30-1 to 22-30-24 (1997 Rplc. Vol.), and the ADEM Administrative Code of Regulations (hereinafter “ADEM Admin. Code R.”) promulgated pursuant thereto.

STIPULATIONS

1. The Operator operates a hydraulic cylinder manufacturing facility in Arab, Marshall County, Alabama, that is assigned EPA Identification Number ALD072099690.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (1997 Rplc. Vol. and 2005 Cum. Supp.).

3. Pursuant to Ala. Code § 22-22A-4(n) (1997 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, 42 U.S.C. 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Hazardous Wastes Management and Minimization Act, Ala. Code §§ 22-30-1 through 22-30-24 (1997 Rplc. Vol.).

4. On March 23, 2006, Department personnel conducted a compliance evaluation inspection (CEI) of the Operator's facility. This CEI was a follow-up to a previous CEI conducted on September 21, 2005, that resulted in the issuance of a warning letter. The Operator submitted a letter to the Department on November 17, 2005, detailing corrective actions taken in response to the warning letter. As a result of the most recent CEI, the Operator was issued a Notice of Violation, dated June 15, 2006, which cited violations of hazardous waste regulations. More specifically, the violations were as follows:

- (a) Three drums in the 90-day accumulation area were marked with an accumulation start date [2 December 2005] that was more than 90 days prior to the inspection and the Operator had not received an extension to the 90-day accumulation time limit nor a permit to store hazardous waste. ADEM Admin. Code r. 335-14-3-.03(5)(b) states a Large Quantity Generator who accumulates hazardous waste for more than 90 days is an operator of a storage facility and is subject to the requirements of 335-14-5 and 335-14-6, and the permit requirements of 335-14-8, unless he has been granted an extension to the 90-day period.
- (b) Two satellite accumulation drums located next to the chrome line and one satellite accumulation drum located next to the paint line were not marked with words identifying the contents. This constitutes a violation of ADEM Admin. Code r. 335-14-3-.03(5)(c)1.(ii)., which requires a generator to

mark his satellite containers either with the words "Hazardous Waste" or with other words that identify the contents of the containers. This violation was cited as an area of noncompliance by the Department in a Warning Letter issued to the Operator dated October 25, 2005.

- (c) Three used oil totes (containers) were observed without the words "Used Oil" affixed to them. This constitutes a violation of ADEM Admin. Code r. 335-14-17-.03(4)(c)1., which requires containers and used oil tanks, except underground tanks, used to store used oil at used oil generator locations be labeled or marked clearly with the words "Used Oil". This violation was cited as an area of noncompliance by the Department in a Warning Letter issued to the Operator dated October 25, 2005.
- (d) Two 30-gallon drums containing hazardous waste located in the 90-day accumulation area were not labeled or marked with the words "Hazardous Waste" or the EPA hazardous waste number. This constitutes a violation of ADEM Admin. Code r. 335-14-3-.03(5)(a)3., which requires that while being accumulated on-site each container and tank of hazardous waste must be labeled or marked clearly with the words "Hazardous Waste" and the EPA hazardous waste number. This violation was cited as an area of noncompliance by the Department in a Warning Letter issued to the Operator dated October 25, 2005.
- (e) Two 30-gallon drums containing hazardous waste located in the 90-day accumulation area were not marked with the appropriate accumulation start dates. This constitutes a violation of ADEM Admin. Code r. 335-14-3-.03(5)(a)2., which requires that the date upon which each period of accumulation begins be clearly marked and visible for inspection on each container of hazardous waste. This violation was cited as an area of noncompliance by the Department in a Warning Letter issued to the Operator dated October 25, 2005.
- (f) A hazardous waste inspection log for the week of March 13, 2006, was not available. This constitutes a violation of ADEM Admin. Code rs. 335-14-3-.03(5)(a)1.(i), 335-14-6-.09(5), and 335-14-6-.02(6)(d), which require a large quantity generator to inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors and to record inspections in an inspection log or summary. He must keep these records for at least three years from the date of the inspection. At a minimum, these records must include the date and time of the inspection, the name of the inspector, a notation of the observations made, and the date and nature of any repairs or other remedial actions. This violation was cited as an area of noncompliance by the Department in a Warning Letter issued to the Operator dated October 25, 2005.

5. According to the operator, the following corrective actions and preventative measures have or will be taken to address each of the violations noted.

Violation	Corrective Actions	Preventative Actions
Satellite accumulation container(s) not labeled or visible for inspection	All drums have been properly labeled	Satellite accumulation areas have been added to weekly inspections logs
Storage of hazardous waste without a permit	Disposal company has disposed of all hazardous material in building	Developed log book for hazardous waste building which identifies, captures history and disposal dates of all material stored in building
Used oil container(s) not labeled or visible for inspection	All used oil totes properly labeled	Weekly inspections to ensure oil totes are properly labeled
Hazardous waste container(s) not labeled or visible for inspection	Drums have been labeled correctly and properly disposed	Developed log book for hazardous waste building which identifies, captures history and disposal dates of all material stored in building
Hazardous waste container(s) missing start accumulation date(s)	Drums have been labeled correctly and properly disposed	Developed log book for hazardous waste building which identifies, captures history and disposal dates of all material stored in building
Missing hazardous waste accumulation area inspection log(s)	All inspection logs are completed each week	Outlook alarms on calendar

6. The Operator consents to abide by the terms of the following Order and to pay the civil penalty assessed herein, but denies the alleged violations are sufficiently serious to warrant any remedial action and reserves its right to contest the alleged violations against the Department or any third party in any proceedings, except as provided for in Ala. Code § 22-22A-7(7) (1997 Rplc. Vol.).

7. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

8. The Operator neither admits nor denies the Department's allegations, but rather contends that the alleged violations have caused no harm to public health or the environment, that the Operator has no history of similar violations, and that the Operator has corrected the alleged violations within a reasonable time period.

9. The Department neither admits nor denies the Operator's contentions.

10. Pursuant to Ala. Code § 22-22A-5(18) (1997 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, 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 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 be less than \$100.00 or 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.

11. In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATION:** The Operator operated as a storage facility without obtaining a permit for storage of hazardous waste and

consistently failed to appropriately label containers of hazardous waste and used oil, constituting a significant deviation from hazardous waste regulations.

(b) THE STANDARD OF CARE: On multiple occasions the same violations were observed by representatives of the Department. Therefore, a very low standard of care has been manifested by the Operator.

(c) ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been a significant economic benefit conferred by the delay of compliance with hazardous waste regulations.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Operator has corrected the violations, which appear to have had little or no affect upon the environment.

(e) HISTORY OF PREVIOUS VIOLATIONS: A warning letter was issued to the Operator on October 24, 2005, for related violations.

(f) THE ABILITY TO PAY: The Operator 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 it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Operator, 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) (1997 Rplc. Vol.), as well as the need for timely and effective enforcement; the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Operator agree to enter into this Order with the following terms and conditions:

A. The Operator agrees to pay to the Department a civil penalty in the amount of \$15,000.00 in settlement of the violations alleged herein within 45 days from the effective date of this Consent Order. Failure to pay the civil penalty within 45 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. The Operator 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 and shall be remitted to:

**Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463**

C. The Operator agrees to store hazardous waste on-site for no longer than 90 days or apply for and receive a permit for the treatment, storage, and disposal of hazardous waste from the Department, in accordance with ADEM Admin. Code R. 335-14-8-.01(1)(a)2., beginning immediately upon the effective date of this Consent Order.

D. 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 violations which are cited in this Consent Order.

F. The Operator 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, the Operator 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. The Operator also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Operator shall be limited to the defenses of Force Majeure, compliance with this Agreement, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Operator, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Operator) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance,

changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute Force Majeure. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of 10 working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control of and without the fault of the Operator, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

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; the Operator shall not 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 the Operator does hereby waive any hearing on the terms and conditions of this Consent Order.

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

K. The parties agree that final approval and entry into this 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 (30) days within which to comment on the Order.

L. The parties agree that, should any provision of this 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 Order must be agreed to in writing signed by both parties.

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

Executed in duplicate, with each part being an original.

HYCO – ARAB

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

Arthur B. Zimmerman Onis "Trey" Glenn, III
(Printed Name)

General Manager
(Printed Title)

Director

2/1/07
(Date Signed)

3/27/07