

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

**Johnny Rick Hayes d/b/a Rick's Oil
Cottondale, Tuscaloosa County, Alabama
USEPA ID NUMBER ALR000062588**

ORDER NO. 19-XXX-HW

FINDINGS

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, the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") makes the following FINDINGS:

1. Johnny Rick Hayes d/b/a Rick's Oil (hereinafter "Rick's Oil") is a used oil transporter with EPA Identification Number ALR000062588, located at 8102 Eastview Drive in Cottondale, Tuscaloosa County, Alabama (hereinafter "the Site"). The company also operates a used oil transfer facility at the Site. Rick's Oil, as a result of its operations, was a used oil transporter, as that term is 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 AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

4. On June 18, 2018, the Department issued a Used Oil Transporter Permit to Johnny Rick Hayes dba Rick's Oil.

5. On October 11, 2018, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection (hereinafter "CEI") of Rick's Oil. The CEI found the following:

Pursuant to ADEM Admin. Code r. 335-14-17-.05(4)(d) a transporter must demonstrate that the financial document submitted with their applications as required in ADEM Admin. Code r. 335-14-17-.05 is in force for the duration of the permit. Also, Part I A. of Rick's Oil's transporter permit requires that the transporter shall maintain financial assurance to comply with the requirements of ADEM Admin. Code r. 335-14-4-.04, and requires the Permittee to obtain written approval from the Department prior to cancellation, alteration, or substitution of any such assurance.

Rick's Oil failed to maintain financial assurance as required. On September 17, 2018, Rick's Oil's certificate of insurance was cancelled by the insurance provider. On October 11, 2018, Department personnel documented that Rick's Oil was transporting used oil and had failed to secure financial assurance.

6. On November 5, 2018, the Department issued a Notice of Violation (hereinafter "NOV) to Rick's Oil for transporting used oil without the required financial assurance.

7. The Department has not received a response to the November 5, 2018, NOV nor has the Department received an updated financial assurance instrument from Rick's Oil.

8. Part IV-B of Hayes Oil's permit provides that the Department may suspend the permit for any of the causes listed in ADEM Admin Code r. 335-14-8-.11(2). One of those causes listed there is "noncompliance by the permittee with any condition of the permit or any rule under Division 335-14. . ."

9. 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 the civil penalty assessed in this Order, 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 violation 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 Rick's Oil, the Department noted that the violation described above was non-technical and easily avoidable. Consequently, Rick's Oil has failed to exhibit a standard of care commensurate with the applicable regulatory standards.

(c) **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** Rick's Oil avoided certain costs associated with maintaining financial assurance as required by its AHWMMMA Used Oil Transporter Permit.

(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:** Based on a review of Department records, Rick's Oil has a history of similar violations.

(f) THE ABILITY TO PAY: The Department does not have any evidence indicating that Rick's Oil is unable to pay the civil penalty.

10. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, and has concluded that the civil penalty is appropriate for the violations cited in this Order (see Attachment A, which is made a part of the Department's Findings).

ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code, §§22-22A-5(10), 22-22A-5(18), 22-30-20, and 22-30-19(a) and (b), as amended, it is hereby ORDERED:

A. That, within forty-five days of the receipt of this Order, Rick's Oil shall pay to the Department a civil penalty in the amount of \$14,000 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or any other method of payment 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 Order shall reference Rick's Oil's name and address and the ADEM Administrative Order number of this action.

B. That, upon issuance of this Order, Rick's Oil's Used Oil Transporter Permit (Permit No. ALR 000 062 588) is suspended, in accordance with Part IV-B of the permit, until such time until the permittee documents that the required financial assurance is reinstated.

C. That, Rick's Oil shall comply with all terms, conditions, and limitations of its transporter permit, the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. 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.

E. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Rick's Oil for the violation(s) cited herein.

F. That failure to comply with the provisions of this Order shall constitute cause for commencement of legal action by the Department against Rick's Oil for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, _____.

Lance R. LeFleur
Director

Attachment A

Johnny Rick Hayes d/b/a Rick's Oil
Cottondale, Tuscaloosa County
Facility ID No. ALR000062588

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*	
Failure to maintain financial assurance.	1	\$5,000	\$2,500	\$2,500	Total of Three Factors
TOTAL PER FACTOR		\$5,000	\$2,500	\$2,500	\$10,000

Adjustments to Amount of Initial Penalty

Mitigating Factors (-)	\$0	Economic Benefit (+)	\$4,000
Ability to Pay (-)	\$0	Amount of Initial Penalty	\$10,000
Other Factors (+/-)	\$0	Total Adjustments (+/-)	\$0
Total Adjustments (+/-) Enter at Right	\$0	FINAL PENALTY	\$14,000

Footnotes

* * See the "FINDINGS" portion of the Order for a detailed description of each violation and the penalty factors.