

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Barry Alan Cherry dba Hokes Bluff Welding & Fab
Hokes Bluff, Etowah County, Alabama
EPA Identification Number ALR000058081**

Consent Order No. XX-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 Barry Alan Cherry dba Hokes Bluff Welding & Fab (hereinafter “Hokes Bluff”) 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. Hokes Bluff owns and operates a metal fabrication shop with EPA Identification Number ALR000058081, located at 2875 Alford Bend in Hokes Bluff, Etowah County, Alabama. Hokes Bluff, as a result of its operations at the facility, was a small quantity generator, as that term is defined in ADEM Admin. Code r. 335-14-1-.02(1)(a)251., 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), (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 AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On January 6, 2016, a representative of the Department conducted a compliance evaluation inspection (CEI) of Hokes Bluff to determine compliance with all applicable requirements of Division 14 of the ADEM Administrative Code. The CEI and a review of Hokes Bluff's compliance revealed the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)7., a small quantity generator may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator maintains sufficient documentation to demonstrate the quantity of hazardous waste generated each calendar month.

Hokes Bluff did not maintain any documentation of the amount of hazardous waste generated each month.

(b) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)6.(iii)(I) and (II), a small quantity generator must maintain at the site documentation that the required training has been administered to and completed by required employees.

Hokes Bluff did not have any records that document that relevant and proper waste handling and emergency response training has been given to, and completed by, facility personnel.

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)6.(i), at all times there must be at least one employee either on the premises or on call (i.e., available to respond to an emergency by reaching the site within a short period of time) with the responsibility for coordinating all emergency response measures specified in 335-14-3-.03(5)d(6).(iv). This employee is the emergency coordinator.

Hokes Bluff had not designated anyone as its emergency coordinator.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)6.(ii), the generator must post the following information next to the telephone: the name and telephone number of the emergency coordinator; location of fire extinguishers and spill control material, and, if

present, fire alarm; and the telephone number of the fire department, unless the generator has a direct alarm.

Hokes Bluff did not post any of the required emergency information next to any telephone.

(e) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(d)2. referencing ADEM Admin. Code r. 335-14-6-.09(5), a small quantity generator may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the generator inspect areas where containers are stored, at least weekly, and document these inspections in accordance with rule 335-14-6-.02(6)(d). ADEM Admin. Code r. 335-14-6-.02(6)(d) requires the generator to record inspections in an inspection log or summary.

Hokes Bluff did not maintain any documentation of weekly inspections of its hazardous waste storage area.

(f) Pursuant to ADEM Admin. Code r. 335-14-3.03(5)(d)5. referencing ADEM Admin. Code r. 335-14-3-.03(5)(a)2., a small quantity generator may accumulate hazardous waste on-site for 180 days or less without a permit or without having interim status provided that the date upon which each period of accumulation begins to be clearly marked and visible for inspection on each container.

As a consequence of Hokes Bluff storing its hazardous waste containers inside a metal shipping container, the accumulation start dates on the containers were not visible for inspection.

(g) Pursuant to ADEM Admin. Code r. 335-14-3-.03(5)(g), a small quantity generator who accumulates hazardous waste for more than 180 days (or more than 270 days if he must transport his waste, or offer his waste for transportation, over a distance of 200 miles or more) is an operator of a storage facility and is subject to the requirements of 335-14-5, 335-14-6, and 335-14-8 unless he has been granted an extension to the 180-day (or 270-day if applicable) period. 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 of the ADEM Administrative Code.

Hokes Bluff operated as an unpermitted storage facility when it accumulated seven 55-gallon drums of hazardous waste in its hazardous waste container storage area for more than 180 days (the applicable period) without having first obtained a storage permit from the Department or an extension from the Department. In an email received by the Department on January 8, 2016, Hokes Bluff disclosed that the accumulation start dates on the aforementioned seven containers of hazardous waste were as follows: “11-01-14” (433 days on-site as of January 8, 2016), “12-04-14” (400 days on-site as of January 8, 2016), “1-29-15” (344 days on-site as of January 8, 2016), “3-13-15” (301 days on-site as of January 8, 2016), “4-09-15” (274 days on-site as of January 8, 2016), “4-20-15” (263 days on-site as of January 8, 2016), and “6-10-15” (212 days on-site as of January 8, 2016). Hokes Bluff has not obtained a hazardous waste storage facility permit from the Department.

(h) Pursuant to ADEM Admin. Code r. 335-14-17-.03(4)(c)1., containers and used oil tanks, except underground tanks, used to store used oil at used oil generator locations must be labeled or marked clearly with the words “Used Oil”.

Hokes Bluff did not label or mark five 55-gallon drums holding used oil with the words “Used Oil”.

5. On January 25, 2016, the Department issued to Hokes Bluff a Notice of Violation citing violations of the hazardous waste program regulations that were observed or existed at the time of the January 6, 2016 CEI.

6. On March 14, 2016 and March 28, 2016, the Department received Hokes Bluff’s responses to the January 25, 2016 Notice of Violation.

7. 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 eight 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 Hokes Bluff, the Department noted that the violations listed above were easily avoidable. Consequently, Hokes Bluff 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 Hokes Bluff 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:** Hokes Bluff does not have a documented history of previous violations of Division 14 of the ADEM Administrative Code.

(f) THE ABILITY TO PAY: Hokes Bluff 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.

8. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code §22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty is appropriate (see "Attachment A", which is made a part of the Department's Contentions).

9. The Department neither admits nor denies Hokes Bluff'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

HOKES BLUFF'S CONTENTIONS

10. Hokes Bluff is a family-owned small business which has been in operation for more than 25 years. We have always conducted business in a manner to minimize or eliminate the possibility of impacting the surrounding environment. Hokes Bluff maintains an organized and clean facility. Hokes Bluff has no history of environmental violations; has never had a spill or leak released off-site; and has never had any complaints from adjacent residential homes or commercial businesses about site operations.

Hokes Bluff has committed personnel and financial resources to meet its environmental obligations. The financial penalty under the proposed administrative order appears excessive given the nature of the violations and the compliance history of Hokes Bluff. Although discrepancies were discovered during the 6 Jan 16 CEI, Hokes Bluff immediately implemented corrective action, identified these activities in response to ADEM's NOV, and has diligently continued to comply with HW regulatory requirements.

The proposed administrative order in June 2016 and associated financial penalty seems to further penalize Hokes Bluff and is unnecessary. Hokes Bluff never intentionally violated the requirements under ADEM Admin Code 335-14. At no time did the violations pose irreparable harm to the environment or a threat to the health or safety of the public. In fact, Hokes Bluff appreciated the assistance and information provided by MS. Bailee Dykes of the Compliance and Enforcement Section of the Land Division.

Immediately following the CEI, Hokes Bluff contracted with One Stop Environmental of Leeds, Alabama to provide expertise and assistance in addressing the discrepancies and implementing compliance with regulatory requirements. Hokes Bluff, is contracted with HGS Engineering, Inc. of Anniston, Alabama to provide assistance with all applicable environmental rules and regulations. Their expertise serves as a ready resource in providing services and information regarding environmental issues.

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

A. Hokes Bluff agrees to pay to the Department a civil penalty in the amount of \$9,000 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. Hokes Bluff 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 Hokes Bluff's name and address, and the ADEM Administrative Order number of this action.

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

D. The Department and Hokes Bluff (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 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 Special Order by Consent, to execute the Special Order by Consent 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 Special Order by Consent is intended to operate as a full resolution of the alleged violations cited herein.

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

G. For purposes of this Special Order by Consent only, Hokes Bluff 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 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; Hokes Bluff 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.

I. 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 Hokes Bluff does hereby waive any hearing on the terms and conditions of this Special Order by Consent.

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

K. 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.

L. 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.

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

N. 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 Hokes Bluff of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

**BARRY ALAN CHERRY DBA HOKES BLUFF
WELDING & FAB**

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**



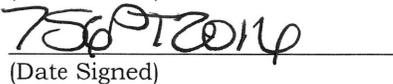
(Signature of Authorized Representative)



(Printed Name)



(Printed Title)



(Date Signed)

Lance R. LeFleur
Director

(Date Executed)

Attachment A

Hokes Bluff Welding & Fab
Hokes Bluff, Etowah County, Alabama
EPA Identification Number ALR000058081

| Violation | Number of Violations* | Seriousness of Violation* | Standard of Care* | History of Previous Violation* |
|--|------------------------------|----------------------------------|--------------------------|---------------------------------------|
| Failure to demonstrate the quantity of hazardous waste generated each calendar month | 1 | \$100 | \$100 | \$0 |
| Failure to maintain hazardous waste management training documents and records | 1 | \$500 | \$500 | \$0 |
| Failure to have anyone designated as Emergency Coordinator | 1 | \$100 | \$100 | \$0 |
| Failure to post required information next to any telephone | 1 | \$50 | \$50 | \$0 |
| Failure to maintain or provide documentation of weekly inspections of the hazardous waste storage area | 1 | \$500 | \$500 | \$0 |
| Failure to stage containers of hazardous waste so that the accumulation start dates were visible | 1 | \$100 | \$100 | \$0 |
| Storing hazardous waste on-site over 180 days without a permit | 1 | \$10,000 | \$1,000 | \$0 |

| Violation | Number of Violations* | Seriousness of Violation* | Standard of Care* | History of Previous Violation* | |
|---|------------------------------|----------------------------------|--------------------------|---------------------------------------|-------------------------------|
| Failure to label containers of used oil with the words "Used Oil" | 1 | \$100 | \$100 | \$0 | Total of Three Factors |
| TOTAL PER FACTOR | | \$11,450 | \$2,450 | \$0 | \$13,900 |

| Adjustments to Amount of Initial Penalty | |
|---|------------------|
| Mitigating Factors* (-) | \$0 |
| Ability to Pay* (-) | \$0 |
| Other Factors* (+/-) | (\$4,900) |
| Total Adjustments (+/-) Enter at Right | (\$4,900) |

| | |
|---------------------------|----------------|
| Economic Benefit* (+) | \$0 |
| Amount of Initial Penalty | \$13,900 |
| Total Adjustments (+/-) | (\$4,900) |
| FINAL PENALTY | \$9,000 |

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.