

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Industrial Coatings & Services, LLC  
Tuscaloosa, Tuscaloosa County, Alabama  
EPA Identification Number ALR000067629**

Consent Order No. 22-XXX-CHW

**PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and Industrial Coatings & Services, LLC (hereinafter “Industrial Coatings & Services”) 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 (“AHWMMA”), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

**STIPULATIONS**

1. Industrial Coatings & Services operates an industrial coating and degreasing facility (the “Facility”) with EPA Identification Number ALR000067629 located at 4711 Fosters Industrial Lane in Tuscaloosa, Tuscaloosa County, Alabama. As a result of its operations, Industrial Coatings & Services was a large quantity generator of hazardous waste, as that terms 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 AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

#### **DEPARTMENT'S CONTENTIONS**

4. On May 5, 2021, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection ("CEI") of Industrial Coatings & Services. The CEI and a review of Industrial Coatings & Services' compliance showed the following:

(a) Pursuant to ADEM Admin. Code r. 335-14-3-.01(1)(a)3., a generator shall not transport, offer its hazardous waste for transport, or otherwise cause its hazardous waste to be sent to a facility that is not a designated facility, as defined in 335-14-1-.02, or not otherwise authorized to receive the generator's hazardous waste.

Industrial Coatings & Services offered hazardous waste (i.e. EPA Hazardous Waste No. D001) for transport to a transporter that was not permitted to transport hazardous waste in Alabama.

(b) Pursuant to ADEM Admin. Code r. 335-14-3-.02(1)(a)1., a generator who transports, or offers for transportation, hazardous waste for off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transportation a rejected hazardous waste load, must prepare a Manifest (OMB control number 2050-0039) on EPA Form 8700-22, and if necessary, EPA Form 8700-22A.

Industrial Coatings & Services failed to prepare a uniform hazardous waste manifest for each shipment of hazardous waste (i.e. EPA Hazardous Waste No. D001).

(c) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(i), a large quantity generator must mark or label its containers.

Industrial Coatings & Services failed to properly mark or label two containers of hazardous waste.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.01(2), a person who generates a solid waste, as defined in 335-14-2-.01(2), must make an accurate determination as to whether that waste is a hazardous waste in order to ensure wastes are properly managed according to applicable AHWMA regulations.

Industrial Coatings & Services failed to perform a hazardous waste determination on two waste streams generated in the degreasing operation at the facility.

(e) Pursuant to ADEM Admin. Code r. 335-14-3-.01(8), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number from the Department. A generator who has not received an EPA identification number may obtain one by applying to the Department using the ADEM Form 8700-12.

Based on waste shipment records, Industrial Coatings & Services operated as a Large Quantity Generator and failed to obtain an EPA identification number by submitting an ADEM Form 8700-12 to the Department.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.01(2)(f)4., in addition to the records described in 335-14-3-.01(2)(f)1. through 3., a small or large quantity generator must maintain sufficient documentation to demonstrate the quantity of hazardous waste generated each calendar month. This documentation must be retained on-site for at least three years from the date the waste was generated.

Industrial Coatings & Services failed to maintain records of monthly hazardous waste generation.

(g) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)10., the large quantity generator must prevent the unknowing entry, and minimize the possibility for the unauthorized entry, of persons or livestock into the central accumulation area, unless physical contact with the waste, structures, or equipment will not injure unknowing or unauthorized persons or livestock which may enter the central accumulation area, and disturbance of the waste or equipment, by the unknowing or unauthorized entry of persons or livestock into the central accumulation area will not cause a violation of the requirements of 335-14-3.

Industrial Coatings & Services failed to adequately restrict access to the hazardous waste central accumulation area.

(h) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)10.(ii), unless exempt under 335-14-3-.01(7)(a)10., a sign with the legend, "Danger-Unauthorized Personnel Keep Out", must be posted at each entrance to the central accumulation area, and at other locations, in sufficient numbers to be seen from any approach. The legend must be written in English and in any other language predominant in the workplace and the area surrounding the facility, and must be legible from a distance of at least 25 feet. Existing signs with a legend other than "Danger-Unauthorized Personnel Keep Out" may be used if the legend on the sign indicates that only authorized personnel are allowed to enter the active portion, and that entry onto the active portion can be dangerous.

Industrial Coatings & Services failed to post adequate signage around the hazardous waste central accumulation area and was not exempt from this requirement.

(i) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)1.(v), at least weekly, the large quantity generator must inspect central accumulation areas. The large quantity generator must look for leaking containers and for deterioration of containers caused by corrosion or other factors. The large quantity generator must record inspections in an inspection log or summary. He must keep these records for at least three years from the date of 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.

Industrial Coatings & Services failed to inspect the hazardous waste central accumulation area weekly.

(j) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)7.(i)a., facility personnel must successfully complete a program of classroom instruction, online training (e.g. computer-based or electronic), or on-the-job training that teaches them to perform their duties in a way that ensures compliance with 335-14-3. The large quantity generator must ensure that this

program includes all the elements described in the document required under 335-14-3-.01(7)(a)7.(iv).

Industrial Coatings & Services failed to provide hazardous waste training to employees that manage hazardous waste.

(k) Pursuant to ADEM Admin. Code r. 335-14-3-.14(8)(a), a large quantity generator must have a contingency plan for the facility. The contingency plan must be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water.

Industrial Coatings and Services failed to have a contingency plan for the facility.

(l) Pursuant to ADEM Admin. Code r. 335-14-3-.14(7)(a), the large quantity generator must attempt to make arrangements with the local law enforcement agency, fire department, other emergency response teams, emergency response contractors, equipment suppliers, and local hospitals, taking into account the types and quantities of hazardous wastes handled at the facility. Arrangements may be made with the Local Emergency Planning Committee, if it is determined to be the appropriate organization with which to make arrangements.

Industrial Coatings and Services failed to make arrangements with local authorities as required.

5. On June 10, 2021, the Department issued a Notice of Violation to Industrial Coatings & Services, which cited violations of the hazardous waste regulations that were discovered during the CEI.

6. On June 25, 2021, the Department received Industrial Coatings & Services' response to the aforementioned 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 violation(s) along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

(b) **STANDARD OF CARE:** In considering the standard of care manifested by Industrial Coatings & Services, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Industrial Coatings & Services 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 Industrial Coatings & Services 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:** Based on a review of Department records, Industrial Coatings & Services has no history of previous violations.

(f) **ABILITY TO PAY:** The Department does not have any evidence indicating that Industrial Coatings & Services is unable 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 Industrial Coatings & Services' 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. Industrial Coatings & Services neither admits nor denies the Department's contentions. Industrial Coatings & Services consents to abide by the terms of this Special Order by Consent and to pay the civil penalty assessed herein.

10. At all times prior to ADEM's conclusions that Industrial Coatings & Services ("ICS") had violated ADEM's rules, regulations and policies, ICS attempted to be diligent in its attempts to comply with those rules, regulations and policies. In furtherance of its attempts to comply with those rules, regulations and policies ICS contracted with a third party "Contractor" to properly handle and dispose of its hazardous waste. The Contractor implicitly represented to ICS that it was knowledgeable of ADEM's rules, regulations and policies for the handling and disposal of hazardous waste. ICS justifiably relied upon the representations of the Contractor and entered into an agreement with the Contractor for those services.

11. As it turned out, the Contractor was not versed in ADEM's rules, regulations and policies for the handling and disposal of hazardous waste, and, failed to comply with the same. As a result of the failures of the Contractor ICS was cited by ADEM for numerous violations resulting from the Contractor's improper handling and disposal of hazardous waste.

12. Upon being notified by ADEM that the Contractor retained by ICS had violated ADEM's rules, regulations and policies for the handling and disposal of hazardous waste, ICS accepted findings and immediately took remedial action, which included contracting with Safety-Kleen Systems, Inc. and entering into a Standby Emergency Response Agreement to comply with ADEM's rules, regulations and policies for the handling and disposal of hazardous waste.

13. Although ICS was remiss in its reliance upon the misrepresentations and abilities of the Contractor to insure that ICS would be in compliance with the ADEM rules, regulations policies for the handling and disposal of hazardous waste, the violations which resulted from that reliance were not based upon any intentional conduct on the part of ICS, but were instead based upon its innocent and justifiable reliance upon the misrepresentations, negligence and wrongful actions of the Contractor.

### **ORDER**

Therefore, without admitting that it has violated any statutes or regulations, Industrial Coatings & Services, 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. The Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Industrial Coatings & Services agree to enter into this Special Order by Consent with the following terms and conditions:

A. Industrial Coatings & Services agrees to pay to the Department a civil penalty in the amount of \$15,060 in settlement of the violations alleged herein within one-hundred-eighty days of the effective date of this Special Order by Consent. Failure to pay the civil penalty within one hundred eighty 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. Industrial Coatings & Services 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 Industrial Coatings & Services' name and address, and the ADEM Administrative Order number of this action.

C. Industrial Coatings & Services agrees that, independent of this Special Order by Consent, Industrial Coatings & Services 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 Industrial Coatings & Services ("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.

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. Industrial Coatings & Services 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, Industrial Coatings & Services 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 actions as may be appropriate. Industrial Coatings & Services agrees not to object to such future orders, litigation, or enforcement actions based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement actions 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 Industrial Coatings & Services 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 Industrial Coatings & Services' 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 Industrial Coatings & Services of its obligations to comply in the future with any permit.

**Executed in duplicate, with each part being an original.**

**INDUSTRIAL COATINGS &  
SERVICES, LLC**

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

  
\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
Lance R. LeFleur  
Director

Darrell Watkins  
(Printed Name)

President  
(Printed Title)

10/20/21  
(Date Signed)

\_\_\_\_\_  
(Date Executed)

**Attachment A**

Industrial Coatings & Services, LLC  
Tuscaloosa, Tuscaloosa County  
Facility ID No. ALR000067629

<b>Violation</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violation*</b>
Offering hazardous waste for transport to a transporter that was not permitted to transport hazardous waste in Alabama	1	\$5,000	\$2,500	\$0
Failure to prepare a uniform hazardous waste manifest for each shipment of hazardous waste	1	\$1,000	\$500	\$0
Failure to properly mark or label containers of hazardous waste	1	\$200	\$100	\$0
Failure to make a hazardous waste determination on waste generated at the facility	1	\$2,500	\$500	\$0
Failure to notify the Department and obtain an EPA ID number	1	\$250	\$125	\$0
Failure to document the quantity of hazardous waste generated each calendar month	1	\$200	\$100	\$0
Failure to prevent unknowing entry into the hazardous waste storage areas	1	\$1,000	\$500	\$0
Failure to post "Danger--Unauthorized Personnel Keep Out" signs at each entrance to the central accumulation area	1	\$200	\$100	\$0
Failure to conduct or document weekly inspections of all hazardous waste accumulation areas	1	\$1,000	\$500	\$0
Failure to ensure that all personnel complete required training before handling hazardous waste	1	\$1,000	\$500	\$0
Failure to have a contingency plan for the facility	1	\$500	\$250	\$0

Failure to send the facility's contingency plan to all local emergency responders	1	\$200	\$100	\$0	<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		\$13,050	\$5,775	\$0	\$18,825

Adjustments to Amount of Initial Penalty

Economic Benefit (+)	\$0
Mitigating Factors (-)	\$0
Ability to Pay (-)	\$0
Other Factors (+/-)	-\$3,765

Amount of Initial Penalty	\$18,825
Total Adjustments (+/-)	-\$3,765
<b>FINAL PENALTY</b>	<b>\$15,060</b>

Footnotes

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