

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

The Heil Company, Inc.
Fort Payne, DeKalb County, Alabama
USEPA Identification Number ALD058036054

Consent Order No. 24-XXX-CHW

PREAMBLE

This Consent Order is made and entered into by the Alabama Department of Environmental Management (“the Department” or “ADEM”) and The Heil Company, Inc. (“Heil”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, 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. Heil operates a refuse truck body manufacturing facility (the “Facility”) with EPA Identification Number ALD058036054, located at 106 45th Street NE in Fort Payne, DeKalb County, Alabama. Heil, as a result of its operations at the Facility, was a large quantity generator of hazardous waste, a used oil generator, and a small quantity handler of universal waste, as those terms are 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-17, 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.

DEPARTMENT'S CONTENTIONS

4. On November 6, 2023, a representative of the Department's Industrial Hazardous Waste Branch conducted a compliance evaluation inspection ("CEI") of Heil. The CEI and a review of Heil's compliance showed the following:

(a) 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, or 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.

Heil failed to prepare a uniform hazardous waste manifest for each shipment of hazardous waste [solvent contaminated personal protective equipment ("PPE") and partially full one-gallon solvent containers] sent for disposal in the general plant trash.

(b) 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.

Heil sent hazardous waste (i.e. solvent contaminated PPE and partially full one-gallon solvent containers) for disposal to a facility that was not a designated facility or otherwise authorized to receive the waste.

(c) 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 AHWMMMA regulations.

Heil failed to make a proper waste determination on solvent contaminated PPE and partially full one-gallon solvent containers generated at the facility. Heil failed to properly characterize this waste and subsequently managed it as non-hazardous waste by placing it in the

general plant trash. Heil also failed to provide a waste determination for waste found in 55-gallon containers located in the Empty Container Storage Area.

(d) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a), a large quantity generator may accumulate hazardous waste on site without a permit or interim status provided the generator accumulates hazardous waste on site for no more than 90 days, unless it has been granted an extension to the 90-day period. ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the “treatment”, “storage”, and “disposal” of any "hazardous waste" as identified or listed in Chapter 335-14-2.

Heil stored hazardous waste in the secondary containment systems for the Paint Storage Area and the Paint Mix Area for more than 90 days without a permit and without being granted an extension to the 90-day period.

(e) 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.

Heil failed to conduct weekly inspections of the central hazardous waste accumulation area located at the Solvent Recycling Area.

(f) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)1.(vi)b., “No Smoking” signs must be conspicuously placed wherever there is a hazard from ignitable or reactive waste.

Heil failed to post “No Smoking” signs at the central hazardous waste accumulation area located at the Solvent Recycling Area. This area held ignitable waste.

(g) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)1.(viii), referencing ADEM Admin. Code r. 335-14-6-.09(6)(a), container storage areas must have a containment system that is designed and operated in accordance with 335-14-6-.09(6)(b), except as otherwise provided

by 335-14-6-.09(6)(c). ADEM Admin. Code r. 335-14-6-.09(6)(b)1. requires that a base must underlie the containers which is sufficiently impervious to contain leaks, spills, and accumulated precipitation.

Heil failed to maintain an impervious coating on the floor of the central hazardous waste accumulation area located at the Solvent Recycling Area.

(h) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)2., referencing ADEM Admin. Code r. 335-14-6-.10(2)(a), for each existing tank system that does not have secondary containment meeting the requirements of 335-14-6-.10(4), a large quantity generator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified professional engineer in accordance with 335-14-8-.02(2)(d) that attests to the tanks system's integrity.

Heil managed the secondary containment systems located in the Paint Storage Area and Paint Mix Area as hazardous waste storage tanks and failed to keep on file written assessments reviewed and certified by a qualified professional engineer attesting to their integrity.

(i) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)2., referencing ADEM Admin. Code r. 335-14-6-.10(6)(b)2., a large quantity generator must inspect, at least once each operating day, aboveground portions of the tank system, if any, to detect corrosion or releases of waste.

Heil managed the secondary containment systems located in the Paint Storage Area and Paint Mix Area as hazardous waste storage tanks and failed to inspect them at least once each operating day.

(j) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(i)c., a large quantity generator must mark or label its containers with the date upon which each period of accumulation begins clearly visible for inspection on each container.

Heil failed to mark four 55-gallon containers of hazardous waste in the central hazardous waste accumulation area located at the Solvent Recycling Area with an accumulation start date.

(k) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(ii)a., a large quantity generator accumulating hazardous waste in tanks must mark or label its tanks with the words “Hazardous Waste” and the EPA hazardous waste number(s).

Heil managed the secondary containment systems located in the Paint Storage Area and Paint Mix Area as hazardous waste storage tanks and failed to mark or label them with the words “Hazardous Waste” and with the EPA hazardous waste number(s).

(l) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)5.(ii)b., a large quantity generator accumulating hazardous waste in tanks must mark or label its tanks with an indication of the hazards of the contents.

Heil managed the secondary containment systems located in the Paint Storage Area and Paint Mix Area as hazardous waste storage tanks and failed to mark or label them with an indication of the hazards of the contents.

(m) Pursuant to ADEM Admin. Code r. 335-14-3-.01(7)(a)10., a 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.

Heil stored four 55-gallon containers of hazardous waste in the central accumulation area located at the solvent recycling area and failed to prevent unknowing entry to this area. The area was not equipped with a fence or other barrier. No warning signs were posted in the area.

(n) Pursuant to ADEM Admin. Code r. 335-14-3-.14(10)(a)., a large quantity generator must submit a copy of the required contingency plan and all revisions to all local emergency responders.

Heil failed to provide documentation that it had sent the contingency plan to all local emergency responders.

(o) Pursuant to ADEM Admin. Code r. 335-14-3-.14(10)(b), a large quantity generator must submit a quick reference guide of the contingency plan to the local emergency responders or, as appropriate, the Local Emergency Planning Committee.

Heil failed to provide documentation that it had developed a quick reference guide for the contingency plan and that a copy of the plan had been sent to all local emergency responders.

(p) Pursuant to ADEM Admin. Code r. 335-14-17-.03(4)(a)1., a container holding used oil must always be closed during storage, except when it is necessary to add or remove used oil.

Heil failed to keep closed one 5-gallon container of used oil located in the Fabrication Area when it was not necessary to add or remove used oil.

(q) 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".

Heil failed to label one 5-gallon container of used oil located in the Fabrication Area with the words "Used Oil".

5. On January 16, 2024, the Department issued a Notice of Violation to Heil, which cited violations of the hazardous waste regulations that were discovered during the CEI.

6. On February 15, 2024, the Department received Heil's 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 VIOLATION(S): In determining the seriousness of the violations, the Department considered the general nature and magnitude of the violations 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 Heil, the Department noted that the violations described above were non-technical and easily avoidable. Consequently, Heil 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 no significant economic benefit was gained by Heil as a result of the violations referenced herein.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION(S) 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, Heil does not have a history of similar violations.

(f) ABILITY TO PAY: The Department does not have any evidence indicating that Heil is unable 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 (see Attachment A, which is made a part of the Department's Contentions).

8. The Department neither admits nor denies Heil's Contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the

alleged violation(s) cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violation(s). The Department has determined that the terms contemplated in this Consent Order are in the best interest of the citizens of Alabama.

HEIL'S CONTENTIONS

9. Heil neither admits nor denies the Department's Contentions. Heil consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

10. Heil's actions in taking the secondary containment systems located in the Paint Storage Area and Paint Mix Area out of service precludes such systems being regulated as hazardous waste storage tanks and Heil has, in doing so, satisfied any obligations that may presently exist with respect to such systems.

ORDER

Therefore, without admitting that it has violated any statutes or regulations, Heil, along with the Department, desires to resolve and settle the alleged violation(s) 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 violation(s) alleged herein. Therefore, the Department and Heil agree to enter into this Consent Order with the following terms and conditions:

A. Heil agrees to pay to the Department a civil penalty in the amount of \$26,120 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. Heil 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 Heil's name and address, and the ADEM Consent Order Number of this action.

C. Heil agrees to comply with all terms, conditions, and limitations of the AHWMMMA and the regulations promulgated pursuant thereto immediately upon the effective date of this Consent Order and continuing every day thereafter.

D. The Department and Heil ("Parties") agree that this Consent Order shall apply to and be binding upon both parties, and both parties shall direct their directors, officers, and employees implementing this Consent Order to comply with its provisions. 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. Heil 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, Heil 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 actions as may be appropriate. Heil agrees not to object

to such future orders, litigation, or enforcement actions based on the issuance of this Consent Order if future orders, litigation, or other enforcement actions 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 Heil 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 Heil'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 Consent 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 Heil of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

THE HEIL COMPANY, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Alex Knecht

(Signature of Authorized
Representative)

Lance R. LeFleur
Director

Alex Knecht
(Printed Name)

Vice President; Asst. Secretary
(Printed Title)

May 20th 2024
(Date Signed)

(Date Executed)

Attachment A

The Heil Company, Inc.
Fort Payne, DeKalb County
Facility ID No. ALD058036054

Violation	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violation*
Failure to prepare a uniform hazardous waste manifest for each shipment of hazardous waste	1	\$1,000	\$100	\$0
Offering hazardous waste to a facility that is not a designated facility or otherwise authorized to receive the waste	1	\$10,000	\$1,000	\$0
Failure to make a proper waste determination	1	\$2,500	\$250	\$0
Storage of hazardous waste for greater than 90 days without a permit	1	\$10,000	\$1,000	\$0
Failure to conduct weekly inspections of the central hazardous waste accumulation area	1	\$1,000	\$100	\$0
Failure to post "No Smoking" signs at the central hazardous waste accumulation area	1	\$200	\$100	\$0
Failure to maintain an impervious coating on the floor of the central hazardous waste accumulation area	1	\$1,000	\$100	\$0

Failure to keep on file an engineer's assessments of hazardous waste storage tanks	1	\$200	\$100	\$0
Failure to inspect hazardous waste storage tanks at least once each operating day	1	\$1,000	\$100	\$0
Failure to mark or label containers of hazardous waste with an accumulation start date	1	\$200	\$100	\$0
Failure to mark or label hazardous waste storage tanks with the words "Hazardous Waste" and with the EPA hazardous waste number(s)	1	\$200	\$100	\$0
Failure to mark or label hazardous waste storage tanks with an indication of the hazards	1	\$200	\$100	\$0
Failure to prevent unknowing entry to the central hazardous waste accumulation area	1	\$1,000	\$100	\$0
Failure to provide a contingency plan for review	1	\$100	\$50	\$0
Failure to provide a quick reference guide for review	1	\$100	\$50	\$0
Failure to keep used oil containers closed	1	\$200	\$100	\$0

Failure to label containers of used oil with the words "Used Oil"	1	\$200	\$100	\$0	Total of Three Factors
TOTAL PER FACTOR		\$29,100	\$3,550	\$0	\$32,650

Adjustments to Amount of Initial Penalty

Economic Benefit (+)	\$0	Amount of Initial Penalty	\$32,650
Mitigating Factors (-)	\$0	Total Adjustments (+/-)	-\$6,530
Ability to Pay (-)	\$0	FINAL PENALTY	\$26,120
Other Factors (+/-)	-\$6,530		

Footnotes

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