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Montgomery, Alabama 36130-1463  
(334) 271-7700 ■ FAX (334) 271-7950

March 06, 2015

**CERTIFIED MAIL #91 7199 9991 7032 3110 6274**

Mr. Ellis Josey  
Owner  
Custom Industrial Fabricating, Inc.  
4214 Underwood Industrial Drive  
Irondale, Alabama 35217

Dear Mr. Josey:

Subject: **Consent Order No. 15-047-CHW**  
Custom Industrial Fabricating, Inc.  
Irondale, Jefferson County, Alabama  
EPA Identification Number ALR000057265

Enclosed is a copy of Consent Order Number 15-047-CHW, which constitutes an agreement between Custom Industrial Fabricating, Inc and the Alabama Department of Environmental Management. This Order requires Custom Industrial Fabricating, Inc 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 06, 2015. As described in Order Item A, Custom Industrial Fabricating, Inc has one-hundred eighty days from that date to pay the civil penalty assessed therein.

Should you have any questions, please feel free to contact Dee Dee Canionero of my staff at (334) 271-7993.

Sincerely,

Phillip D. Davis, Chief  
Land Division

PDD/DDC/nbf

Enclosure

CC via email: César Zapata, EPA Region 4  
Paula Whiting, EPA Region 4  
Jerome Hand, ADEM Office of External Affairs  
Chris Sasser, ADEM Office of General Counsel

Birmingham Branch  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (FAX)

Decatur Branch  
2715 Sandlin Road, S.W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (FAX)



Mobile Branch  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (FAX)

Mobile-Coastal  
3664 Dauphin Street, Suite B  
Mobile, AL 36608  
(251) 304-1176  
(251) 304-1189 (FAX)

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Custom Industrial Fabricating, Inc.  
Irondale, Jefferson County, AL  
EPA Identification Number ALR000057265**

ORDER NO. 15-047-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 Custom Industrial Fabricating, Inc. 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, (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

**STIPULATIONS**

1. Custom Industrial Fabricating, Inc. owns and operates a metal fabricating and painting facility with EPA Identification Number ALR000057265 located at 4214 Underwood Industrial Drive in Irondale, Jefferson County, Alabama. At all times relevant to these findings, Custom Industrial Fabricating had not notified the Department of any regulated waste activity at its Irondale facility.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

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 (2006 Rplc.

Vol.).

#### DEPARTMENT'S CONTENTIONS

4. On July 7, 2014, representatives of the Department conducted a compliance evaluation inspection (CEI) of Custom Industrial Fabricating, Inc. to determine compliance with all applicable requirements of Division 14 of the ADEM Administrative Code. The CEI and a review of Custom Industrial Fabricating, Inc.'s compliance revealed the following:

(a) ADEM Admin. Code r. 335-14-8-.01(1)(c) requires a permit for the "disposal" of any "hazardous waste" as identified or listed in Chapter 335-14-2.

Custom Industrial Fabricating, Inc. disposed of regulated hazardous waste on the ground at the site without first obtaining a hazardous waste disposal permit from the Department. As noted during the inspection, the following wastes had been disposed on site:

- Solvent-borne paint waste (which facility personnel described as a hazardous waste) that had been poured in a hole in the ground in the woods behind the paint area;
- A rusty 55-gallon drum containing an unidentified liquid, which was determined via analytical testing to be an ignitable (D001) hazardous waste, that had been abandoned in the woods behind the paint area; and
- Paint chips contaminated with methyl ethyl ketone (MEK) (F005/D035) that were piled on the ground (MEK used to clean painting equipment was sprayed directly onto the floor and allowed to dry; the resultant dried paint and solvent mixture was then scraped from the floor and placed into a pile on the ground outside).

(b) Pursuant to ADEM Administrative Code r. 335-14-3-.01(2), a person who generates a solid waste, as defined in 335-14-2-.01(2), must determine if that waste is a hazardous waste.

Custom Industrial Fabricating, Inc. did not make hazardous waste determinations on several 5-gallon buckets of paint waste (each of which was approximately 10% full) that were disposed in a general trash dumpster located on the property.

5. On August 1, 2014, the Department issued to Custom Industrial Fabricating, Inc. a Notice of Violation citing violations of the hazardous waste program regulations that were observed or existed at the time of the July 7, 2014 CEI.

6. On August 15, 2014, the Department received Custom Industrial Fabricating, Inc.'s response to the August 1, 2014 Notice of Violation.

7. Pursuant to Ala. Code § 22-22A-5(18) (2006 Rplc. Vol.), 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.

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

(a) **SERIOUSNESS OF THE VIOLATIONS:** The Department noted violations of ADEM Admin. Code div. 335-14 and the AHWMMMA. In arriving at the civil penalty, the Department considered the general nature and magnitude of the violations along with the available evidence of irreparable harm to the environment or threat to the public.

(b) **THE STANDARD OF CARE:** In considering the standard of care manifested by Custom Industrial Fabricating, Inc., the Department noted that the violations listed above were easily avoidable. Consequently, Custom Industrial Fabricating 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 Custom Industrial Fabricating, Inc. as a result of the violations referenced herein.

(d) EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of the nature, extent, and degree of success of Custom Industrial Fabricating, Inc.'s efforts to minimize or mitigate the effects of the violations noted in this action upon the environment.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, Custom Industrial Fabricating, Inc. does not have a documented history of noncompliance with respect to Division 14 of the ADEM Administrative Code.

(f) THE ABILITY TO PAY: Custom Industrial Fabricating, Inc. has alleged an inability 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 appropriate 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).

9. The Department neither admits nor denies Custom Industrial Fabricating, Inc.'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 violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

#### **CUSTOM INDUSTRIAL FABRICATING, INC.'S CONTENTIONS**

10. Custom Industrial Fabricating, Inc. neither admits nor denies the Department's contentions. Custom Industrial Fabricating, Inc. consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. As such, neither the execution hereof nor



the payment herein shall be deemed or construed at any time for any purpose by anyone (including but not limited to other parties who may bring claims in any legal, administrative or other proceeding) as an admission of liability.

#### **ORDER**

THEREFORE, without admitting that it has violated any statutes or regulations, Custom Industrial Fabricating, Inc., along with the Department, desires to resolve and settle the alleged violation 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 Custom Industrial Fabricating, Inc. agree to enter into this Consent Order with the following terms and conditions:

A. Custom Industrial Fabricating, Inc. agrees to pay to the Department a civil penalty in the amount of \$40,000 in settlement of the violation alleged herein within 180 days from the effective date of this Consent Order. Failure to pay the civil penalty within 180 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. Custom Industrial Fabricating, Inc. 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 Order shall reference Custom Industrial Fabricating, Inc.'s name and address, and the ADEM Administrative Order number of this action.

C. Custom Industrial Fabricating, Inc. agrees that, independent of this Consent Order, Custom Industrial Fabricating, Inc. shall comply with all terms, conditions, and limitations of the AHWMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. Within 15 days of the effective date of Order, Custom Industrial Fabricating, Inc. shall clean up and properly containerize all contaminated soils in the area near the back of the facility where the MEK-contaminated paint chips were disposed. Custom Industrial Fabricating, Inc. shall remove all contaminated soils in the area until the concentrations of the chemical contaminants in the soils are at or below the Regional Screening Levels for residential soils as presented in the Regional Screening Level (RSL) Summary Table (TR=1E-6, HQ=0.1) May 2014, or to background soil concentration levels accepted by the Department, if these levels exceed those listed in the Regional Screening Summary Table.

E. Within 30 days of the effective date of the Order, Custom Industrial Fabricating, Inc. shall dispose of the contaminated soil in accordance with the results of the above waste determination.

F. Within 60 days of the effective date of the Order, Custom Industrial Fabricating, Inc. shall submit to the Department documentation of compliance with Order Conditions D and E.

G. That, if Custom Industrial Fabricating, Inc. is unable to demonstrate that it has met Order Condition D., then Custom Industrial Fabricating, Inc. shall submit to the Department a complete Closure Plan and Contingent Post-Closure Plan for the MEK-contaminated paint chip disposal area at its Irondale facility acceptable to the Department and in accordance with the requirements of ADEM Admin. Code rs. 335-14-5-.07(2) to (6) and ADEM Admin. Code rs. 335-14-5-.07(7) to (11), within 180 days of the effective date of this Order, respectively. If clean closure cannot be achieved, Custom Industrial Fabricating, Inc.

shall comply with the requirements of ADEM Admin. Code rs. 335-14-5-.07(7) to (11) and ADEM Admin. Code r. 335-14-5-.14(11). The Closure and Contingent Post-Closure Plans shall address all areas of soil and groundwater contamination identified by an assessment of the MEK-contaminated paint chip disposal area. The Closure and Contingent Post-Closure Plans shall also include an implementation schedule, proposed cleanup standards and justification, and a full description of the methods by which the areas of contamination will be remediated and by which attainment of cleanup standards will be confirmed. The Closure and Contingent Post-Closure Plans shall comply with all requirements of ADEM Admin. Code r. 335-14-5-.07. Upon receipt of an invoice from the Department, Custom Industrial Fabricating, Inc. shall remit to the Department all applicable fees in accordance with ADEM Admin. Code ch. 335-1-6, Schedule C.

H. That, within 180 days after notification of the Department's approval of the Closure Plan, Custom Industrial Fabricating, Inc. shall complete closure activities of the MEK-contaminated paint chip disposal area in accordance with the approved plan.

I. That, within 60 days after completion of closure of the MEK-contaminated paint chip disposal area, Custom Industrial Fabricating, Inc. shall submit to the Department all certifications and notices of closure in accordance with all requirements of ADEM Admin. Code r. 335-14-5-.07(6), and, if clean closure is not achieved, Custom Industrial Fabricating, Inc. shall comply with all applicable requirements of ADEM Admin. Code rs. 335-14-5-.07(7) to (10) within the time frames specified in the regulations.

J. That, in the event either the Department or Custom Industrial Fabricating, Inc. determines that clean closure of the hazardous waste container storage area(s) cannot be accomplished, Custom Industrial Fabricating, Inc. shall implement the approved Contingent Post-Closure Plan. Custom Industrial Fabricating, Inc. shall also, within 180 days of a determination that clean closure of any area of contamination cannot be accomplished, submit to the Department a complete Post-Closure Permit Application prepared in accordance with ADEM Admin. Code ch. 335-14-8 for the purpose of conducting post-closure care activities pursuant to ADEM Admin. Code ch. 335-14-5 standards, or enter into an enforceable post-



closure document, as provided for under ADEM Admin. Code r. 335-14-8-.01(1)(c)7. If a Post-Closure Permit Application is used, it must include, at a minimum, all applicable information required by ADEM Admin. Code r. 335-14-8-.02. Upon receipt of an invoice from the Department, Custom Industrial Fabricating, Inc. shall remit to the Department all applicable fees in accordance with ADEM Admin. Code ch. 335-1-6, Schedule C. If an enforceable document is used, it must address all applicable requirements of ADEM Admin. Code r. 335-14-8-.02, and its format will be determined at the time the determination is made that clean closure of an area of contamination cannot be accomplished.

K. The Department and Custom Industrial Fabricating, Inc. (hereinafter 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.

L. 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 cited in this Consent Order.

M. Custom Industrial Fabricating, Inc. agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

N. For purposes of this Consent Order only, Custom Industrial Fabricating, Inc. 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. Custom Industrial Fabricating, Inc. also agrees that in any action brought by the Department to compel compliance with the terms of this Order, Custom Industrial Fabricating, Inc. agrees to be limited to the defenses of Force Majeure, compliance with this Order, and physical impossibility. A Force Majeure is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control Custom Industrial Fabricating, Inc.,

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 Custom Industrial Fabricating, Inc.) 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 agrees to be submitted to the Department a minimum of ten 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 Custom Industrial Fabricating, Inc., 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.

O. 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; Custom Industrial Fabricating, Inc. agrees not to 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.

P. 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 Custom Industrial Fabricating, Inc. does hereby waive any hearing on the terms and conditions of this Consent Order.

Q. The parties agree that this Consent Order shall not affect Custom Industrial Fabricating, Inc.'s obligation to comply with any Federal, State, or local laws or regulations.

R. 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.

S. 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.


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

U. 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 Custom Industrial Fabricating, Inc. of its obligations to comply in the future with any permit.

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

**Custom Industrial Fabricating, Inc.**

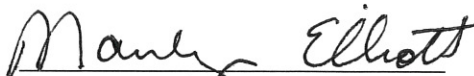
**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

  
(Signature of Authorized Representative)

Ellis Josey  
(Printed Name)

President  
(Printed Title)

1-22-2015  
(Date Signed)

  
Lance R. LeFleur  
Director

MAR 06 2015  
(Date Executed)

**Attachment A**

**Custom Industrial Fabricating, Inc.  
Irondale, Jefferson County  
EPA Identification Number ALR000057265**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations*</b>	
Disposal of hazardous waste without obtaining a permit	3	\$45,000	\$3,000	\$0	
Failure to perform waste determinations on solid wastes prior to disposal	1	\$100	\$50	\$0	<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		\$45,100	\$3,500	\$0	<b>\$48,150</b>

<b>Adjustments to Amount of Initial Penalty</b>	
<b>Mitigating Factors (-)</b>	\$0
<b>Ability to Pay (-)</b>	\$0
<b>Other Factors (+/-)</b>	\$(8,150)
<b>Total Adjustments (+/-)</b> <i>Enter at Right</i>	\$(8,150)

<b>Economic Benefit (+)</b>	\$0
<b>Amount of Initial Penalty</b>	<b>\$48,150</b>
<b>Total Adjustments (+/-)</b>	\$(8,150)
<b>FINAL PENALTY</b>	<b>\$40,000</b>

Footnotes

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