

North Carolina Department of Environment
and Natural Resources
Division of Waste Management

In Re: EQ Industrial Services, Inc.

NCD 982 170 292

**IMMEDIATE SUSPENSION
OF PROVISIONS OF
HAZARDOUS WASTE
MANAGEMENT PERMIT**

PRELIMINARY STATEMENT

Based upon a finding of an imminent hazard and a determination that the public health, safety and welfare requires emergency action, the North Carolina Department of Environment and Natural Resources, by and through its Division of Waste Management, hereby Orders the immediate suspension of certain operating provisions of the Hazardous Waste Management Permit issued on March 9, 2005, by the Division of Waste Management to EQ Industrial Services, Inc. d/b/a EQ North Carolina. This Order of Immediate Suspension of Provisions of Hazardous Waste Management Permit is issued pursuant to the authority provided in N.C.G.S. § 130A-23, the North Carolina Solid Waste Management Act, N.C.G.S. Chapter 130A, Article 9, and the rules promulgated there under.

STATEMENT OF FACTS

1. The North Carolina Department of Environment and Natural Resources ("the Department" or "DENR") enforces the North Carolina Solid Waste Management Act, N.C.G.S. Chapter 130A, Article 9, and the Hazardous Waste Management Rules codified at 15A N.C.A.C. 13A, which govern the management of hazardous waste. The Department has delegated this authority and responsibility to the Director of the Division of Waste Management ("the Division").
2. The United States Environmental Protection Agency has authorized North Carolina to operate the State Hazardous Waste Program in accordance with the Solid Waste Management Act and the Hazardous Waste Management Rules, in lieu of the federal Resource Conservation and Recovery Act ("RCRA") program.
3. EQ Industrial Services, Inc. (hereinafter "EQ Industrial Services" or "EQ") is a corporation organized and existing under the laws of the State of Michigan, and doing

business in Wake County, North Carolina. EQ Industrial Services is a person as defined in N.C.G.S. § 130A-290(a)(22) and 15A NCAC 13A .0102.

4. Since January 15, 2003, EQ Industrial Services has operated the hazardous waste management facility located at 1005 Investment Boulevard, Apex, North Carolina (hereinafter “the EQ facility” or “EQ’s hazardous waste management facility”). A hazardous waste management facility is defined in N.C.G.S. § 130A-290(a)(9) as a facility for the collection, storage, processing, treatment, recycling, recovering or disposal of hazardous waste. The EQ facility is a commercial hazardous waste facility within the meaning of N.C.G.S. § 130A-290(a)(3), since EQ Industrial Services accepts hazardous waste from the general public or from another person for a fee.
5. EQ Holding Co., Inc. is a corporation organized and existing under the laws of the State of Michigan. EQ Holding Co., Inc. owns the property comprising EQ’s hazardous waste management facility.
6. EQ’s hazardous waste management facility is located less than one mile from the Town of Apex’s historic downtown area. Apex Gymnastics, which provides training in gymnastics to children ages 6 through 18 is located next to the EQ facility at 1013 Investment Boulevard. The Dream Sport Center is located at 1016 Investment Boulevard, approximately one-tenth of a mile from the facility. Other businesses, residential subdivisions, townhomes, parks and church properties are located within a one-quarter mile radius of the EQ facility. Within this area, approximately one-half of the acreage is being used for residential purposes.
7. Outside the one-quarter mile radius from the EQ facility, the surrounding land use can be characterized as residential to the north, west and across Center Street to the northeast. Apex Middle School is less than one-half mile to the west and Lufkin Middle School is less than one-half mile to the southeast of the EQ facility. Baucom Elementary School is approximately 1.25 miles to the northwest and Apex High School is approximately 1.25 miles to north of the EQ facility. Land use is largely industrial and commercial to the south and southeast.
8. Pursuant to 40 CFR 270.1(c), adopted by reference at 15A NCAC 13A .0113, no person may store, treat or dispose of hazardous waste without a RCRA permit.
9. The hazardous waste management facility was first permitted on June 1, 1993, when the facility was operated by EnviroChem Environmental Services, Inc. (“EnviroChem”). In January 2003, EnviroChem sold the facility to EQ Holding Co., Inc. On January 15, 2003, the Division of Waste Management transferred the permit to EQ Industrial Services, Inc. to operate the facility.
10. The permit, which had been issued to EnviroChem and transferred to EQ Industrial

Services, was set to expire on July 1, 2003. On March 28, 2003, EQ Industrial Services filed its Part B Permit Renewal Application (hereinafter “Renewal Application”). The transferred permit remained in effect, pending the Division’s consideration of the Renewal Application and its decision on a new permit.

11. On March 9, 2005, the Division of Waste Management issued to EQ Industrial Services, Inc. d/b/a EQ North Carolina a Hazardous Waste Management Permit (hereinafter “the Hazardous Waste Management Permit” or “the Permit”). The Permit became effective on April 8, 2005, and will expire on April 8, 2015. A copy of the permit, without attachments, is attached to this Order.
12. The Hazardous Waste Management Permit allows EQ Industrial Services, Inc. to store and treat hazardous waste in accordance with the provisions of the Permit. (See Permit Conditions Part I-A, Part II-A, Part III and Part IV.)
13. Part II-A of the Permit identifies the hazardous waste and categories of hazardous waste which EQ Industrial Services may store and treat. The authorized wastes (and EPA Hazardous Waste Numbers) include: hazardous wastes which exhibit the characteristic of ignitability (D001); hazardous wastes which exhibit the characteristic of corrosivity (D002); hazardous wastes which exhibit the characteristic of reactivity (D003); hazardous wastes which exhibit the characteristic of toxicity (D004-D043); listed hazardous wastes from non-specific sources (F-listed wastes); listed hazardous wastes from specific sources (K-listed wastes); discarded commercial chemical products (P-listed wastes and U-listed wastes); and universal waste such as batteries, pesticides, mercury-containing equipment, and lamps containing mercury.
14. Part III of the Permit identifies the locations within the EQ hazardous waste management facility where hazardous waste in containers may be stored and treated, and includes conditions designed to ensure the proper management of the waste and the containers. The Permit requires that EQ manage waste in containers, which are in good condition and suitable for the type of waste stored, and ensure the proper segregation of wastes which are ignitable, reactive, or incompatible. (Permit Conditions Part III-A, B, C, G and H; 40 CFR 264.171, 264.172, 264.173, 264.176 and 264.177, adopted by reference at 15A N.C.A.C. 13A .0109)
15. Part IV of the Permit identifies the locations within the EQ hazardous waste management facility where hazardous waste in tanks may be stored and treated, and includes conditions designed to ensure the proper management of the waste and the tanks.
16. All of EQ’s hazardous waste activities were conducted out of the facility, which had been built by EnviroChem pursuant to the earlier (now expired) permit. The Permit issued to EQ Industrial Services allowed the use of the existing facility. Under the Permit, EQ Industrial Services was required to submit as-built drawings for each of the existing

hazardous waste management units. (Permit Conditions Part I-I.2)

17. In its Renewal Application, EQ Industrial Services sought permission to construct new hazardous waste management units at the facility. EQ proposed to add three tank systems, a warehouse storage area and a lab pack pour up room. The Permit allowed the construction of the new hazardous waste management units. (Permit Conditions Part I-I.1, and I.3-I.6) To date, EQ Industrial Services has not constructed the new units authorized in its Permit.
18. Under the Permit, EQ Industrial Services must comply with all conditions of the Permit, and all applicable Rules, including but not limited to the requirement that it maintain and operate the facility so as to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil or surface water which could threaten human health or the environment. (Permit Condition Part II-B; 40 CFR 264.31, adopted by reference at 15A N.C.A.C. 13A .0109). Under the Permit, EQ must properly operate and maintain, at all times, all facilities and systems of treatment and control (and related appurtenances) used to achieve compliance with the conditions of the Permit. (Permit Condition Part I-D.6; 40 CFR 264.30, adopted by reference at 15A N.C.A.C. 13A .0109)
19. Beginning on October 5, 2006, and continuing through October 6 and October 7, 2006, there was a catastrophic fire at the EQ hazardous waste management facility. As a result of the fire, the hazardous waste storage area and its contents were largely destroyed. The roof of the structure collapsed onto the storage containers underneath. Upon information and belief, some of the containers and their contents were consumed in the fire, while others were damaged and released their contents. As operated by EQ Industrial Services, the permitted hazardous waste storage facility consisted of: a Flammables Bay used to store containers of flammable sludges and liquids, propane cylinders and paint cans; a Lab-Pack Bay used to store a variety of laboratory chemicals, reactive metals and most, if not all, of the acutely-toxic wastes handled at the EQ facility; an Oxidizer/Base Bay used to store containers of oxidizers, reactive metals and some cyanides; and an Acids/Flammables Bay. Currently, hazards are presented by releases of corrosive, flammable, incompatible reactive and toxic wastes on the site.
20. DENR is conducting an ongoing investigation into the cause(s) of the fire, as well as determining the extent of any environmental contamination that may have resulted from the fire. The Division of Waste Management is conducting preliminary employee interviews, reviewing chemical inventories of waste on-site at the time of the fire, reviewing hazardous waste manifests, and reviewing and analyzing EQ's operating records. A facility Waste Characterization Plan that directs site remediation has been approved and is being implemented. The Division is reviewing a plan for Post Incident Site Investigation (PISI) to address site conditions once the burned debris and chemicals have been removed.

21. When DENR's investigation is complete, the Division will decide what enforcement actions should be taken to address any and all violations at the facility. The Division will also determine what additional actions should be taken with respect to the Hazardous Waste Management Permit to protect human health and the environment.

PERMIT PROVISIONS SUSPENDED

22. Given the damage to the hazardous waste management facility and hazardous waste management units, and questions concerning the integrity of the facility's containment structures, the Division has determined that EQ is unable to manage hazardous waste at the facility in compliance with its Permit and the Rules.
23. Pursuant to N.C.G.S. § 130A-23(a), the Secretary of the Department of Health and Human Services may suspend or revoke a permit issued under Chapter 130A upon a finding that a violation of the applicable provisions of Chapter 130A, the rules of the Commission of Health Services or a condition imposed upon the permit has occurred. Pursuant to N.C.G.S. § 130A-23(d), a permit shall be suspended or revoked immediately if a violation of Chapter 130A, the rules or a condition imposed upon the permit presents an imminent hazard.
24. Pursuant to N.C.G.S. § 130A-23(e), the Secretary of the Department of Environment and Natural Resources ("DENR") shall have all of the rights set out in Section 130A-23 to enforce the provisions of Article 9 of Chapter 130A. The Secretary of DENR has delegated this power to the Director of Division of Waste Management.
25. Pursuant to N.C.G.S. § 130A-303, in order to eliminate an imminent hazard, the Secretary of DENR may issue an order requiring that immediate action be taken to protect the public health or environment. This order may be directed to a generator or transporter of solid waste or to the owner or operator of a solid waste management facility. The Secretary of DENR has delegated this power to the Director of Division of Waste Management.
26. The Division finds an imminent hazard as defined in N.C.G.S. § 130A-2(3) because the material and residues that remain onsite presents an imminent threat of serious physical injury or adverse health effects because of the ignitable, reactive, corrosive, and toxic properties of the wastes individually, as well as by the uncontrolled combination of potentially incompatible waste streams caused by the rupture and destruction of the containers. An uncontrolled reaction occurred in the drum of sodium metal on October 18, 2006. There was a reaction in an exposed pile of residual waste material on October 20, 2006. While EQ Industrial Services has made significant progress in identifying,

characterizing and containerizing waste, the waste remains on site pending final chemical analysis.

27. Once the waste and debris have been removed from the site, EQ Industrial Services will be required to assess and remediate remaining contamination at the site. Acceptance of new waste at the EQ facility would not be consistent with the need to complete assessment and remediation of contamination on the site. Failure to adequately assess and remediate the site would create a risk of future dermal exposure, inhalation or ingestion of contaminants.
28. The original structures designed to store waste on the site were significantly damaged in the October 5-6, 2006 fire. Under current conditions, EQ cannot ensure that any new waste that enters the site will be appropriately stored and secured. Resumption of waste-handling on the site under those conditions would create an unacceptable risk to the public health, safety and welfare.
29. Site conditions warrant deliberate and specialized assessment and remediation. Due to the complexity and variety of chemicals and chemical constituents, and the on-going potential for incompatible wastes, reactive waste, and the specific health and safety hazards associated with corrosive and toxic wastes, including the potential for inhalation, dermal contact, and ingestion of chemicals and chemical constituents, EQ Industrial Services shall not bring any additional wastes on site. EQ Industrial Services shall limit its waste management activities to those associated with the Division-approved plans for assessment and remediation of the EQ facility, and the Division-approved plan for removal of non-hazardous solid waste and household hazardous waste from the site.
30. Based upon a finding of an imminent hazard and a determination that the public health, safety and welfare require emergency action, the following provisions of the Hazardous Waste Management Permit are suspended immediately and shall remain suspended until further notice from the Division:
 - a. Provisions of the Permit which would allow EQ Industrial Services to bring any additional hazardous waste to the EQ hazardous waste management facility, including the following Permit Conditions and Permit Sections:
 - (1) The first sentence of Permit Condition Part I-A;
 - (2) Permit Condition Part II-A;
 - (3) All of Permit Section Part III, with the exception of Permit Condition Part III-I (“Closure”); and
 - (4) All of Permit Section Part IV.

- b. Provisions of the Permit which would allow EQ Industrial Services to construct the new hazardous waste management units proposed in its Renewal Application, including Permit Conditions Part I-I.1, Part I-I.3, Part I-I.4 and Part I-I.5.
31. EQ Industrial Services shall not bring any waste of any type to the EQ facility for storage, treatment, or any other purpose, including temporary storage or staging of waste under transporter authorities. EQ Industrial Services shall not accept any additional hazardous waste for storage or treatment at the EQ facility while this Order of Immediate Suspension of Provisions of Hazardous Waste Management Permit is in effect. EQ Industrial Services shall not accept any additional non-hazardous solid waste or household hazardous waste for collection, storage, treatment, disposal or management at the EQ facility prior to obtaining a permit that would allow those activities. (See discussion below, under “Management of Other Wastes.”) EQ Industrial Services shall remove all non-hazardous solid waste or household hazardous waste from the facility in accordance with the Division-approved plan for removal of those wastes from the EQ facility.
32. No construction, repairs or alterations of any kind shall take place at the EQ facility until the Division has determined if the permit should be modified to provide for additional or different permit conditions to ensure that rebuilding and resuming operations at the EQ facility will not pose a threat to human health or the environment. EQ Industrial Services shall not construct the new hazardous waste management units (including the tank systems, warehouse storage area and lab pack pour up room), or otherwise reconfigure any area to allow for the storage or treatment of hazardous waste, while this Order of Immediate Suspension of Provisions of Hazardous Waste Management Permit is in effect. EQ Industrial Services shall file a request to modify its Permit if it wants to rebuild the hazardous waste management facility and any and all of the hazardous waste management units which had been constructed by EnviroChem under the earlier (now expired) permit.
33. Decisions about the status of the Permit and any future operations will be made following a complete assessment of contamination existing on site, a complete assessment of facility containment structures, and a complete investigation into the cause of the incident.

DUTY TO COMPLY WITH OTHER PERMIT CONDITIONS

To the extent not expressly suspended by this Order, all other Permit Conditions remain in effect. EQ Industrial Services shall comply with all remaining Permit Conditions, the Rules applicable to generators of hazardous waste in amounts greater than 1000 kilograms (“large quantity generators”), the statutory requirements of Article 9 of Chapter 130A, and EQ’s Renewal Application.

MANAGEMENT OF OTHER WASTES

In EQ's Renewal Application, EQ Industrial Services described plans to accept and store a wide variety of non-hazardous solid waste and household hazardous waste at the facility. (See, for example, the Renewal Application, Module B page 2, Module C page 4, and Module G page 2.) The permitting requirements for solid waste management facilities are found in 15A N.C.A.C. 13B. Pursuant to 15A NCAC 13B .0201(a) no person shall establish or allow to be established on his land, a solid waste management facility or otherwise treat, store, or dispose of solid waste unless a permit for the facility has been obtained from the Division. EQ Industrial Services (or the property owner, EQ Holding Co., Inc.) must obtain a permit from the Division's Solid Waste Section, prior to establishing a solid waste management facility, and prior to storing, treating or disposing of non-hazardous solid waste or household hazardous waste at the EQ facility, or at any other location within this State.

SITE ACCESS AND SECURITY

Access to the site shall be strictly limited to activities necessary to implement the plans approved by the Division for assessment and remediation and regulatory oversight of those activities. On site security 24 hours a day, seven days a week, shall be provided by EQ Industrial Services until further notice by the Division.

APPEAL RIGHTS

Pursuant to N.C.G.S. § 150B-3, the Division shall commence a contested case proceeding, and an administrative hearing will be held in accordance with Chapter 150B, the Administrative Procedure Act, at which time EQ Industrial Services may challenge the Order for Immediate Suspension of Provisions of Hazardous Waste Management Permit.

This the ____ day of October, 2006.

By: _____

Dexter R. Matthews, Director
Division of Waste Management

CERTIFICATE OF SERVICE

I hereby certify that I personally hand-delivered a copy of the attached Order for Immediate Suspension of Provisions of Hazardous Waste Management Permit on the following persons:

Steve Tinnemeier, General Manager
EQ Industrial Services, Inc. d/b/a EQ North Carolina
1005 Investment Boulevard
Apex, North Carolina

Dated this _____ day of October, 2006.

J.D. Hester
Waste Management Specialist
Division of Waste Management