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F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É	
September 26, 2022 26 septembre 2022			
Jennifer Sorvisto			
EDM		1	

Court File No.

FEDERAL COURT

BETWEEN:

VAC SAFE SOLUTIONS LTD.

Plaintiff

- and -

FAULTLESS SOLUTIONS CORPORATION

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the [Federal Courts Rules](#), serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the [Federal Courts Rules](#).

Copies of the [Federal Courts Rules](#), information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: _____

Issued by: _____

Edmonton Local Office
Federal Court of Canada
Scotia Place, Suite 530, Tower 1
10060 Jasper Avenue
Edmonton, AB T5J 3R8

TO: Faultless Solutions Corporation
6670 Columbus Road
Mississauga, ON, Canada, L5T 2G1

CLAIM

1. THE PLAINTIFF CLAIMS:

- (a) A declaration that Canadian Letters Patent no. 2,903,443 (“443 Patent”) and in particular claims 1-10, inclusive, thereof are valid and have been infringed by the defendant.
- (b) An interim, interlocutory and permanent injunction restraining the defendant, together with its agents, successors, and all those over whom it exercises control, directly or indirectly, from designing, manufacturing, making, using, operating, selling or offering for sale the products described herein, and from otherwise infringing the 443 Patent, and from contributing to and inducing infringement of the 443 Patent, by others;
- (c) Indirect and direct damages or, alternatively, an accounting of profits made by the defendant, as a result of its infringement of the 443 Patent, as the plaintiff may elect, in which the amount claimed, exclusive of interest and costs exceeds \$50,000;
- (d) An Order for delivery-up to the plaintiff or the destruction under oath, as the plaintiff may direct, of all infringing products and all parts, components, attachments, drawings, specifications and molds thereof and any other thing in the possession, custody or control of the defendant, which infringe or which are designed to enable others to infringe the 443 Patent, or as may offend the injunctions sought;
- (e) Reasonable compensation for damage sustained by the plaintiff pursuant to subsection 55(2) of the Patent Act;
- (f) Punitive and exemplary damages;
- (g) Pre-judgment and post judgment interest;
- (h) Costs of this action including GST, together with all reasonable expenses, costs and disbursements, or on such a scale deemed appropriate by this Honourable Court; and
- (i) Such further and other relief as this Honourable Court may deem just.

THE PARTIES

2. The plaintiff, Vac Safe Solutions Ltd. (“Vac Safe”), is a corporation incorporated pursuant to the laws of the Province of Alberta, Canada with its registered office at Suite 102, 9333 – 47 Street, Edmonton, AB, T6B 2R7. Vac Safe carries on business as a distributor of polyethylene dig tubes.
3. The defendant, Faultless Solutions Corporation (“Faultless”) is a corporation incorporated pursuant to the laws of the Province of Ontario, Canada with its registered office at 6670 Columbus Road, Mississauga, Ontario, L5T 2G1. Faultless carries on business as a manufacturer and supplier of Hydrovac parts, industrial hoses, and fittings.

CANADIAN PATENT NO. 2,903,443

4. The 443 Patent entitled “Dig Tube for Vacuum System”, was open to public inspection on March 14, 2016 and issued on November 8, 2016. A copy of the 443 Patent is attached in **Schedule “A”**.
5. Clint van Berkel and Ricardo Januario are the inventors of the invention disclosed and claimed in the 443 Patent. The plaintiff, Vac Safe, is the owner and patentee of the 443 Patent. Clint van Berkel and Ricardo Januario assigned their right, title and interest in the 443 Patent to Mega Diesel Excavating Ltd., who later assigned its right, title, and interest in the 443 Patent to Vac Safe.
6. The 443 Patent relates generally to a tube made from high density polyethylene being connected to a vacuum hose of a vacuum system. This invention is more particularly described in the specification of, and claimed in, the 443 Patent.

7. By reason of the facts above, Vac Safe has the exclusive right, privilege and liberty of making, constructing and using the invention described and claimed in the 443 Patent in Canada as well as the right to sell it to others to be used in Canada.
8. Claim 1 of the 443 Patent describes a dig tube for a hydrovac system, comprising a tube made from high density polyethylene having a density in the range of 0.93 to 0.97 g/cm³, the tube having a first end and a second end, and the tube being connected to a vacuum hose of the hydrovac system.
9. Claims 2-10 of the 443 Patent depend on claim 1 and describe further embodiments of the apparatus described in claim 1.

ACTIVITIES OF THE DEFENDANT

10. The defendant has infringed and continues to infringe the 443 Patent at least as follows. Since at least 2020, and such earlier times as known to the defendant, but not to the plaintiff, the defendant has directly or through entities it controls, designed, manufactured, used, offered for sale and/or sold polyethylene dig tubes for use with a hydrovac system.
11. The defendant has promoted its polyethylene dig tubes and has encouraged and induced its customers to use the polyethylene dig tube attached to vacuum hoses of hydrovac systems. For example, Faultless has advertised HDPE dig tubes for sale on its website under the heading Hydrovac Store since at least September 2020 both online and on Instagram. Images of the website advertisements and Instagram posts are attached in **Schedule "B"**.
12. The defendant has claimed to have sold 124 HDPE plastic dig tubes in a single day. The extent of the defendant's sales is known to the defendant, but not to the plaintiff.

13. The defendant has approached customers of the plaintiff and attempted to sell infringing dig tubes for approximately \$100 less than the plaintiff's sale price and other prices known to the defendant, but not to the plaintiff.
14. In 2019, the defendant attempted to source polyethylene dig tubes from the plaintiff and was aware of the 443 Patent but chose not to source the products from the plaintiff. The defendant has also discussed the 443 Patent with the plaintiff's exclusive licensee of the 443 Patent, 1895784 Alberta Ltd. The defendant does not purchase its polyethylene dig tubes from either the plaintiff or its exclusive licensee.
15. At least as early as 2019, the defendants were aware of the patent application that eventually issued as the 443 Patent. In producing its polyethylene dig tube, the defendant copied the polyethylene dig tube disclosed and claimed in the 443 Patent. The defendant's infringing activities have been carried out with full knowledge of the 443 Patent. Moreover, the defendant has admitted that it considered the 443 Patent to be valid.
16. The defendant's polyethylene dig tubes are aptly described as a dig tube for a hydrovac system, comprising a tube made from high density polyethylene having a density in the range of 0.93 to 0.97 g/cm³, the tube having a first end and a second end, and the tube being connected to a vacuum hose of the hydrovac system, all according to the invention of claim 1 of the 443 Patent.
17. The defendant's polyethylene dig tubes are also aptly described by claims 2-10 of the 443 Patent.
18. The defendant has also induced and procured others, including its customers, to infringe the 443 Patent and in particular any one of claims 1-10 of the 443 Patent. The defendant has promoted the purchase and use of its polyethylene dig tubes for use attached to vacuum hose

of dig tube systems and has further encouraged and induced its customers to purchase and use such dig tubes for use attached to vacuum hoses of dig tube systems. Such conduct by the defendant, or those entities it controls, has been without the license, permission, or consent of the plaintiff.

19. The precise numbers, amounts and dates of all such design, manufacturing, using, offering for sale, selling, providing, promoting of, contribution to and the inducing of others by the defendant are unknown to the plaintiff but are within the knowledge of the defendant and the plaintiff claims recovery of full compensation in respect thereof.
20. The defendants' egregious conduct in knowingly violating the 443 Patent and damaging the plaintiff's business is sanctionable by punitive damages.
21. By reason of the aforementioned, the plaintiff has suffered and continues to suffer direct and indirect harm and losses from the infringement of the 443 Patent, and the defendant has made and continues to make unlawful profits. The defendant will continue such acts unless restrained by this Honourable Court.
22. The plaintiff claims recovery of all reasonable compensation and damages during the period from March 14, 2016 until the present.
23. The plaintiff proposes that the trial of this action be held at the City of Edmonton, in the Province of Alberta.

Date: September 26, 2022



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Markus A. Feigel (markus@lambertlaw.ca)

Solicitors for the Plaintiff

SCHEDULE “A”



(22) Date de dépôt/Filing Date: 2015/09/09

(41) Mise à la disp. pub./Open to Public Insp.: 2016/03/14

(45) Date de délivrance/Issue Date: 2016/11/08

(51) Cl.Int./Int.Cl. *E02D 17/00* (2006.01),
E21B 21/00 (2006.01), *E21B 7/18* (2006.01)

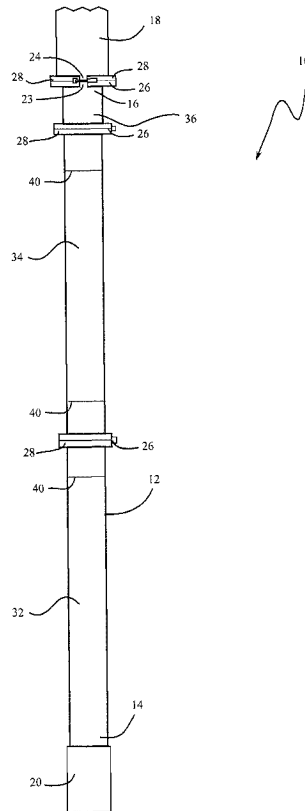
(72) Inventeurs/Inventors:
VAN BERKEL, CLINT, CA;
JANUARIO, RICARDO, CA

(73) Propriétaire/Owner:
VAC SAFE SOLUTIONS LTD., CA

(74) Agent: LAMBERT, ANTHONY R.

(54) Titre : TUBE DE CREUSAGE POUR SYSTEME D'ASPIRATEUR

(54) Title: DIG TUBE FOR VACUUM SYSTEM



(57) Abrégé/Abstract:

A dig tube for a vacuum system, comprising a tube made from high density polyethylene having a density in the range of 0.93 to 0.97 g/cm³, the tube being connected to a vacuum hose of the vacuum system.

DIG TUBE FOR VACUUM SYSTEM

TECHNICAL FIELD

[0001] Dig tube for vacuum system, for example hydrovac system, flusher truck, air vac or other vacuum systems.

BACKGROUND

[0002] Dig tubes are used in vacuum systems for example to assist in excavating holes in the ground, particularly where care must be taken to avoid damage to underground systems. For example in a hydrovac or flusher system, water is injected into the ground and the resulting slurry is vacuumed up using the dig tube. Dig tubes may be used for example to dig up pipelines without causing damage to the pipeline. Applicant proposes a new dig tube.

SUMMARY

[0003] In an embodiment, there is provided a dig tube for a vacuum system, comprising a tube made from high density polyethylene having a density in the range of 0.93 to 0.97 g/cm³, the tube having a first end and a second end, the tube being connected to a vacuum hose of the vacuum system.

[0004] In various embodiments, there may be included any one or more of the following features: a flexible boot, the flexible boot having a boot end, the boot end extending beyond the first end of the tube; the flexible boot being made of neoprene; a reducer connecting the tube to a flanged end of the vacuum hose; a flanged end for connecting to another tube, and the flanged end being tapered, thinning towards an outer periphery of the flange; and the flanged end having a radiused surface on the inside corner of the flange..

[0005] These and other aspects of the device and method are set out in the claims, which are incorporated here by reference.

BRIEF DESCRIPTION OF THE FIGURES

[0006] Embodiments will now be described with reference to the figures, in which like reference characters denote like elements, by way of example, and in which:

[0007] Fig. 1 is a side view of an embodiment of a dig tube connected to a vacuum system.

[0008] Fig. 2 is a perspective view of an embodiment of a dig tube with a boot fitted on an end of the dig tube.

[0009] Fig. 3 is a perspective view of an embodiment of a dig tube in which tube segments are shown disassembled.

DETAILED DESCRIPTION

[0010] Immaterial modifications may be made to the embodiments described here without departing from what is covered by the claims. In the claims, the word “comprising” is used in its inclusive sense and does not exclude other elements being present. The indefinite articles “a” and “an” before a claim feature do not exclude more than one of the feature being present. Each one of the individual features described here may be used in one or more embodiments and is not, by virtue only of being described here, to be construed as essential to all embodiments as defined by the claims.

[0011] As shown in Fig. 1, a dig tube 10 for a vacuum system has a tube 12 made from high density polyethylene (HDPE) having a density in the range of 0.93 to 0.97 g/cm³. The density may for example be 0.9490 g/cm³. The tube 12 has a first end 14 and an upper end to which may be connected a reducer 16. The tube 12 may comprise multiple segments of connected tubing. The tube 12 is connected to a flanged end 24 of vacuum hose 18 of the vacuum system by reducer 16 at the second end of the tube 12. The reducer 16 may be made from steel, which is conventional, or from high density polyethylene, as with the dig tube 12.

[0012] HDPE has a large strength-to-density ration, due to its low amount of branching which gives it stronger intermolecular forces and tensile strength than low density polyethylene (LDPE). HDPE has a higher specific strength than LDPE because the difference in strength is greater than the difference in density. HDPE is a thermoplastic material composed of carbon and hydrogen atoms joined together forming high molecular weight products. To make HDPE, in an embodiment, methane gas is converted into ethylene, then, with the application of heat and pressure, into polyethylene. The polymer chain may be 500,000 to 1,000,000 carbon units long. Short and/or long side chain molecules exist with the polymer's long main chain molecules. The longer the main chain, the greater the number of atoms, and consequently, the greater the molecular weight. HDPE is also harder than LDPE and can withstand temperatures of 120 degree Celsius for short periods.

[0013] The tube 12 may for example be made of HDPE of one or more of the following types: PE100, PE4710, PE3408, or PE3608, as designated by the Plastics Pipe Institute. PE4710 has a density cell class of 4.

[0014] A protective covering may surround the first end 14 of the tube 12 to protect against the tube 12 damaging other structures in use. As shown in Figs. 1 and 2, the protective covering may for example be a flexible boot 20 having a boot end 22, the boot end 22 extending beyond the first end 14 of the tube 12 while the vacuum system is in use. The flexible boot 20 helps protect against the tube 12 causing damage by contact with underground utilities or other materials in the vicinity of the vacuum system. The flexible boot 20 may for example be made of neoprene, and may taper inwardly, so that its outer circumference extends beyond the tube 12 more than the inside circumference, and the inside circumference may be aligned with the square end of the dig tube 12. The flexible boot 20 may be bolted to the dig tube or secured in any other suitable manner.

[0015] As shown in Fig. 1, a flanged end 23 of the reducer 16 may connect to flanged end 24 of the vacuum hose 18 using a connector. The connector may for example be any kind of clamp, and a particular clamp 26 is shown having arms 28, the arms 28 being hingedly connected and shaped to hold together the flanged end 24 of the vacuum hose 18 and a flange 23 formed on the reducer 16. The arms 28 may be tightened around the flanged end 24 of the vacuum hose 18 and the flange 23 on the reducer 16 by a hook and lever mechanism. Lower flanged end 36 of the reducer 16 may be connected in like manner by another connector 26 to the upper flanged end 38 of the upper piece or segment of the dig tube 12.

[0016] As shown in Fig. 1, the tube 12 may be formed of multiple tube segments, for example a lower tube segment 32 and upper tube segment 34. Each tube segment may have flaring at each end, forming flanged ends 38 for connecting to another tube. The flanged ends 38 may be tapered, thinning towards an outer periphery of the flange, to provide a tightly fitting connection respectively between the lower tube segment 32 and the upper tube segment 34, between the upper tube segment 34 and the reducer 16 and between the reducer 16 and the vacuum hose 18, as shown in Figs. 1 and 3.

[0017] Fig. 3 shows the lower tube segment 32 and upper tube segment 34, separated. Each flanged end 38 may have a radiused surface 39 on the inside corner of the flange. The radiused surface 39 may for example have a radius between 0.750 inches and 1.018 inches, or between 0.982 inches and 1.018 inches. Flanged end 23 of reducer 16, shown in Fig. 1, may also have a similar radiused surface if the reducer 16 is made of HDPE. A flanged end 38 of a lower tube segment 32

and two flanged ends 38 of upper tube segment 34 may be seen in Fig. 3. Each flanged end may be connected to provide a secure joint. The flanged ends 38 of each tube segment may be connected, such as by a clamp, and in particular by a clamp such as clamp 26.

[0018] The lower tube segment 32 may have a flat end without flaring at the end that attaches to the boot 20. The lower tube segment may have a square end, as shown in Fig. 3.

[0019] As shown in Figs. 1 and 3, each tube segment may have at least one fusion joint 40 connecting portions of the tube segments for ease of manufacture, or may have no fusion joints and be made from a full mould.

[0020] The tube 12 may be orange, black or any other colour. The tube 12 may have a range of wall thicknesses, for example, a wall thickness between 0.310 and 0.507 inches. The tube may have a range of outer and inner diameters, such as for example 8.624 inches outer diameter and 7.549 inner diameter (8 inch tube), or 6.625 outer diameter and 5.799 inner diameter (6 inch tube) or be made for other nominal diameters for example 4 inch.

[0021] The tube 12 may be preassembled, with boot 20 already attached.

What is claimed is:

1. A dig tube for a hydrovac system, comprising:
a tube made from high density polyethylene having a density in the range of 0.93 to 0.97 g/cm³, the tube having a first end and a second end, and
the tube being connected to a vacuum hose of the hydrovac system.
2. The dig tube of claim 1 further comprising a flexible boot, the flexible boot having a boot end, the boot end extending beyond the first end of the tube.
3. The dig tube of claim 2 in which the flexible boot is made of neoprene.
4. The dig tube of any one of claims 1, 2 and 3, further comprising a connector, the second end of the dig tube having a flange, the connector joining the flange of the second end of the tube to a flanged end of the vacuum hose.
5. The dig tube of any one of claims 1-4 in which the tube is made of high density polyethylene having density 0.9490 g/cc.
6. The dig tube of any one of claims 1-5 in which the tube is made of high density polyethylene of one of the following types: PE100, PE4710, PE3408, or PE3608.
7. The dig tube of any one of claims 1-6 in which the tube is made of type PE100 high density polyethylene.
8. The dig tube of any one of claims 1-7 in which the tube is made of type PE4710 high density polyethylene.
9. The dig tube of any one of claims 1-8 in which the tube has a flanged end for connecting to another tube, and the flanged end is tapered, thinning towards an outer periphery of the flange.
10. The dig tube of claim 9 in which the flanged end has a radiused surface on the inside corner of the flange.

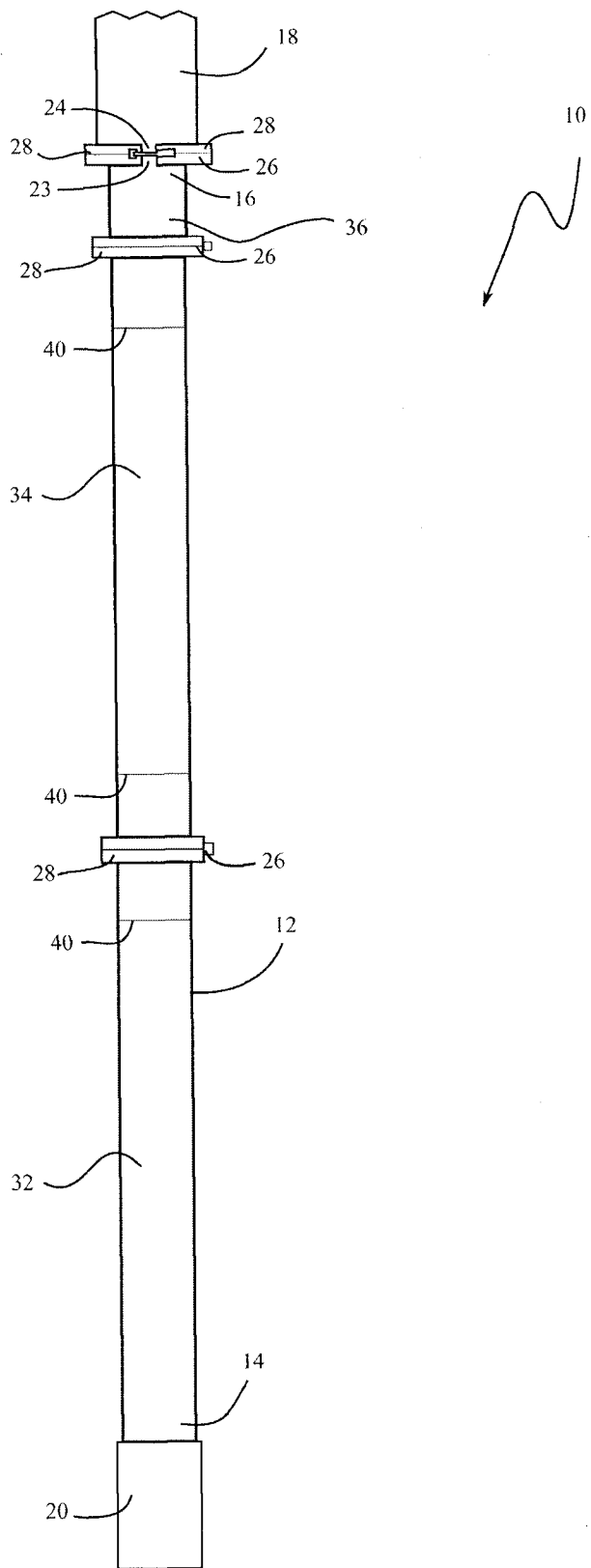


Fig. 1

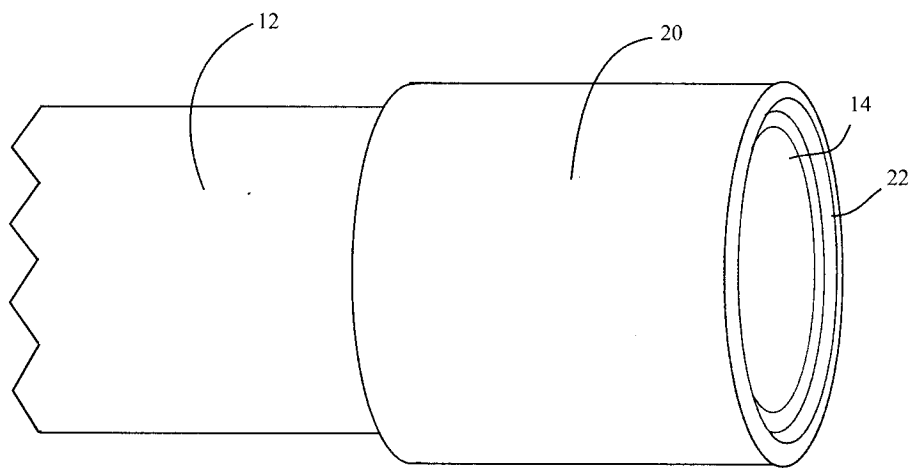


Fig. 2

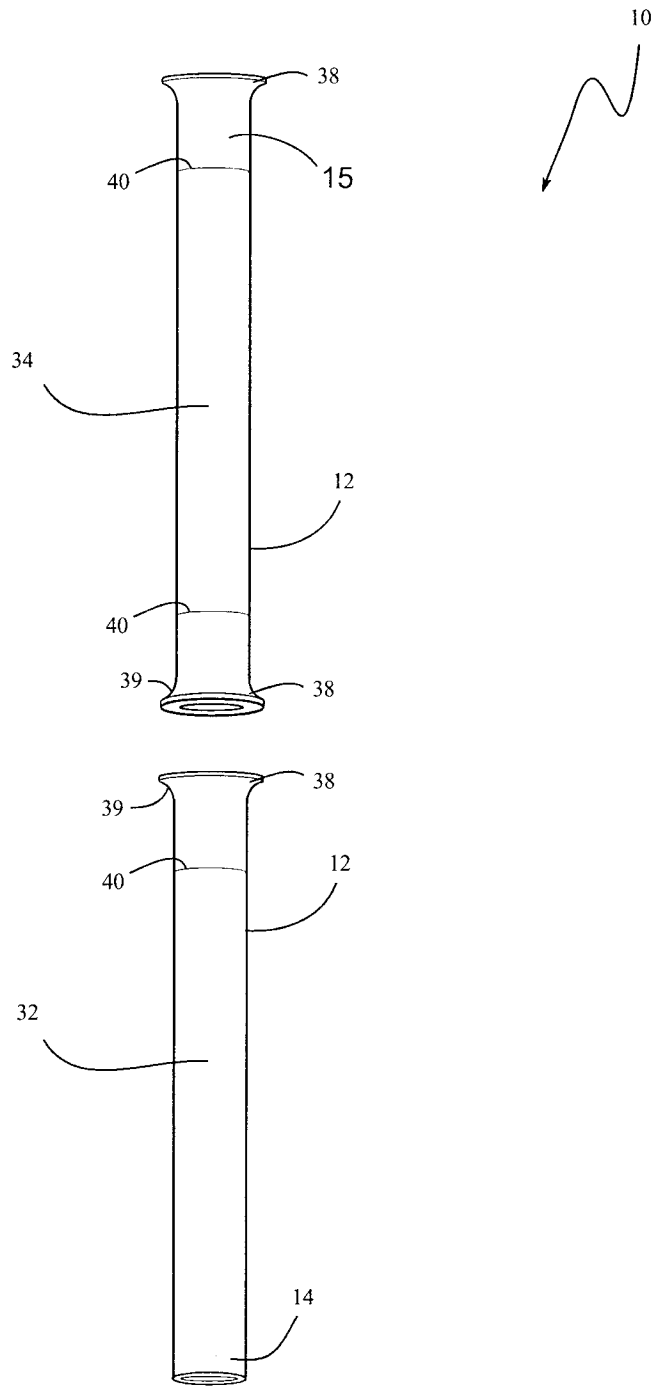


Fig. 3

SCHEDULE “B”



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1

Dig Tubes


2 products

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faultlessolutions Some big orders that were placed on our online store on Saturday: (hydrovacstore.com). Two being delivered on Sunday and another two being delivered on Monday. Industrial vacuum hose, dig tubes, spray guns, ripsaw nozzles, power wash hose, wash guns, and grounding mats. We have everything you need to get the job done.

77w



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MARCH 27, 2021



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faultlessolutions These new HDPE plastic dig tubes we just introduced onto the market this year have become outstandingly popular and we've been hearing some great feedback from our hydrovac customers.

They've become so popular that we just managed to sell 124 of them in a single day. Some of these orders are being shipped to our customers same day for freight delivery and others are being delivered locally through our online store. Guess who has another round of Saturday deliveries lined up this weekend!

#hydrovac #hydrovaclife #vacuumtruck #digtube #plasticdigtube #polydigtube #vacuumtrucks #hydrovacparts

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hood2680 Quality work!



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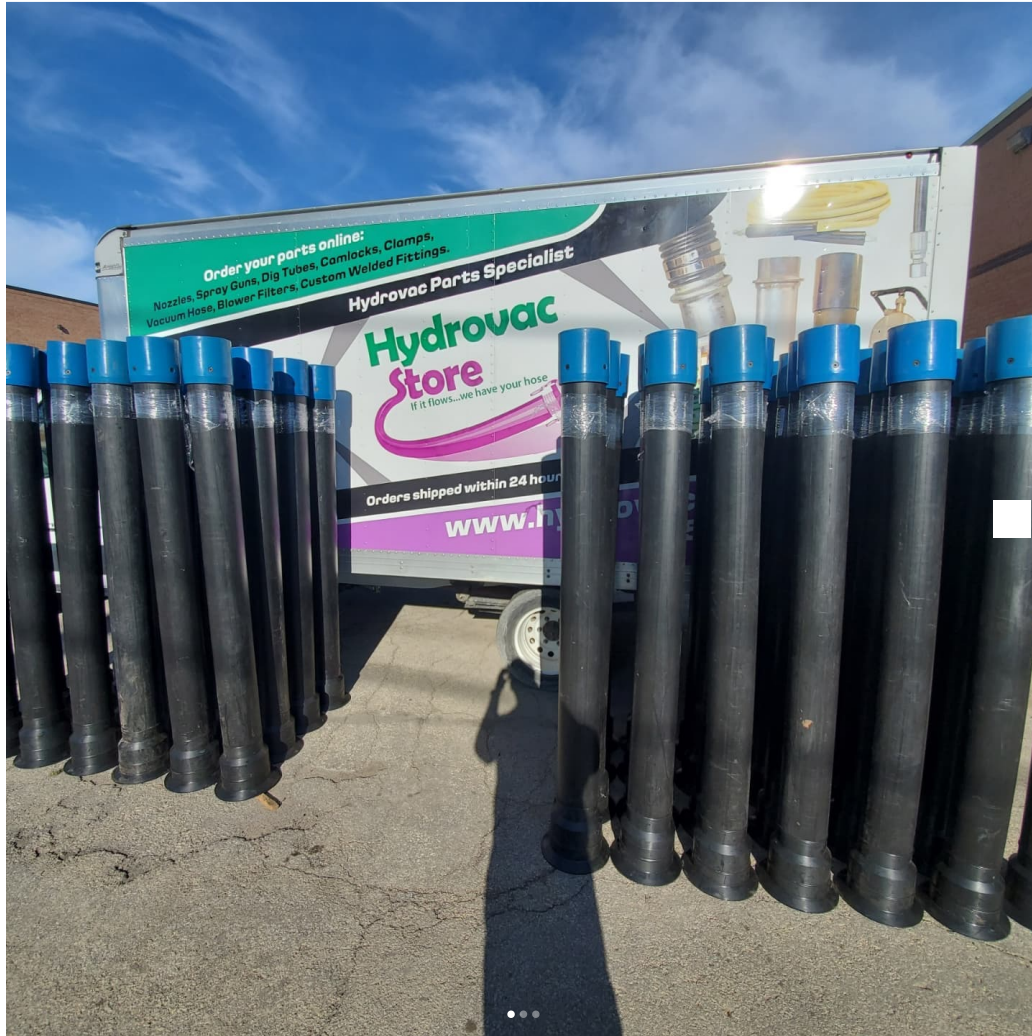
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MAY 14, 2021



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faultlessolutions Just delivered a massive order of 50 dig tubes this week! Many of our customers loved the first batch and couldn't wait for them to be re-stocked after we sold out so quickly! Some of the largest and most established hydrovac companies have now switched over exclusively to our brand of dig tubes as their sole dig tube for excavating. Ask around and you might hear why these are some of the best dig tubes on the market right now!

Our line-up of dig tubes now come in two versions for your convenience (regular and heavy duty). The regular version features a lightweight design that is easy to handle yet doesn't compromise on durability. Our heavy duty version has a reinforced tube that is designed for extreme conditions where only the strongest dig tube will do. If you would like to try one of these out - then give us a call - we're sure you'll join the ranks of everyone that loves them!

#excavationlife #digtube #hydrovactruck #hydrovac #hydroexcavation #vacuumtruck #vacuumtruckparts #vactor #vaccon

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OCTOBER 4, 2021

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Dig Tubes - Plastic

FAULTLESS SOLUTIONS



Size: 6" x 78"

6" x 78"

8" x 78"

Style: 6" flange x 6" urethane

6" flange x 6" urethane

8" flange x 6" urethane

6" male bush hog x 6" urethane

8" male bush hog x 6" urethane

Price: **\$405**

Stock: **In stock**

Quantity: 1 

Description

We carry a variety of plastic Hydrovac Dig Tubes. If you don't see your size, length or fitting on these tubes, simply call 905-564-4673 and we'll put together the desired length, size and fitting type.

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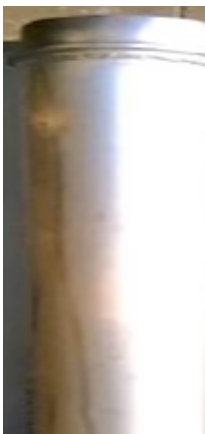
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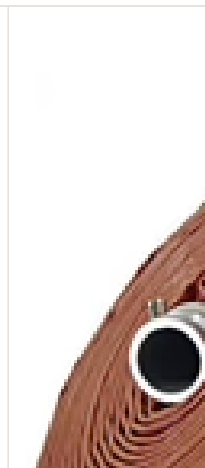
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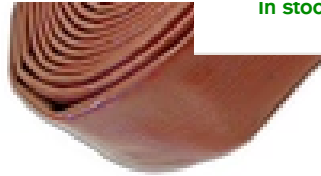
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Delivery worldwide

For delivery in Southern Ontario, we will personally deliver. For those outside this area, we will provide you with the BEST shipping rate. Weight will determine rate.



Satisfied or refunded

Our manufacturers guarantee their products and we do too. If you're not 100% satisfied we will replace or refund any item within 7 days of receipt.

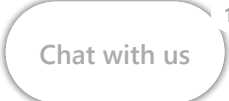


Top-notch support

Don't see what you're looking for, feel free to call our office and speak with one of highly experienced sales associates at 905-564-HOSE (4673). If we don't have it in our warehouse, we'll special order it for you and then stock it so you won't have to wait next time.



Secure payments



All credit card payments are 100% shopify accredited and secure to use.

If you'd like to set-up an account with us, please call our office at 905-564-HOSE (4673) and once credit approved, you can send us your PO numbers and take 30 days to pay.

ABOUT THE SHOP

Want to see what we're all about and what we do in-store, visit our website at Faultless Solutions...www.faultlessolutions.com

Our custom weld-shop, high-performance crimping equipment and specialized tools are in our warehouse which is stocked with items ensuring you can keep your hydrovac truck moving.

DON'T SEE WHAT YOU'RE LOOKING FOR - WE HAVE IT AND ARE ADDING ITEMS EVERYDAY. CALL ONE OF OUR KNOWLEDGEABLE SALES REPRESENTATIVES AT 905-564-HOSE (4673) AND WE'LL GET THAT SHIPPED TO YOU WITHIN 24 HOURS

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