

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

1400 Coliseum Blvd. 36110-2400 ■ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

January 16, 2013

CERTIFIED MAIL NO: 91 7108 2133 3936 3651 6360
RETURN RECEIPT REQUESTED

MR JACKIE PULLEN
STREET DEPARTMENT SUPERVISOR
CITY OF BOAZ
PO BOX 537
BOAZ AL 35957

RE: Consent Order 13-042-CAP

Dear Mr. Pullen:

Please find enclosed ADEM Consent Order No. 13-042-CAP which requires the City of Boaz to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of City of Boaz and the Department. Please refer to Order Items A and B for the dates by which the monetary penalties must be paid. Also, please note that Order Item C requires the submittal of "a plan". This plan should be received by the Department no later than forty-five (45) days from the date of this letter.

If you have any questions concerning this matter, please contact Jennifer Knight at (334) 271-7701 in Montgomery.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald W. Gore", is written over a faint, circular, embossed seal. The seal is partially obscured by the signature and the text below it.

Ronald W. Gore, Chief
Air Division

Enclosure

Cc: Thomas Johnston, 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
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: _____)
)
The City of Boaz)
Boaz, Marshall County, Alabama)
ADEM Permit No. 711-0048-X001)
_____)

CONSENT ORDER NO. 13-042-GAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” or “ADEM”) and the City of Boaz (hereinafter, “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The City of Boaz is the permitted owner and/or operator of the Air Curtain Incinerator (hereinafter, the “ACI”) operating in Boaz, Marshall County, Alabama. The ACI is operating under the authority of ADEM Permit No. 711-0048-X001 (hereinafter, the “Permit”), issued on September 27, 2002.

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 air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.).

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

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The City of Boaz _____)

Boaz, Marshall County, Alabama _____)

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4. Permit Proviso 9 states that “[T]he owner/operator must perfect loading techniques to minimize visible emissions (smoke).”

5. Permit Proviso 10 states that “[T]he air curtain burner shall not be loaded such that any material protrudes above the air curtain.”

6. Permit Proviso 19 states:

This facility is subject to New Source Performance Standard (NSPS) 40 CFR Part 60 Subpart CCCC. This limits opacity emissions to 10% as measured by an EPA Reference Method 9 (6-minute average). The opacity limitation is 35% (6-minute average) during the start-up period that is within the first 30 minutes of operation.

DEPARTMENT'S CONTENTIONS

7. On September 18, 2012, the Department conducted an unannounced inspection of the ACI and discovered that the operating ACI burn chamber had been overloaded with wood waste, resulting in increased emissions. As determined by an EPA Reference Method 9 observation, visible emissions with a high six-minute average opacity of 20.21% were noted by the Department during the inspection.

8. As a result of the overloading, wood materials were protruding above the air curtain, which contributed to the excess emissions.

9. On September 26, 2012, the Department issued a Notice of Violation (NOV) to the Permittee for operating the ACI in violation of Permit Provisos 9, 10, and 19, pursuant to the September 18, 2012 inspection of the ACI. The NOV requested that the Permittee respond and explain why the ACI was being overloaded, which resulted in a violation of the opacity limitation of 10%.

10. The Permittee responded to the NOV on October 12, 2012 stating that "We have discussed what may have occurred and feel as if the material sifted or fell causing several protrusions above the top of our ACI."

11. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, 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 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 that such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: The Department considers the failure to properly operate the unit in a manner as to minimize emissions to be a serious violation.

B. THE STANDARD OF CARE: By overloading the ACI in non-compliance with the Permit, the Permittee did not exhibit a standard of care consistent with the requirements of the ADEM Admin. Code R.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any economic benefit that the Permittee may have received by failing to operate the ACI in a manner consistent with the requirements of the Permit.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts made by the Permittee to minimize or mitigate the effects upon the environment due to its non-compliance.

E. HISTORY OF PREVIOUS VIOLATIONS: In 2007, the Department observed the ACI being overloaded with wood waste and the Permittee was issued a Warning Letter concerning this practice.

F. THE ABILITY TO PAY: The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

12. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of Department's contentions).

13. The Department neither admits nor denies Permittee'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.

PERMITTEE'S CONTENTIONS

14. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues 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. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee shall pay to the Department a civil penalty in the amount of \$3,000.00 in settlement of the violations alleged herein within forty-five days from 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. The Permittee 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 and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. The Permittee agrees to submit a plan to the Department detailing how it will demonstrate proper loading techniques for the ACI, not later than forty-five days from the effective date of this Consent Order.

D. The Permittee agrees to comply with the terms, limitations, and conditions of the Permit upon the effective date of this Consent Order and every day thereafter.

E. 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.

F. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, the parties agree that this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

G. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, the Permittee 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. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, 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 the Permittee) 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 shall 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 and without the fault of the Permittee, 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.

I. The Department and the Permittee 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 concerning the facility 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, and the Permittee shall not 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.

J. The Department and the Permittee 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 the Permittee does hereby waive any hearing on the terms and conditions of same.

K. The Department and the Permittee agree that this Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

Attachment A

City of Boaz
Boaz, Marshall County, Alabama
Facility No. 711-0048

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Failed to load air curtain incinerator properly	1	\$ 2,500.00	\$ 1,500.00	
Failed to operate within the 10% opacity limitation	1	\$ 1,000.00		
Totals		\$ 3,500.00	\$ 1,500.00	

Economic Benefit

Mitigating Factors	\$	-
Ability to Pay	\$	-
Other Factors	\$	(1,500.00)
Civil Penalty	\$	3,000.00

mw-

Footnotes

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

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