

ADEM

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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ONIS "TREY" GLENN, III, P.E.

DIRECTOR

BOB RILEY

GOVERNOR

September 27, 2006.

CERTIFIED MAIL NO.: 7005 0390 0000 9281 2202
RETURN RECEIPT REQUESTED

MR PERRY BOROM
B & H ASPHALT INC
PO BOX 609
PHENIX CITY AL 36868

RE: Consent Order 06-100-CAP

Dear Mr. Borom:

Please find the enclosed ADEM Consent Order No. 06-100-CAP which requires B & H Asphalt, Inc., 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 B & H Asphalt, Inc., and the Department. Please refer to Order Items A. and B. for the dates by which the monetary penalties must be paid.

If you have any questions concerning this matter, please contact Shane Jordan at (334) 270-5681 in Montgomery.

Sincerely,

Ronald W. Gore, Chief
Air Division



Enclosure

cc: Olivia Rowell, Office of General Counsel

Birmingham Branch
110 Vulcan Road
Birmingham, Alabama 35209-4702
(205) 942-6168
(205) 941-1603 [Fax]

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, Alabama 35603-1333
(256) 353-1713
(256) 340-9359 [Fax]

Mobile Branch
2204 Perimeter Road
Mobile, Alabama 36615-1131
(251) 450-3400
(251) 479-2593 [Fax]

Mobile - Coastal
4171 Commanders Drive
Mobile, Alabama 36615-1421
(251) 432-6533
(251) 432-6598 [Fax]



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IN THE MATTER OF:

CONSENT ORDER NO. 06-100-CAP

1. The Permittee operates an asphalt batch plant located in Phenix City, Russell County, Alabama, under the authority of Air Permit 211-0022-X001 (issued September 15, 2004). This permit authorizes the construction and operation of an asphalt batch plant facility subject to certain limitations and conditions.

2. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (1997 Rplc. Vol. and 2005 Cum. Supp.).

3. Pursuant to § 22-22A-4(n), Ala. Code (1997 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, §§ 22-28-1 to 22-28-23, Ala. Code (1997 Rplc. Vol. and 2005 Cum. Supp.).

4. ADEM Admin. Code r. 335-3-4-.01 (1) (a) states "...no person shall discharge into the atmosphere from any source of emission, particulate of an opacity greater than that designated as twenty percent (20%) opacity, as determined by a six (6) minute average."

5. Pursuant to Proviso No. 7 of Air Permit No. 211-0022-X001, the Permittee shall maintain and operate all air pollution control devices and capture systems at all times in a manner so as to minimize the emissions of air contaminants.

6. Pursuant to Proviso No. 19 of Air Permit No. 211-0022-X001, the Permittee shall maintain and operate a device to measure the pressure differential across the baghouse.

7. On September 22, 2004, during an inspection of the Permittee's 110 TPH asphalt batch plant, the Department documented excess visible emissions from the baghouse of the 110 TPH asphalt batch plant.

8. On September 27, 2004, the Department issued a Warning Letter (hereinafter "WL") to the Permittee for excess visible emissions from the 110 TPH asphalt batch plant baghouse.

9. On October 21, 2004, the Department received a response from the Permittee regarding the September 27, 2004 WL.

10. On February 16, 2005, during an inspection of the Permittee's 110 TPH asphalt batch plant, the Department documented emissions escaping capture from a hole in the dryer chute of the 110 TPH asphalt batch plant.

11. On February 24, 2005, the Department issued a WL to the Permittee for emissions escaping capture from a hole in the dryer chute of the 110 TPH asphalt batch plant.

12. On March 15, 2005, the Department received a response from the Permittee regarding the February 24, 2005 WL.

13. On April 6, 2006, during an inspection of the Permittee's 110 TPH asphalt batch plant, the Department documented visible emissions of 78% opacity from the baghouse stack of the 110 TPH asphalt batch plant during a six minute average.

14. On April 20, 2006, the Department issued a Notice of Violation (hereinafter "NOV") to the Permittee for allowing excess visible emissions from the baghouse of the 110 TPH asphalt batch plant.

15. On May 15, 2006, the Department received a response from the Permittee regarding the April 20, 2006 NOV.

16. On June 19, 2006, during an inspection of the Permittee's 110 TPH asphalt batch plant, the Department documented that the device used to measure the pressure differential across the baghouse was inoperable.

17. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

18. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CONTENTIONS

19. Pursuant to Ala. Code § 22-22A-5(18)c., 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

be less than \$100.00 or 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 violation continues shall constitute a separate violation.

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

A. SERIOUSNESS OF THE VIOLATION: The amount of elevated visible emissions exceeded the Permittee's allowed amount under its Air Permit (211-0022). The Permittee failed to maintain the air pollution control device.

B. THE STANDARD OF CARE: By not maintaining and operating the Permittee's facility in such a manner as to comply with its permit, the Permittee did not exhibit a high standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Since the Permittee operated without complying with its Air Permit, the Permittee realized an economic benefit due to the production of asphalt.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee took steps and purchased improved equipment to resolve the noncompliance issues.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has been issued 2 Warning Letters and 2 Notices of Violation (referenced in this order) since the first Air Permit was issued in 1997.

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 it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

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. (2005 Cum Supp.), as well as the need for timely and effective enforcement, and the Department believes 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 agrees to pay to the Department a civil penalty in the amount of \$5,500 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 comply with the terms, limitations, and conditions of Air Permit 211-0022 issued on May 5, 1997, immediately upon the effective date of this Consent Order and each and every day hereafter until such time the permit(s) are deemed invalid.

D. 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.

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

F. The Permittee 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, 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.

H. 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.

I. 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.

J. 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.

K. The Department and the Permittee agree that final approval and entry into this 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 Order.

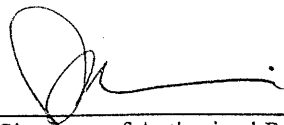
L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this 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 the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

B & H ASPHALT, INC.



(Signature of Authorized Representative)

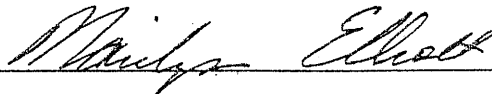
Perry L. Boron Jr.

(Printed Name)

R.E.O.

(Printed Title)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



for
Onis "Trey" Glenn, III
Director

9/25/2004

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