ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

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ADEM
AIR DIVISION

IN THE MATTER OF:	)	
	)	
Hosea O. Weaver & Sons, Inc.	)	
Hosea O. Weaver & Sons, Inc. Cut-off Road	)	CONSENT ORDER NO.: 16-_____-CAP
Mobile, Mobile County, Alabama	)	
	)	
ADEM Air Permit No.: 503-8069	)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and Hosea O. Weaver & Sons, Inc, (hereinafter, the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 22-22A-16 (2006 Rplc. Vol.), and the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 through 22-28-23, (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee is the owner and/or operator of an asphalt plant facility known as the Hosea O. Weaver & Sons, Inc., Cut-off Road (hereinafter, the "Facility") located in Mobile, Mobile County, Alabama. The Permittee operates the Facility under the authority of ADEM Air Permit 503-8069-X001 (hereinafter, the "Permit").

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 through 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 through 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 through 22-28-23 (2006 Rplc. Vol.).

4. The U.S. Environmental Protection Agency's Standards for Performance for Hot Mix Asphalt Facilities, found at 40 C.F.R 60, Subpart I, are incorporated by reference in ADEM Admin. Code r. 335-3-10-.02(7).

5. 40 C.F.R. 60, Subpart I (§60.92 – Standard for Particulate Matter), states:

> (a) On and after the date on which the performance test required to be conducted by §60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected facility any gases which:
>
> (1) Contain particulate matter in excess of 90 mg/dscm (0.04 gr/dscf).
>
> (2) Exhibit 20 percent opacity, or greater.

DEPARTMENT'S CONTENTIONS

6. On August 20, 2015, the Department observed excessive visible emissions emanating from the asphalt plant baghouse stack at Facility.

7. On September 28, 2015, the Department issued a Warning Letter to the Permittee requesting that it respond to it by October 30, 2015.

8. On October 26, 2015, the Permittee responded to the Warning Letter and stated the following:

(a) Its operator did not notice greater than expected emissions coming from the stack at the Facility.

(b) One-hundred and five bags in the baghouse were found to be faulty and replaced.

(c) A hole was found in the ducting that allowed unfiltered emissions to be emitted through the stack into atmosphere, which was later caulked and corrected.

9. On July 13, 2016, the Department conducted an inspection of the Facility and noted visible emissions of 42%, 57%, 64%, 55% and 56% opacities during five six minute averages, emitting from asphalt drum baghouse, in violation of ADEM Admin. Code r. 335-3-10-.02(7).

10. On August 2, 2016, the Department issued a Notice of Violation (NOV) to the Permittee citing violations of ADEM Admin. Code r. 335-3-10-.02(7) and requesting a response from the Permittee by September 2, 2016.

11. On September 6, 2016, the Department received a response from the Permittee stating the following:

(a) At the time of the Department's inspection, the Facility had endured many days of rain and the material stockpiles had become inundated with water and resulted in high moisture levels.

(b) Because of heavy rain, the Permittee was unable to determine whether the plume was steam or particulate matter.

(c) Since the Department's July 13, 2016, two-hundred twenty bags were replaced.

(d) Following the July 13, 2016 inspection and after replacing the two-hundred twenty bags, the Permittee engaged Sanders Engineering and Analytical Services to conduct a follow-up stack test, which indicated a particulate matter emission rate of 0.03142 gr/dscf in compliance with ADEM Admin. Code r. 335-3-10-.02(7).

12. Pursuant to Ala. Code §22-22A-5(18)c., *as amended*, 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 Permittee failed to operate the Facility in compliance after receiving the Warning Letter and conditions at the Facility degraded resulting in more serious violations occurring.

B. THE STANDARD OF CARE: By not maintaining the Facility in proper operating condition, the Permittee did not exercise the requisite standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that the Permittee gained no significant economic benefit 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 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: The Permittee has a history of emissions exceedances at the Facility and received a Warning Letter in September 2015 as a result.

F. THE ABILITY TO PAY: 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 that 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.

H. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, 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 (*See* "Attachment A", which is made a part of the 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. Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms and conditions 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., *as amended*, as well as the need for timely and effective enforcement, and the Department 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 agrees to pay to the Department a civil penalty in the amount of $6000.00 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 comply with the terms, limitations, and conditions of the Permit and applicable ADEM Regulations.

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. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order 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 this incident 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 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.

HOSEA O. WEAVER AND SONS, INC.

R Lewis Tillery
(Signature of Authorized Representative)

R. LEWIS TILLERY
(Printed Name)

VICE PRESIDENT
(Printed Title)

10/12/16
(Date)

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur
Director

(Date Executed)

Attachment A

Hosea O. Weaver & Sons, Inc.
Mobile, Mobile County

Facility ID No. 503-8069

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Documented VE exceedance	5	$2,000	$2,000	$2,000	
					Total of Three Factors
TOTAL PER FACTOR		*$2,000*	*$2,000*	*$2,000*	*$6,000*

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	$0
Ability to Pay (-)	$0
Other Factors (+/-)	$0
Total Adjustments (+/-) *Enter at Right*	$0

Economic Benefit (+)	$0
Amount of Initial Penalty	$6,000
Total Adjustments (+/-)	$0
FINAL PENALTY	$6,000

Footnotes

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