### ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
Hosea O. Weaver & Sons, Inc.	)	CONSENT ORDER
Mobile, Mobile County, Alabama	)	
Facility ID No. 503-8069-X001	)	No.

#### **PREAMBLE**

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("Department" or "ADEM") and Hosea O. Weaver & Sons, Inc. ("Permittee") pursuant to the provisions of the Alabama Environmental Management Act, <u>Ala. Code</u> §§22-22A-1 through 22-22A-17, *as amended*, and the Alabama Air Pollution Control Act, <u>Ala. Code</u> §§22-28-1 through 22-28-23, *as amended*, and the regulations promulgated pursuant thereto.

#### **STIPULATIONS**

- 1. Hosea O. Weaver & Sons, Inc., owns and operates an asphalt plant located at 1908 Bay Bridge Cutoff Road in Mobile, Alabama (the "Facility"). The Permittee operates the Facility under the authority of ADEM Permit No. 503-8069-X001 ("Permit"), issued to it on September 22, 1998.
- 2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 through 22-22A-17, as amended.
- 3. Pursuant to <u>Ala. Code</u> §22-22A-4(n), *as amended*, 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, *as*

amended.

4. Air Permit No. 503-8069-X001 Proviso No. 7 states:

All air pollution control devices and capture systems for which this permit is issued shall be maintained and operated at all times in a manner so as to minimize the emissions of air contaminants. Procedures for ensuring that the above equipment is properly operated and maintained so as to minimize the emission of air contaminants shall be established.

5. Air Permit No. 503-8069-X001 Proviso No. 20 states:

This facility is subject to New Source Performance Standards (NSPS). This limits particulate emissions to 0.04 grains per dry standard cubic foot.

6. Air Permit No. 503-8069-X001 Proviso No. 10 states:

Written test results are to be reported to the Department within 15 working days of completion of testing.

### DEPARTMENT'S CONTENTIONS

- 7. On June 28-29, 2022, ADEM performed EPA Reference Methods 5 (Particulate Matter) and Method 9 (Visible Emissions Observation) on the Facility and the results indicated that the Permittee was operating with particulate emissions at the maximum of the Permit limit.
- 8. On August 4, 2022, the Department issued a letter to the Permittee documenting concerns about its ability to maintain compliance given that there was no compliance margin. The Department requested the Permittee to provide a written response by August 25, 2022.
- 9. On August 29, 2022, the Permittee responded to the Department's August 4, 2022, letter stating that it would implement quarterly glow tests to detect particulate matter leaks and would continue to conduct frequent maintenance to ensure compliance.

- 10. On December 15, 2022, EML, LLC., performed EPA Reference Methods 5 and 9 on the Facility and the results indicated that the Permittee was operating in violation of the Permit with a particulate emissions average of 0.067 gr/dscf.
- 11. On February 8, 2023, the Department issued a Notice of Violation ("NOV") to the Permittee for operating in violation of the Permit by emitting particulate emissions in excess of the 0.04 gr/dscf standard and failing to report the test results to the Department within 15 working days.
- 12. On February 27, 2023, the Permittee responded to the NOV stating that upon inspection of the Facility equipment following the December 15, 2022, tests, a damaged pipe and silicone seal were identified and repaired. In addition, the Permittee reported that 147 bags were replaced at the Facility on December 17, 2022.
- 13. 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. In arriving at this civil penalty, the Department has considered the following:
- A. SERIOUSNESS OF THE VIOLATION: The Department considers these violations to be serious. The Department is not aware of any evidence of irreparable harm to human health or the environment due to these violations.

- B. THE STANDARD OF CARE: By not operating the plant in such a manner as to comply with the Permit, the Permittee did not exhibit the requisite standard of care.
- C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any significant economic benefit as a result of the violation 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: On August 2, 2016, the Permittee was issued a Notice of Violation (NOV) due to excessive visible emissions. Subsequently, the Permittee was issued a Consent Order on December 2, 2016, for operating in violation of the Permit by exhibiting visible emissions greater than 20 percent opacity.
- 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.
- 14. 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 and consistent with the historical penalty range imposed by

the Department for similar violations (See Attachment "A", which is hereby made a part of Department's Contentions).

15. The Department neither admits nor denies the 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**

- 16. Prior to the Department's August 4, 2022 letter, the Permittee became aware of the results for the June 28-29, 2022 ADEM EPA Reference Methods 5 (Particulate Matter) testing via communications with the Department. Upon completion of the Department's emissions testing, the Permittee notified the Department that diligent efforts were underway to minimize the emissions for the facility at 1908 Bay Bridge Cutoff Rd., Mobile, AL 36610 (Asphalt Plant No. 1). The Permittee has performed comprehensive inspections and regular maintenance to minimize the emissions for the facility for many years. The Permittee Air Permit compliance is well documented during prior inspections by the Department. The Permittee communicated with the Department prior to and after the EML, LLC follow-up emissions tests in compliance with the Air Permit requirements for the facility.
- 17. After receipt of the August 4 letter from the Department, the Permittee contacted the Department via emails and phone conversations on or before the August 25 due date and notified the Department that due to a serious family health crisis the written response to the August 4 Department letter would not be submitted on August 25, 2022. The health crisis was related to

an emergency intensive care condition of the Permittee Responsible Official's spouse on August 24, 2022.

- 18. The EML, LLC test results that revealed the non-compliant particulate emissions, averaging 0.067 gr/dscf were delivered to the Permittee's office between December 23, 2022 and January 2, 2023, when the Permittee's office and operations were completely shut down for Christmas break, which their office does every year (late December to early January) so that the Permittee's employees can enjoy this time with their families. The Permittee had limited email access at that time and the Permittee Responsible Official was not in the office until after January 2, 2023. Also, the Permittee Responsible Official was suffering from COVID 19 prior to and during the communications with the Department on January 19, 2023.
- 19. During and after the EML, LLC emissions testing on December 15, 2022, the Permittee identified the source of the non-compliant emissions and repaired the problem area in the baghouse equipment within a 2 day time frame (by December 17, 2022), working after hours and on the weekend to complete the repairs. The Permittee immediately notified the Department that the source of the non-compliant emissions was corrected, and that confirmation emissions testing by EML, LLC was scheduled and approved by the Department, in compliance with the Air Permit requirements. The results of the confirmation emissions testing by EML, LLC demonstration full compliance with the Air Permit emissions requirements for the facility, and a drastic reduction in the particulate matter emissions for the facility, as a results of the repairs and maintenance efforts by the Permittee. The Permittee submitted the EML, LLC confirmation emissions test results within the 15 day requirement to the Department.

20. 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., as amended, 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 \$24,000.00 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 Post Office Box 301463 Montgomery, Alabama 36130-1463

- C. The Permittee agrees to comply with the terms, limitations, and conditions of the Permit and ADEM regulations everyday hereafter.
- 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 the Site 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.

HOSEA O. WEAVER & SONS, INC.	ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
(Signature of Authorized Representative)  Michael F. Wagner  (Printed Name)	Lance R. LeFleur Director
(Printed Title)	
Date Signed: 4/19 23	Date Executed:

## Attachment A

# Hosea O. Weaver & Sons, Inc. Mobile, Mobile County Facility ID No. 503-8069-X001

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to control particulate emissions from baghouse stack.	2	\$10,000	\$5,000	\$2,500	
Failure to report test results within 15 working days.	1	\$2,500	\$0	\$0	
					Total of Three Factors
TOTAL PER .	FACTOR	\$22,500	\$5,000	\$2,500	\$30,000

Adjustments to Amount of Initial Penalty			
Mitigating Factors (-)			
Ability to Pay (-)			
Other Factors (+/-)	- \$6,000		
Total Adjustments (+/-) Enter at Right	- \$6,000		

Economic Benefit (+)	
Amount of Initial Penalty	\$30,000
Total Adjustments (+/-)	-\$6,000
FINAL PENALTY	\$24,000

#### Footnotes

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