

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In The Matter Of:

H & L TRUCKING, INC.

Moulton, Lawrence County, Alabama

ADEM Air Facility I.D. No. 707-0019

CONSENT ORDER NO. 99-068-CAP

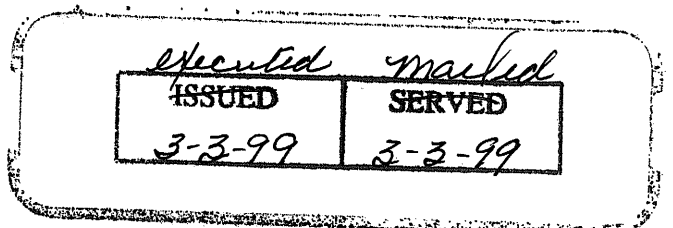
FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended, the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended, and the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties hereto, the Alabama Department of Environmental Management (hereinafter, "the Department") makes the following FINDINGS OF FACT:

1. H & L Trucking, Inc. (hereinafter "H & L Trucking") is an Alabama corporation operating an asphalt concrete plant under the authority of ADEM Air Permit No 707-0019-X001 issued April 17, 1992. The said permit authorizes the operation of H & L Trucking's 250 Tons per hour Drum-mix Asphalt Plant with Baghouse, subject to certain limitations and conditions.

2. The Department is a duly constituted agency of the State of Alabama pursuant to §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended.

3. Pursuant to §22-22A-4(n), Code of Alabama (1975), 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, §§ 22-28-1 through 22-28-23, Code of Alabama (1975), as amended.



4. ADEM Admin. Code R. 334-3-4-.01(1) states that no person shall discharge into the atmosphere from any source of emission particulates with an opacity greater than that designated as 20%, as determined by a six minute average.

5. ADEM Admin. Code R. 335-3-10-.02(7) incorporates by reference the federal regulations governing NSPS (New Source Performance Standards) for hot mix asphalt facilities. Those standards can be found at 40 CFR § 60.90 through § 60.93, Subpart I.

6. 40 CFR § 60.92(a)(1) states that owners or operators of hot mix asphalt facilities shall not allow gases to be discharged into the atmosphere that contain particulate matter in excess of 0.04 gr/dscf.

7. 40 CFR § 60.92(a)(2) states that owners or operators of hot mix asphalt facilities shall not allow particulate matter to be discharged into the atmosphere with visible emissions 20% or greater.

8. Proviso Number 6 of H & L Trucking's Air Permit Number 707-0019-X001 states that in the event that there is a breakdown of equipment in such a manner as to cause increased emissions of air contaminants for a period of greater than one hour, the Department shall be notified within an additional 24 hours giving all pertinent facts including the duration and notification when breakdown has been corrected.

9. Proviso Number 21 of H & L Trucking's Air Permit Number 707-0019-X001 states that this facility is subject to New Source Performance Standards (NSPS) which limits particulate emissions to 0.04 gr/dscf.

10. On August 19, 1997, the Department issued a Notice of Violation to H & L Trucking citing ADEM Administrative Code R. 335-3-4-01(1) and Permit Proviso Number 6 for allowing visible emissions with an opacity of 77% (six minute average within any sixty minute period) to be emitted from the baghouse stack that occurred on August 4, 1997.

11. On September 2, 1998, H & L Trucking responded to the August 19, 1997, Notice of Violation stating that all of the bags in the baghouse had been replaced, and plant personnel were observing 0% opacity at the baghouse stack.

12. On May 29, 1998, the Department issued a Notice of Violation to H & L Trucking citing ADEM Admin. Code R. 335-3-4-01(1), ADEM Admin. Code R. 335-3-10-02(7) and Permit Proviso No 6 for allowing visible emissions with opacities of 31% and 31 % (two six minute averages) to be emitted from the baghouse stack on May 20, 1998.

13. On June 19, 1998, H & L Trucking responded to the May 29, 1998, Notice of Violation stating that a dye test had been performed and it was determined that the cause of the visible emissions was not a baghouse problem. The response stated that the emissions were a result of "smoke" from the fuel being utilized, and that another load of fuel would be ordered.

14. On October 23, 1998, the Department issued a Notice of Violation to H & L Trucking citing ADEM Admin. Code R. 335-3-10-.02(7) and Permit Proviso No. 21 for discharging into the atmosphere gases that contained an average of 0.0727 gr/dscf during three runs of a Method 5 particulate emissions test conducted on September 17, 1998.

15. On November 11, 1998, H & L Trucking responded to the October 23, 1998, Notice of Violation stating that there was a large deviation between Test No. 1 and Test Nos. 2 & 3 that were performed on September 17, 1998. The response concluded that there was a build up of particles in the stack and that someone may have hit the stack during the first run causing the deviation between tests. This response was considered inadequate since all three tests resulted in particulate discharges that were greater than 0.04 gr/dscf.

16. H & L Trucking neither admits nor denies the Findings contained in this Consent Order. However, in an effort to cooperate with the Department and to resolve the allegations cited above, H & L Trucking consents to the terms of this Order.

17. The Department agrees to this Order upon a determination that the terms contained herein are in the best interests of the citizens of the State of Alabama in resolving the cited allegations.

ORDER

Based on the foregoing FINDINGS and pursuant to §§22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-28-10(2) and 22-28-18, Code of Alabama (1975), as amended, and with the consent of each party hereto, it is hereby ORDERED:

A. That there is assessed a civil penalty against H & L Trucking in the amount of \$10,000 to be paid to the Alabama Department of Environmental Management within thirty (30) days of issuance of this Order.

B. That on or before **March 10, 1999**, H & L Trucking shall bring the asphalt concrete plant into compliance with the requirements of 40 CFR Part 60 Subpart I.

C. That on or before **June 1, 1999** H & L Trucking shall conduct emission tests to demonstrate compliance with the particulate emission limits in accordance with 40 CFR Part 60, Method 5 and Method 9.

D. 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 contained herein and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the allegations cited hereinabove.

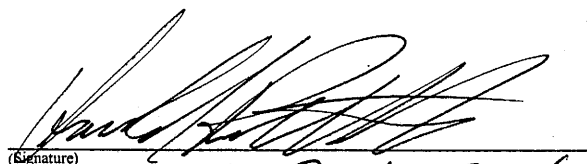
F. That H & L Trucking is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. That for purposes of this Order only, H & L Trucking agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including but not limited to the Circuit Court of Montgomery County, Alabama. H & L Trucking further agrees that in any action brought by the Department to compel compliance with the terms of this Order, H & L Trucking shall be limited to the defenses of Force Majeure, compliance with this Order and physical impossibility.

H. That this Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning H & L Trucking which would constitute possible violations not addressed in this Order, or if the violations noted herein continue, then such future violations shall be addressed in Orders as may be issued by the Department, litigation initiated by the Department, or such other enforcement action as may be appropriate, and H & L Trucking shall not object to such future orders, litigation or enforcement actions based on the issuance of this Consent Order.

I. That by agreement of the parties, this Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and H & L Trucking does hereby waive any hearing on the terms and conditions contained herein.

ORDERED and ISSUED this 3rd day of March, 1999.

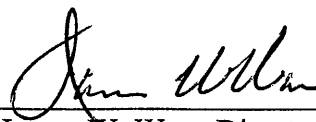


(Signature)

Harold Rutherford

(Print Name and Title of Authorized Officer)

H & L Trucking, Inc.



James W. Warr, Director
Alabama Department of Environmental
Management

IN THE MATTER OF:)
)
H & L TRUCKING, INC.)
MOULTON, ALABAMA)

INSTALLMENT AGREEMENT FOR
PAYMENT OF ADMINISTRATIVE PENALTY

H & L Trucking, Inc. and the Alabama Department of Environmental Management ("the Department") do hereby agree as follows:

That the \$10,000 administrative penalty assessed by the Department in Administrative Order No. 99-068-CAP shall be paid by H & L Trucking, Inc. to the Department as follows:

1. The first installment of \$3,333.33 shall be due on April 15, 1999.
2. A Subsequent installment of \$3,333.33 shall be due on August 15, 1999, and a final installment of \$3,333.34 shall be due on December 15, 1999.

That as long as said payments are made when due, the Department shall take no action to collect said penalty.

That if any payment becomes in default or is not made before midnight of the thirtieth day of the month when said payment is due, the Department is free to file suit in the Circuit Court of Montgomery County, Alabama to collect the entire unpaid amount of said penalty.

That all payments are to be made to the Alabama Department of Environmental Management and shall be delivered to the Office of General Counsel,