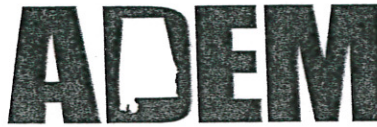


LANCE R. LEFLEUR
DIRECTOR



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

October 14, 2015

CERTIFIED MAIL NO: 91 7199 9991 7030 3447 3436

Mr. Chris Clark
Chris Clark Grading and Paving, Inc.
PO Box 258
Lanett, AL 36863

RE: Consent Order No. 16-007-CAP

Dear Mr. Clark:

Please find enclosed ADEM Consent Order No. 16-007-CAP which requires Chris Clark Grading and Paving, 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 Chris Clark Grading and Paving, Inc., and the Department. Chris Clark Grading and Paving, Inc., has submitted the monetary penalty in reference to Item A of this order.

If you have any questions concerning this matter, please contact Shane Jordan at (334) 274-4228 in Montgomery.

Sincerely,

Ronald W. Gore, Chief
Air Division

RWG/sdj

Enclosure

cc: Tom Johnston, Office of General Counsel



91 7199 9991 7030 3447 3436

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 450-3500 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)
)
Chris Clark Grading and Paving, Inc.)
Lanett, Chambers County, Alabama)
Lanett Asphalt Plant)
ADEM Air Facility ID No. 302-0001)

CONSENT ORDER

No. 16-007-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and Chris Clark Grading and Paving, Inc. (hereinafter, "CCGP"), 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 operates a batch mix asphalt plant located in Lanett, Chambers County, Alabama, (hereinafter, "the Facility") under the authority of Air Permit 302-0001-Z001 (hereinafter, "the Permit"), issued April 3, 2000. The Permit authorizes the operation of a batch mix asphalt plant subject to certain limitations and conditions.
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 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.).

4. ADEM Admin. Code r. 335-3-3-.01(1) prohibits open burning, with certain exceptions.

DEPARTMENT'S CONTENTIONS

5. On June 11, 2015, the Department inspected the Facility and documented open burning of demolition materials and vegetation in violation of ADEM Admin. Code r. 335-3-3-.01(1).

6. 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 Department considers this a serious violation but, is not aware of any evidence of irreparable harm to human health or the environment due to this violation.

B. THE STANDARD OF CARE: By not disposing of the materials appropriately, CCGP did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: CCGP may have recognized some economic benefit from non-compliance but the Department has determined the amount to be minimal and unquantifiable.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts to minimize or mitigate the effects of the violation upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued a Consent Order with penalty on July 8, 2008 to CCGP for open burning at the Facility.

F. THE ABILITY TO PAY: CCGP 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.

7. 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 Department's contentions).

8. The Department neither admits nor denies CCGP 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.

CCGP'S CONTENTIONS

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

ORDER

THEREFORE, CCGP, along with the Department, desires to resolve and settle the compliance issue 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 violation alleged herein. Therefore, the Department and CCGP agree to enter into this ORDER with the following terms and conditions:

A. CCGP agrees to pay to the Department a civil penalty in the amount of \$6,000.00 in settlement of the violation 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. CCGP 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. CCGP agrees to comply with the terms, limitations, and conditions of ADEM Admin. Code chap. 335-3-3 immediately upon the effective date of this Consent Order and every day thereafter.

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. CCGP 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, CCGP 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. CCGP also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, CCGP 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 CCGP, 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 CCGP) 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 CCGP, 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 CCGP 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 CCGP 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 CCGP 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 CCGP does hereby waive any hearing on the terms and conditions of same.

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

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

N. The Department and CCGP 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 CCGP of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CHRIS CLARK GRADING AND PAVING, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Chris Clark
(Signature of Authorized Representative)

Lance R. LeFleur
Director

Chris Clark
(Printed Name)

President
(Printed Title)

Date Signed: 8/19/2015

Date Executed: October 14, 2015

Attachment A

Chris Clark Grading and Paving, Inc.
Lanett, Chambers County

ADEM Air Facility ID No. 302-0001

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Unauthorized Open Burning	1	\$2500.00	\$2500.00	\$2500.00	
					Total of Three Factors
TOTAL PER FACTOR		\$2500.00	\$2500.00	\$2500.00	\$7500.00

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	\$1500.00
Total Adjustments (+/-)	\$1500.00

Economic Benefit (+)	
Amount of Initial Penalty	\$7500.00
Total Adjustments (+/-)	\$1500.00
FINAL PENALTY	\$6000.00

Footnotes

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