

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)

The Concrete Company)

Air Facility ID No.: 209-B015)

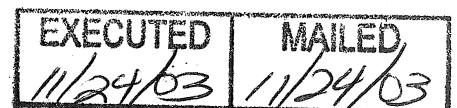
Montgomery, Montgomery County, Alabama)

CONSENT ORDER NO. 04-012-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, and 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 concerned hereto, the Alabama Department of Environmental Management (hereinafter, the "Department") makes the following FINDINGS:

1. **The Concrete Company** operates a concrete batching facility located in Montgomery, Montgomery County, Alabama.
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), 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, §§ 22-28-1 through 22-28-23, Code of Alabama (1975), as amended.

4. ADEM Admin. Code R. 335-3-4-.01 (1) (a) states:

Except as provided in subparagraphs (b), (c), (d), or (e) of this paragraph, 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 six (6) minute average.

5. ADEM Admin. Code R. 335-3-4-.01 (1) (b) states:

During one six (6) minute period in any sixty (60) minute period, a person may discharge into the atmosphere from any source of emission, particulate of opacity not greater than that designated as forty percent (40%).

6. On November 11, 1999, Department personnel observed excessive visible emissions at The Concrete Company's Northern Blvd. plant. Six-minute averages of 22%, 27%, and 34% were recorded.

7. On January 11, 2000, the Department issued a Notice of Violation (NOV) to The Concrete Company, for the excessive visible emissions documented on November 11, 1999.

8. On February 9, 2000, The Concrete Company submitted a response to the January 11, 2000 NOV.

9. On February 13, 2003, during an inspection of The Concrete Company's facility on the Northern Blvd. in Montgomery, the Department documented excessive visible emissions. A six-minute average of 56% opacity was recorded.

10. On March 21, 2003, the Department issued a NOV to The Concrete Company, for the excessive visible emissions documented on February 13, 2003.

11. On April 17, 2003, The Concrete Company submitted a response to the March 21, 2003 NOV.

12. On June 13, 2003, during an inspection of The Concrete Company's facility on the Northern Blvd. in Montgomery, the Department documented excessive visible emissions. Six-minute averages of 73%, 69%, and 48% opacity were recorded.

13. On August 18, 2003, the Department issued a NOV to The Concrete Company, for the excessive visible emissions documented on June 19, 2003 and June 23, 2003.

14. The Concrete Company neither agrees nor disagrees with the Findings presented in this Consent Order, but, in an effort to cooperate with the Department and to comply with the provisions of the Air Pollution Control Act, The Concrete Company consents to the terms of this Consent Order.

15. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Consent Order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

ORDER

Based upon 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 The Concrete Company, it is hereby ORDERED:

A. That, not later than thirty (30) days after the effective date of this Consent Order, The Concrete Company shall pay to the Department a civil penalty in the amount of Five Thousand Dollars (\$5,000.00) for the violations cited herein.

B. That, immediately upon the effective date of this Consent Order, and continuing thereafter, The Concrete Company shall comply with ADEM Admin. Code R. 335-3-4-.01 (1) (a)

and (b), by maintaining equipment in such a manner as to minimize emissions to less than the regulatory limit at all times.

C. 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.

D. 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.

E. That The Concrete Company is not relieved from any liability if it fails to comply with any provision of this Consent Order.

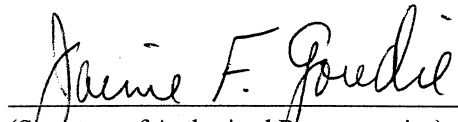
F. That, for purposes of this Consent Order only, The Concrete Company agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. The Concrete Company also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, The Concrete Company 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 Concrete Company, 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 be beyond the reasonable control of The Concrete Company) and which delays or prevents

performances 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*.

G. 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 shall 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 Concrete Company 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.

H. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon execution signature by all parties. This Consent Order shall not be appealable, and The Concrete Company does hereby waive any hearing on the terms and conditions of same.

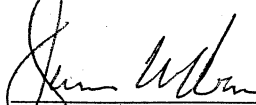
The Concrete Company


(Signature of Authorized Representative)

Jaime F. Goudie
Senior Vice President, Concrete Group
(Printed Name and Title)

Date Signed: 11-14-2003

**Alabama Department of
Environmental Management**


James W. Warr
Director

Date Signed: 24 Nov 2003