

LANCE R. LEFLEUR
DIRECTOR



ROBERT J. BENTLEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

March 11, 2011

CERTIFIED MAIL NO 91 7108 2133 3936 5742 1124
RETURN RECEIPT REQUESTED

Honorable Jimmy Lunsford, Mayor
City of Troy
PO Box 549
Troy, AL 36081

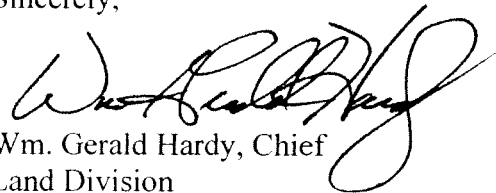
Dear Mayor Lunsford:

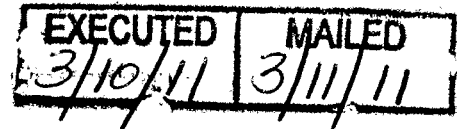
RE: Consent Order No. 11-064-CSW

Please find enclosed ADEM Consent Order No. 11-064-CSW which requires you to take certain actions in regard to alleged violations of the Solid Wastes and Recyclable Materials Management Act. This Order has been issued with the consent of you and the Department.

If you have any questions concerning this matter, please contact David Hamilton at (334) 274-4249 or via e-mail at dhamilton@adem.state.al.us.

Sincerely,


Wm. Gerald Hardy, Chief
Land Division



Enclosure

WGH/dh

Filenet: 12378 55-08 109 20110311 ENFS City of Troy C/D LF Consent Order

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1803 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)

Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
4171 Commanders Drive
Mobile, AL 36615-1421
(251) 432-6533
(251) 432-6598 (FAX)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

City of Troy
Solid Waste Permit No. 55-08
PO Box 549
Troy, Alabama 36081

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Consent Order No. 11-064-CSW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter “the Department”) and the City of Troy (hereinafter “the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), and the Solid Wastes and Recyclable Materials Act (SWRMMA), Ala. Code §§ 22-27-1 through 22-27-18 (2006 Rplc. Vol. and 2009 Cum. Supp.).

STIPULATIONS

1. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

2. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.) and Ala. Code § 22-27-9(a) (2006 Rplc. Vol. and 2009 Cum Supp.), the Department is the state agency authorized to administer and enforce the provisions of the Solid Wastes and Recyclable Materials Act (SWRMMA), Ala. Code §§ 22-27-1 through 22-27-18 (2006 Rplc. Vol. and 2009 Cum. Supp.).

3. On January 5, 2009, the Department issued a renewal Solid Waste Disposal Permit Number 55-08 (hereinafter, "the Permit") to the City of Troy (hereinafter, "the Permittee") for the operation of a construction/demolition landfill (hereinafter, the "landfill" or "facility") located at 665 Hudson Road in Troy, Alabama.

4. On November 24, 2009, February 18, 2010, August 10, 2010, and November 9, 2010, Department personnel inspected the Permittee's landfill for compliance with the ADEM Administrative Code. During these inspections, Department personnel documented that the Permittee had failed to adequately maintain sedimentation control structures.

5. On February 22, 2010 and November 23, 2010, the Department issued Notices of Violation (hereinafter "NOV") to the Permittee for failing to adequately maintain sedimentation control structures in accordance with ADEM Admin. Code div 335-13 regulations.

ORDER

THEREFORE, without admitting that it has violated any statutes or regulations, the Permittee, along with the Department, desires to resolve and settle the alleged violations cited above. Therefore, the Department and the Permittee agree to enter into this Order with the following terms and conditions:

A. That, by no later than March 31, 2011, the Permittee shall have employed all necessary measures to ensure that all sedimentation control structures at the landfill comply with ADEM Admin. Code div 335-13 regulations, as determined by the Department.

B. That, by no later than July 1, 2011, the Permittee shall have completed all construction closure activities of the landfill in accordance with the requirements outlined in ADEM Admin. Code div 335-13 regulations and the approved closure plan,

and recorded an environmental covenant in accordance with ADEM Admin. Code div 335-5 regulations.

C. That, by no later than September 31, 2011, the Permittee shall submit to the Department a certification, signed by a registered professional engineer, verifying that closure has been completed in accordance with ADEM Admin. Code div 335-13 regulations, and the approved closure plan.

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. The parties agree that, subject to the terms of these provisions 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 10 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 of 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 parties 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 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; 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 parties 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 this Consent Order.

J. The parties agree that this Order shall not affect the Permittee's obligation to comply with any federal, State, or local laws or regulations.

K. The parties 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.

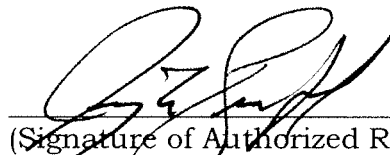
L. The parties agree that any modifications of this Order must be agreed to in writing signed by both parties.

M. The parties 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.

CITY OF TROY

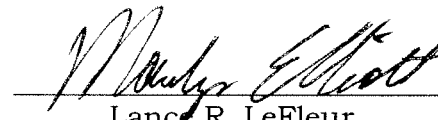
ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

Jimmy C. Lunsford
(Printed Name)

Mayor
(Printed Title)

2-21-11
(Date Signed)


Lance R. LeFleur
Director

3/10/11
(Date Signed)

CERTIFICATE OF SERVICE

I, WM. Gerald Hardy, hereby certify that I have this date served the foregoing Consent Order by regular United States Mail, properly addressed and postage prepaid to:

City of Troy
PO Box 549
Troy, AL 36081

Done this 11th day of March, 2011.



Wm. Gerald Hardy