

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

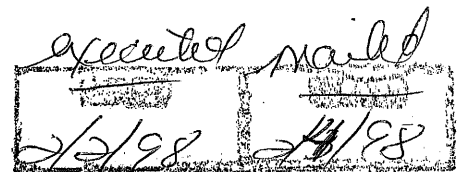
IN THE MATTER OF:)
)
FRIESE HAULING, INC.)
CHAMPION GRANT PIT #1)
)
SPANISH FORT, ALABAMA)
)
NPDES PERMIT # AL0065790)

CONSENT ORDER # 98-056-CMNPS

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Code of Alabama (1975), §§ 22-22A-1 through 22-22A-16, as amended, and the Alabama Water Pollution Control Act. Code of Alabama (1975), §§ 22-22-1 through 22-22-14, as amended, the regulations promulgated thereto, and the National Pollutant Discharge Elimination System (hereinafter "NPDES") administered by the Alabama Department of Environmental Management (hereinafter "ADEM" or "the Department") and approved by the Administrator of the U.S. Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, 33 U.S.C. §1342, and without the adjudication of any issues of fact or law and upon the Consent of the parties hereto, the Department makes the following FINDINGS:

1. Friese Hauling, Inc. (hereinafter "the Permittee") operates a sand and gravel mine in Conecuh County, Alabama.
2. The Permittee has been issued NPDES Permit No. AL0065790 authorizing the discharge of pollutants to an unnamed tributary of Brushy Creek, a water of the state, subject to certain terms, limitations and conditions.
3. Part II, A.2. of NPDES Permit No. AL0065790 states that



[t]he permittee shall prepare, implement, and maintain a Spill Prevention, Control and Countermeasures (SPCC) plan acceptable to the Department that is prepared and certified by a Professional Engineer registered in the State of Alabama, for all onsite petroleum product or other pollutant storage tanks or containers as required by applicable state (ADEM Admin. Code 335-6-6-.12 (c) and federal (40 CFR §§112.1-.7) regulations. The permittee shall implement appropriate structural and/or non-structural spill prevention, control, and/or management sufficient to prevent any spills of pollutants from entering a ground or surface water of the State or a publicly or privately owned treatment works. Careful consideration should be applied for tanks or containers located near treatment ponds, water bodies, or high traffic areas.

4. On March 18, 1997 ADEM personnel observed a trough of waste oil/water positioned at the edge of a canal of the unnamed tributary of Brushy Creek. Mr. Clarke Glover, facility manager, opened the valve located at the trough's base, discharging a quantity of the contents to the ground. The material flowed into the canal and caused an oily sheen on the water's surface immediately upon reaching the water's edge.

5. On March 18, 1997 ADEM personnel also observed a diesel engine attached to a water pump leaking fuel oil to the ground. The engine was located at the edge of an on-site pond and was not equipped with secondary containment.

6. The Permittee, in an effort to cooperate with the Department and to comply with the Alabama Water Pollution Control Act and NPDES Permit requirements, has agreed to the terms of the following Consent Order.

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

CONSENT ORDER

Based upon the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(12), 22-22A-5(18), 22-22-9(i), and 22-22-9(k), as amended, and with the Consent of the Permittee, the Department hereby Orders:

A. That not later than thirty (30) days following the effective date of this Order, the Permittee shall pay to the Department a civil penalty in the amount of two thousand (\$2,000) dollars for the violations identified herein. Said penalty shall also cover any violations of the Alabama Water Pollution Control Act not specifically listed in the FINDINGS but which were specifically known to the Department prior to June 1, 1997.

B. That the Permittee agrees to pay stipulated penalties in the amount of five hundred (\$500) dollars for each and every missed deadline or requirement of this Consent Order. All stipulated penalties shall be due at the Department's headquarters office in Montgomery not later than the seventh day of the month following the month in which the obligation to pay the penalty accrues. Every payment of stipulated penalties shall be in the full amount due at that time, and shall be accompanied by an itemized listing of the violations for which the penalties are being paid and the corresponding payment amount. The cumulative stipulated penalties of this Consent Order shall be limited to a maximum of ten thousand (\$10,000) dollars. All penalties 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. That not later than sixty (60) days from the effective date of this Order, the Permittee shall submit to the Department certification by a Professional Engineer, registered in the State of Alabama, that all construction sand and gravel mines operated by the Permittee are in compliance with the terms and conditions of their permits and the Department's regulations.

D. That immediately upon execution of this Order, the permittee shall meet all terms, conditions, and limitations of its NPDES Permit, ADEM regulations, the Environmental Management Act, and the Alabama Water Pollution Control Act.

E. 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 the Consent Order, to execute the Consent Order on behalf of the party represented and to legally bind such party.

F. 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 alleged in this Order.

G. That the Permittee is not relieved from any liability if he fails to comply with any provision of this Consent Order.

H. That 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 a court of competent jurisdiction, including but not limited to the Circuit Court for Montgomery County, Alabama. The Permittee also agrees in any action brought by the Department to compel compliance with the terms of the Agreement, that the Permittee shall

be limited to the defenses of Force Majeure, compliance with this Agreement and physical impossibility.

I. The sole purpose of this Consent Order is to resolve and dispose of all allegation and contentions stated herein concerning the factual circumstances referenced herein as they relate to the Alabama Water Pollution Control Act. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order or specifically known to the Department prior to June 1, 1997, then such future violations shall be addressed in an Order 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 upon the issuance of this Consent Order if future Orders, litigation or other enforcement actions address new matters not raised in this Consent Order and not specifically known to the Department prior to June 1, 1997. This Order does not address violations of any statutes and regulations other than the Alabama Water Pollution Control Act and its implementing regulations, and the Department reserves the right to address violations of any other statutes and regulations as appropriate.

J. By agreement of the parties, 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 hereby waives any right to a conference prior to the execution of the Consent

Order or any right to a hearing before the Environmental Management Commission.

FRIESE HAULING, INC.

ALABAMA DEPARTMENT
OF ENVIRONMENTAL
MANAGEMENT

By: Jan Strangle VP

DATE: 1-28-98

By: ABG Quinon

DATE: 2/2/98