

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

CERTIFIED MAIL NO.: 91 7108 2133 3936 3655 6625

May 16, 2013

Ron Fisher
Kitchen and Bath Center
20 Ready Ave North West
Fort Walton Beach, FL 32548



Re: Consent Order
Facility No. 501-0039

Dear Mr. Fisher:

Please find enclosed ADEM Consent Order No. 13-096-CAP which requires Kitchen and Bath Center 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 Kitchen and Bath Center and the Department. Please note that the first payment of the assessed civil penalty is due on the first day of the month following the effective date of this Order, with each subsequent payment due on the first day of the third month thereafter.

If you have any questions concerning this matter, please contact John Robert Gill at (334) 271-7866 in Montgomery.

Sincerely,

A handwritten signature in dark ink, appearing to read "Ronald W. Gore".

Ronald W. Gore, Chief
Air Division

RWG/JRG:jrg

Enclosures

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (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:)	
)	
Kitchen and Bath Center)	
Air Facility ID No. 501-0039)	CONSENT ORDER NO. 13- <u>096</u> -CAP
Fairhope, Baldwin County, Alabama)	
)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and Kitchen and Bath Center (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 through 22-22A-16, (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Kitchen and Bath Center (hereinafter, the "Permittee") operates a cultured marble manufacturing plant, Air Division Facility No. 501-0039 (hereinafter, the “Facility”), located in Baldwin County in Fairhope, Alabama.
2. 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.).

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. 335-3-11-.06(100) incorporates by reference the requirements of the National Emission Standards for Hazardous Air Pollutants (hereinafter, "NESHAP") for Reinforced Plastic Composites Production, 40 CFR 63, Subpart WWW, which are applicable to the Permittee.

5. On January 14, 2008 the Department issued Major Source Title V Operating Permit 501-0039 (hereinafter, the "Permit") to the Permittee, subject to certain conditions and requirements.

6. Permittee chose to meet the emissions standards of 40 CFR 63, Subpart WWW by using the compliant materials option (63.5810(a)) when it applied for the Permit on November 16, 2006. The Permittee stated in the application that it would use a gelcoat containing less than 44% combined Hazardous Air Pollutants (HAPs) to meet the emission standard for clear production gelcoats of 522 lb/ton listed in Table 3 of the Subpart.

7. During evaluation of the Permittee's applications for renewal of the Permit the Department requested copies of the Material Safety and Data Sheets (MSDS) for the gelcoat and resin to be used by the Permittee.

8. The Permittee has used a gelcoat containing a previously unreported HAP, Methyl Methacrylate (MMA) and 49.24% combined HAPs. According to the

equations for calculating organic HAP emission factors in Table 1 of Subpart WWWW, this percentage would result in HAP emissions of 630.7 lb/ton.

9. In e-mail correspondence dated April 27, 2012, the Permittee stated to the Department that the gelcoat in question had been in use at the Facility for more than five years.

10. General Permit Proviso 12 of the Permit states: "A compliance certification shall be submitted annually within 60 days of the anniversary date of issuance of this permit."

11. Unit Specific Proviso 2.2 of the Permit states: "This source is subject to the applicable organic HAP emission limits in 40 CFR Part 63 Subpart (WWWW) Reinforced Plastics Composites Production as listed in Table 3 and Table 7 to Subpart WWWW."

12. Unit Specific Proviso 5.2 of the Permit requires Permittee to keep records that include monthly emissions of Volatile Organic Compounds (VOCs) and HAPs and a rolling twelve month total of VOCs and HAPs. Proviso 5.3 of the Permit also requires that Permittee submit To the Department a report summarizing the above referenced records, each calendar quarter by the 10th day of the month.

13. The quarterly emission reports submitted by the Permittee to the Department since the issuance of the Permit did not include MMA, which included the July 10, 2012 report that, was submitted after it was informed by the Department that MMA is a HAP.

14. The Permittee stated that it was in compliance with the Unit Specific Provisos 5.2 and 5.3 of the Permit in each of the Annual Compliance Certifications it has submitted to the Department.

15. General Permit Proviso 23 of the Permit states: "Annual emission fees shall be remitted each year according to the fee schedule in ADEM Admin. Code r. 335-1-7-.04." Permittee's emission estimates for the Permit fees were due by June 30, 2012 but not received by the Department.

16. The Department issued a Notice Of Violation (NOV) to the Permittee on August 7, 2012 for failing to report certain emissions and failing to submit emission estimates to the Department. The NOV requested that the Permittee to submit the emissions estimates and respond to the NOV. Permittee responded to the NOV but did not include the requested emissions estimates.

DEPARTMENT'S CONTENTIONS

17. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), 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 twenty-five thousand dollars (\$25,000.00) for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed two hundred fifty thousand dollars (\$250,000.00). Each day 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 the following violations to be serious:

- 1) The Permittee failed to submit accurate applications for the Permit.
- 2) The Permittee failed to comply with the requirements of General Provisos 12 and 23 and Unit Specific Provisos 5.2, and 5.3 of the Permit.

B. THE STANDARD OF CARE: The Department considers the Permittee to have demonstrated an insufficient standard of care by failing to properly keep emissions records, by failing to submit accurate information to the Department and by failing to submit the emission estimates for 2011.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any significant economic benefit gained by the Permittee as a result of the violations referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There is currently no evidence that the violations cited in this Order resulted in emissions to the environment beyond that allowed by regulations; therefore, there are no know adverse effects to the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued Permittee a NOV on February 20, 2007, a Consent Order No. 08-004-CAP on October 11, 2007, a NOV on March 4, 2009, and a Warning Letter on April 22, 2009 for violations unrelated to the issues addressed in this order. However, the Department issued a Warning Letter on August 22, 2008 to the Permittee for late submission of emission estimates for the year of 2007.

F. THE ABILITY TO PAY: The Permittee has alleged that due to a decline in its sales it is unable to pay the full amount of the proposed penalty in a lump sum. The Permittee has agreed to pay a reduced penalty in four quarterly installments over one year.

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 in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

18. 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 and consistent with the historical penalty range imposed by the Department for similar violations (see Attachment A, which is made a part of Department's contentions).

19. The Department neither admits nor denies Permittee's 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.

PERMITTEE'S CONTENTIONS

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

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues 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. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. Pursuant to Ala. Code § 22-22A-5(18)a. 4. (2006 Rplc. Vol.) the Permittee agrees to pay to the Department a civil penalty in the amount of \$7,500.00 in settlement of the violations alleged herein payable in four quarterly installments of \$1,875.00 each. The first payment shall be due on the first day of the month following the effective date of this Order, with each subsequent payment due on the first day of the third month thereafter. Failure to pay the civil penalty within the allowed time frame may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the full unpaid amount of the imposed civil penalty.

B. The Permittee 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. The Permittee agrees to immediately upon execution of this Consent Order to comply with all applicable regulations and conditions of the Permit.

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 presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations 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 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 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 Department and the Permittee 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 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 Department and the Permittee 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.

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

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

N. The Department and the Permittee 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.

KITCHEN AND BATH CENTER

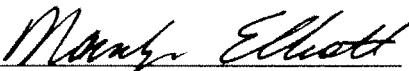

(Signature of Authorized Representative)

RON FISHER
(Printed Name)

PRESIDENT
(Printed Title)

3/18/2013
(Date Signed)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


Lance R. LeFleur
Director

5-16-2013
(Date Executed)

Attachment A
Kitchen and Bath Center
Air Facility ID No. 501-0039

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*
Failure to submit accurate applications for MSOP	1	\$1,875.00	\$1,875.00	
Failure to submit emissions estimates for emissions fees	1	\$1,875.00	\$1,875.00	
Failure to submit accurate Annual Compliance Certifications	1	\$1,875.00	\$1,875.00	
Failure to submit accurate reports	1	\$1,875.00	\$1,875.00	
Totals:		\$7,500	\$7,500	

Economic Benefit:

Mitigating Factors:

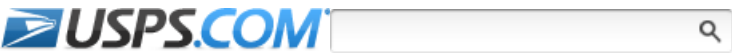
Ability to Pay: -\$7,500

Other Factors:

Civil Penalty: **\$7,500**

Footnotes

* See the "Stipulations and Contentions portions" of the order for detailed descriptions of each violation and consideration of the penalty factors.




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YOUR LABEL NUMBER	SERVICE	STATUS OF YOUR ITEM	DATE & TIME	LOCATION	FEATURES
9171082133393636556625		Delivered	May 22, 2013, 12:59 pm	FORT WALTON BEACH, FL 32548	Certified Mail™
		Arrival at Unit	May 22, 2013, 6:59 am	FORT WALTON BEACH, FL 32548	
		Processed through USPS Sort Facility	May 22, 2013, 4:41 am	PENSACOLA, FL 32522	
		Depart USPS Sort Facility	May 20, 2013	MONTGOMERY, AL 36119	
		Processed through USPS Sort Facility	May 20, 2013, 8:17 pm	MONTGOMERY, AL 36119	

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