



STATE OF MISSISSIPPI
HALEY BARBOUR
GOVERNOR
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
TRUDY D. FISHER, EXECUTIVE DIRECTOR

March 29, 2011

CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Mr. John M. Ahearn
Rifenburg Construction
303 Highway 70 Bypass
Durham, North Carolina 27703

**Re: Rifenburg Construction
Agreed Order No. 5932 11**

Dear Mr. Ahearn:

Enclosed you will find a copy of Agreed Order No. 5932 11, which has been executed by the Executive Director of the Mississippi Department of Environmental Quality, Trudy Fisher, on behalf of the Mississippi Commission on Environmental Quality.

The enclosed Order assesses a civil penalty. The penalty payment, when due, should be made by check payable to the Mississippi Department of Environmental Quality and returned in the enclosed, self-addressed envelope to the MDEQ Fees Division at P.O. Box 2339, Jackson, MS 39225.

If you have any questions regarding your obligations under the enclosed order, please contact Jake White at (601) 961-5513.

Sincerely,

A handwritten signature in blue ink that reads "Jerry W. Cain".

Jerry W. Cain, P.E., DEE
Director, Office of Pollution Control

Enclosure
cc: Jake White

Agency Interest No. 54323
ENF20110001

OFFICE OF POLLUTION CONTROL

POST OFFICE BOX 2261 • JACKSON, MISSISSIPPI 39225-2261 • TEL: (601) 961-5171 • FAX: (601) 354-6612 • www.deq.state.ms.us

AN EQUAL OPPORTUNITY EMPLOYER

BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

COMPLAINANT

VS.

ORDER NO. 5932 11

RIFENBURG CONSTRUCTION
303 HIGHWAY 70 BYPASS
DURHAM, NORTH CAROLINA 27703

RESPONDENT

AGREED ORDER

COME NOW the Mississippi Commission on Environmental Quality (Commission), acting through the staff and Executive Director of the Mississippi Department of Environmental Quality (MDEQ), Complainant, and Rifenburg Construction, Respondent, in the above captioned cause and agree as follows:

1.

By letter dated October 26, 2010, Respondent was contacted by Complainant and notified of the following alleged violation at its facility located at 100 International Drive, Jackson, Mississippi in Rankin County (the "Site"):

A. Violation of Mississippi Code: Section 49-17-29.1(b):

"It is unlawful for any person to build, erect, alter, replace, use or operate any equipment which will cause the issuance of air contaminants unless that person holds a permit from the Permit Board (except repairs or maintenance of equipment for which a permit has been previously issued), or unless that person is exempted from holding a permit by a regulation promulgated by the commission."

A Compliance Evaluation Inspection (CEI) was conducted at the Site on October 25, 2010. The CEI revealed Respondent had constructed a hot mix asphalt plant prior to the issuance of the appropriate permit. Respondent had applied for a Certificate of Coverage under the Hot Mix Asphalt General Permit. However Respondent had not received coverage prior to construction. Furthermore, the CEI revealed that a 1200kW generator had been utilized during the unauthorized construction and was intended to be the power source for the plant. According to the Hot Mix Asphalt General Permit, any plant being powered by a stand alone source (generator) cannot be covered under the Hot Mix Asphalt General Permit. The use of a generator would require the issuance of an individual air emissions permit. Upon being notified of the violation, Respondent ceased any and all operations until the requirements of the Hot Mix Asphalt General Permit could be met and coverage under that permit issued. Respondent removed the generator and established an alternate power source via temporary power lines from the local power company. The Hot Mix Asphalt General Permit, MSR700092, was issued to Respondent on November 19, 2010.

2.

In lieu of a formal enforcement hearing concerning the alleged violation listed above, Complainant and Respondent agree to settle this matter as follows:

- A. Respondent agrees to pay and Complainant agrees to accept a civil penalty in the amount of \$25,000.00. Respondent shall pay this penalty to MDEQ on or before April 29, 2011. .

3.

Nothing in this Agreed Order shall limit the rights of MDEQ or the Commission in the event Respondent fails to comply with this Agreed Order. The Agreed Order shall be strictly construed to apply to those matters expressly resolved herein.

4.

The parties to this agree that, by entering into this Agreed Order, Respondent does not admit the violation alleged above. The parties further agree that Complainant continues to assert

that the violation occurred. Further, nothing contained in this Agreed Order shall limit the rights of MDEQ or the Commission to take enforcement or other actions against Respondent for violations not addressed herein and for future violations of environmental laws, rules, and regulations.

5.

Respondent understands and acknowledges that it is entitled to an evidentiary hearing before the Commission pursuant to Miss. Code Ann. Section 49-17-31 (Rev. 2003), and that it has made an informed waiver of that right.

ORDERED, this the 23 day of March, 2011.

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

BY: 

TRUDY D. FISHER
EXECUTIVE DIRECTOR
MISSISSIPPI DEPARTMENT
OF ENVIRONMENTAL QUALITY

AGREED, this the 15th day of March, 2011.

RIFENBURG CONSTRUCTION

BY: 

TITLE: CFO / Assistant Secretary

STATE OF New York

COUNTY OF Rensselaer

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named John M. Ahearn who first being duly sworn, did state upon his/her oath and acknowledge to me that he/she is the CFO / Assistant Secretary of Rifenburg Construction and is authorized to sign and enter this Agreement.

SWORN AND SUBSCRIBED BEFORE ME, this the 15th day of March, 2011.

Monserate Arce
Notary Public, State of New York
No. 01AR3319902, Saratoga County
Commission Expires October 31, 2013


NOTARY PUBLIC

My Commission expires: _____



<http://www.rifenburg.com>

159 Brick Church Road
Troy, NY 12180-9643

(518) 279-3265
Fax - (518) 279-4260
An E.E.O. Employer

RECEIVED

MAR 21 2011

Dept of Environmental Quality

Certified Mail: 7007 1490 0000 6504 8854

March 16, 2011

Jake White, Agent
State of Mississippi
Construction and Buildings Materials Branch
Environmental Compliance and Enforcement Division
Post Office Box 2261
Jackson, MS 39225-2261

RE: Rifenburg Construction
Jackson, Rankin County
GP-Asphalt Coverage No. MSR700092

Dear Mr. White:

Enclosed please find the executed Agreed Order regarding our operation at 100 International Drive, Jackson, Mississippi.

If you have any questions or need further information, please do not hesitate to contact me.

Sincerely,

John M. Ahearn
Chief Financial Officer

CC: Brian Birdsall, Project Manager