

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

HICKORY BEND FARMS, INC.

CALLOWAY PIT

NPDES PERMIT # AL0062481

MACON COUNTY

CHAPMAN PLANT & McWHORTER PIT

NPDES PERMIT # AL0057606

MONTGOMERY COUNTY

INGRAM MINE

NPDES PERMIT # AL0069540

TALLAPOOSA COUNTY

THOMAS MINE

NPDES PERMIT # AL0068560

MACON COUNTY

TUSKEGEE PLANT

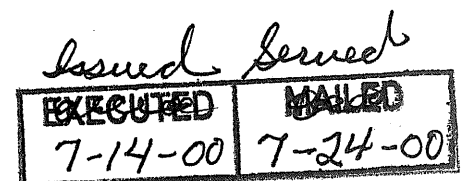
NPDES PERMIT # AL0069531

MACON COUNTY

ADMINISTRATIVE
ORDER NO.: 00-156-MNPS

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 "the Department"), and approved by the Administrator of the



United States Environmental Protection Agency, pursuant to the federal Water Pollution Control Act, 33 U.S.C. § 1342, the Department makes the following FINDINGS:

GENERAL FINDINGS

1. Hickory Bend Farms, Inc. (hereinafter "the Permittee") operates construction sand and gravel mines, preparation plants and associated areas in Macon, Montgomery, and Tallapoosa counties. Those facilities have received NPDES permits as follows:

<u>Facility</u>	<u>Permit #</u>	<u>Issuance Date</u>	<u>Expiration Date</u>	<u>Receiving Water</u>	<u>Location</u>
Calloway Pit	AL0062481	July 29, 1991	July 31, 1996	Cubahatchee Creek	Macon Co.
Chapman Plant & McWhorter Pit	AL0057606	Nov. 29, 1993	Nov. 30, 1998	Line Creek & Tank Branch	Montgomery Co.
Ingram Mine	AL0069450	Jan. 29, 1996	Jan. 31, 2001	Mill Creek	Tallapoosa Co.
Thomas Mine	AL0068560	Nov. 29, 1994	Nov. 30, 1999	Line Creek	Macon Co.
Tuskegee Plant	AL0069531	Jan. 29, 1996	Jan. 31, 2001	Wauxamaka Creek	Macon Co.

2. Hickory Bend has received the following administrative orders from the Department: Order # 88-044-WP issued April 15, 1988; Order # 88-045-WP issued April 14, 1988; Order # 91-005-WP issued October 22, 1990; and Order # 96-099-CWP issued June 11, 1996.

3. Administrative Order # 96-099-CWP imposed certain stipulated penalties upon the Permittee for violations of deadlines contained in the Order.

4. Although the Permittee was assessed stipulated penalties in the amount of \$7,500 due to violations of the Order, the Permittee has failed to pay the stipulated penalties.

5. Each of the NPDES permits the Permittee holds requires the Permittee to submit Discharge Monitoring Reports (hereinafter "DMRs") once each quarter for each permitted outfall. There are eight existing outfalls. The Permittee failed to submit any DMRs for any of the outfalls for the second, third and fourth quarters of 1998, thereby failing to submit 24 DMRs.

6. The Permittee has repeatedly refused to accept mail from the Department.

THE TUSKEGEE PLANT

7. Administrative Order # 96-099-CWP required the Permittee to submit certification from the design engineer that the Pollution Abatement Plan for the Tuskegee Plant had been fully implemented.

8. The Permittee has failed to submit certification from the design engineer that the Pollution Abatement Plan for the Tuskegee Plant has been fully implemented.

9. Order # 96-099-CWP required the Permittee to submit certification by the design engineer that the SPCC plan at the Tuskegee Plant had been implemented.

10. The Permittee has failed to submit certification by the design engineer that the SPCC plan at the Tuskegee Plant has been implemented.

11. Order # 96-099-CWP required the Permittee to comply with all permit conditions imposed by its NPDES permit.

12. The Permittee has violated this provision of Order # 96-099-CWP, as follows:

- a. Part II,A.,2.,d. of Permit # AL0069531 requires the Permittee to route all surface drainage and stormwater runoff from disturbed areas through an accepted pollution treatment structure and ultimately discharge the surface drainage and stormwater runoff through a permitted point source.

- b. An inspection of the Tuskegee Plant on January 6, 2000 revealed that drainage from significant areas of disturbance related to the mining area was not routed through the facility's treatment structure.

- c. Part II,A.,2.,c. of Permit # AL0069531 requires the Permittee to fully implement and maintain an SPCC plan that meets the minimum requirements established in

40 C.F.R. Part 112. The SPCC plan submitted as part of the NPDES application indicates that the Permittee will maintain an impervious berm around the fuel and oil tanks.

d. The January 6, 2000 inspection revealed that there was a fuel tank on-site without a containment berm or any other spill controls.

THE INGRAM MINE

13. Administrative Order # 96-099-CWP required the Permittee to submit certification from the design engineer that the Pollution Abatement Plan for the Ingram Mine had been fully implemented.

14. The Permittee has failed to submit certification from the design engineer that the Pollution Abatement Plan for the Ingram Mine has been fully implemented:

15. Administrative Order # 96-099-CWP required the Permittee to submit certification by the design engineer that the SPCC plan at the Ingram Mine had been implemented.

16. The Permittee has failed to submit certification from the design engineer that the SPCC plan at the Ingram Mine has been implemented.

THE THOMAS MINE

17. An inspection of the Thomas Mine on January 6, 2000 revealed the following permit violations:

a. Part II,A.,1. of NPDES Permit # AL0062481 requires the Permittee to properly operate and maintain all pollution treatment systems and related appurtenances at all times.

b. The Permittee had not installed an adequate splash pad immediately downstream of the discharge pipe for DSN001. A splash pad is a structure placed below the discharge pipe to prevent erosion that may result from the Permittee's discharges.

c. A ditch had been cut into the dam. In order to maintain the structural integrity of a treatment pond dam, the discharges must be through discharge structures designed and constructed to prevent erosion and other damage to the dam.

d. The outslopes of the dam were not adequately stabilized with grasses or by any other means resulting in severe erosion problems.

e. Part A,II.,2.,a. requires the Permittee to maintain subsurface withdrawal for any discharges resulting from a precipitation event equal to or less than the 10-year, 24 hour event. Subsurface withdrawal prevents the discharge of floatables including, but not limited to, petroleum products such as oil and grease.

f. There was no device on the discharge structure that would cause subsurface withdrawal and prevent the discharge of oil. The discharge pipe did have a trash rack which does prevent the discharge of large, solid floatables such as limbs and other large tree debris.

g. Part II.A.,2.,c. requires the Permittee to fully implement and maintain a SPCC plan that meets the minimum requirements established in 40 C.F.R. Part 112. The SPCC plan submitted as a part of the NPDES application indicates that the Permittee will maintain an impervious berm around the fuel and oil tanks.

h. There were at least two fuel tanks on-site without a containment berm or any other spill controls.

i. Part II.A.,2.,d. requires the Permittee to route all surface drainage and stormwater runoff from disturbed areas through an accepted pollution treatment structure and ultimately discharge through a permitted point source.

j. Drainage from significant areas of disturbance related to the mining area was not routed through the facility's treatment structure.

k. Part II,A.,4. prohibits the bypass of treatment except to conduct routine maintenance or, if necessary, to prevent loss of life, personal injury, or severe property damage. For routine maintenance the Permittee is required to obtain permission from the Department prior to the intended bypass. If the bypass is necessary to prevent loss of life, etc., the Permittee is required to notify the Department. The Permittee has the burden to establish that all conditions relating to bypass are met.

l. A ditch had been cut in the treatment pond dam bypassing the discharge structure. The Department was not notified of this bypass, and there was no indication that it was necessary to prevent loss of life, etc.

m. ADEM Admin. Code R. 335-13-1-.13 prohibits open or unauthorized solid waste dumps.

n. During the January 6, 2000 inspection of the Thomas Mine several areas were discovered where solid waste was being burned and improperly disposed.

ORDER

Based on the foregoing FINDINGS and pursuant to Code of Alabama (1975), §§ 22-22A-5(1), 22-22A-5(12), 22-22A-5(18), 22-22-9(i), and 22-22-9(k), as amended, it is hereby ORDERED:

A. That, immediately upon receipt of this Order, the Permittee shall pay to the Department the \$7,500 currently owed to the Department in stipulated penalties for violations of Administrative Order # 96-099-CWP.

B. That, not later than 30 days after receipt of this Order, the Permittee shall pay to the Department a civil penalty in the amount of \$17,500 for the violations cited herein.

C. That, immediately upon receipt of this Order and continuing thereafter, the Permittee and/or its President, Mike Phillips, shall accept mail from the Department. Any mail returned stamped with "unclaimed" shall be considered to be a violation of this Order.

D. That, immediately upon any change of address, phone number, or operational control of the Permittee, the Permittee shall notify the Department in writing of said changes. Failure to so notify the Department of said changes in writing shall be considered a violation of this Order.

E. That, not later than 90 days after receipt of this Order, the Permittee shall have conducted a complete environmental audit of all its facilities. This audit shall be conducted by a registered professional engineer licensed to practice in Alabama or by persons under the direct supervision of a registered professional engineer licensed to practice in Alabama. This audit must account for all facilities, permitted and unpermitted, operated or under the operational control of the Permittee or its President, Mike Phillips since May 1, 1998. This audit shall also include any facilities, permitted and unpermitted, which the Permittee or its President, Mike Phillips, owns, leases, or is a partner in a company which owns or operates such facility, or a member of a Limited Liability Company which owns or operates such facility, or is a majority stockholder in a corporation which owns or operates such facility. The purpose and goal of this audit is to determine compliance status with the Alabama Water Pollution Control Act and any applicable regulations including, but not limited to, those regulations involving solid waste disposal and burning waste, as well as all other applicable regulations.

F. That, not later than 100 days after receipt of this Order, the Permittee shall submit to the Department a detailed report of the findings of the audit. This report must be submitted in a form acceptable to the Department and must contain sufficient detail for the Department to determine the Permittee's and its President's, Mike Phillips, compliance status with the Alabama Water Pollution Control Act and all applicable Departmental regulations. This report must be certified by the professional engineer who conducted the audit and must contain proposed compliance schedules, not to exceed 150 days from the receipt of this Order, unless extended by the Department, for correction of any violations identified in the audit and mitigation of any environmental impacts which are a result of said violations.

G. That, not later than 160 days after receipt of this Order, the Permittee shall submit to the Department a certification by the registered professional engineer who conducted the audit that the violations identified in the audit have been corrected and that any environmental impacts which resulted from those violations have been mitigated.

H. That, not later than 14 days after receipt of this Order, the Permittee shall submit to the Department a comprehensive plan for record keeping and reporting as required by its NPDES permits and applicable Departmental regulations.

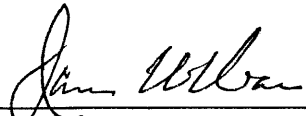
I. That, not later than 30 days after receipt of this Order, the Permittee shall submit to the Department a certification that the comprehensive plan for record keeping and reporting required by Paragraph H above, has been implemented.

J. That, immediately upon receipt of this Order, the Permittee and its President, Mike Phillips, shall comply with the Alabama Water Pollution Control Act, applicable Departmental regulations, and any NPDES permits issued to the Permittee or its President, Mike Phillips.

K. That failure to comply with any and all provisions of this ORDER may constitute cause for the assessment of additional CIVIL PENALTIES and/or the commencement of appropriate legal action for civil or criminal sanctions.

L. That the issuance of this ORDER does not preclude the Department or others from seeking appropriate sanctions for the violations stated herein.

ORDERED and ISSUED this, the 14th day of July, 2000.



James W. Warr, Director
Alabama Department of
Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700

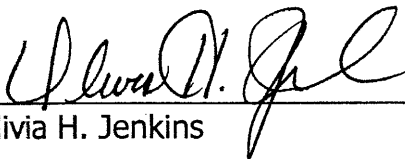
CERTIFICATE OF SERVICE

I, Olivia H. Jenkins, hereby certify that I have served Administrative Order No. 00-156-MNPS upon Hickory Bend Farms, Inc. by sending the same, postage paid, through the United States Mail, as Certified Mail, with instructions to forward and return receipt requested to:

CERTIFIED MAIL NO. 7099 3400 0002 5747 9437

Mike Phillips, President
Hickory Bend Farms, Inc.
Post Office Box 241061
Montgomery, AL 36124

DONE this 24th day of July, 2000.



Olivia H. Jenkins