

IN THE MATTER OF

BEAZER EAST INC.
FAIRFIELD, ALABAMA
MONTGOMERY, ALABAMA

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USEPA ID#"s ALD 000 771 949 )
              ALD 000 771 949 )
              ALD 004 009 403 )
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CONSENT ORDER NO. 94-280-CHW

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 Hazardous Wastes Management and Minimization Act of 1978, Code of Alabama 1975, §§ 22-30-1 through 22-30-24, as amended, and without adjudication of any issues of fact or law, but upon the consent of the parties, the Alabama Department of Environmental Management ("the Department") makes the following FINDINGS:

1. Beazer East, Inc. (hereinafter "Beazer"), operated a coke plant facility located at Koppers Drive Jefferson County, Alabama (ALD 000 771 949), a tar plant facility located at 1835 Koppers Drive, Jefferson County, Alabama (ALD 085 765 808), and a wood treating facility located at 1451 Louisville Street, Montgomery County, Alabama (ALD 004 009 403) (collectively referred to as the "Facilities").

2. The Alabama Department of Environmental Management is a duly constituted department of the State of Alabama pursuant to

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§§ 22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended.

3. The Department notified Beazer that in its determination Beazer has not posted adequate financial assurance for its "Facilities".

4. ADEM Admin. Code Div. 14 regulations require that owners or operators of Treatment, Storage, or Disposal facilities (TSD's) seeking or holding a permit to handle hazardous waste demonstrate financial assurance to meet requirements set forth in ADEM Admin. Code R. 335-14-5-.07; 335-14-5-.08 and 335-14-6-.07; 335-14-6-.08.

5. Although Beazer does not agree with certain Findings in this Consent Order, it does agree, in the spirit of cooperation and with the desire to amicably resolve this matter with ADEM, not to contest same. In view of the above and its desire to comply with the provisions of the Act, Beazer also agrees to the terms of this Consent Order. Beazer neither admits nor denies that its financial assurance submissions for the hazardous waste management units at the Facilities were inadequate.

6. Likewise, the Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

ORDER

Based upon the foregoing FINDINGS and pursuant to the Code of Alabama 1975, §§ 22-22A-5(10), 22-22A-5(18), 22-30-20, 22-30-19(a) & (b) as amended, and with the consent of Beazer, it is hereby ORDERED:

A. That not later than thirty (30) days following the date of execution of this Order, Beazer shall pay to the Department a civil penalty of \$150,000.00 for the alleged past violations cited herein.

B. That immediately following the date of execution of this Order, Beazer shall cease to use the financial test for purposes of any future financial assurance submission to the Department for the hazardous waste management units at the Facilities until December 31, 1999. The Department reserves the right of final approval over Beazer's future use of the financial test, with Beazer expressly reserving any right to pursue an appeal of the Department's determination that it may have. Beazer shall never use any defeased bonds or other bonds which rely on a "structural support mechanism" in order to obtain an investment grade rating, for purposes of any future financial assurance submission to the Department.

C. That within 60 days of the date of execution of this Order, Beazer will submit to the Department a letter of credit financial assurance document for Beazer's 1993 cost estimate of \$13,181,912 to cover third-party liability and closure and

post-closure costs. The submission shall meet all applicable requirements of ADEM Admin. Code R. 335-14-6-.08.

D. If the Department determines that the letter of credit documentation is deficient with respect to the requirements of ADEM Admin. Code R. 335-14-6-.08, then Beazer shall submit to the Department revised documentation within 60 days of receipt of written notice by the Department of such deficiencies. Beazer expressly reserves any right to pursue an appeal of the Department's determination under this paragraph that it may have.

E. Beazer understands that the Department plans to conduct a comprehensive review of Beazer's closure and post-closure cost estimates for compliance with ADEM Admin. Code R. 335-14-6-.08. If the Department determines that any such cost estimate is deficient with respect to ADEM Admin. Code R. 335-14-6-.08 or 335-14-5-.08, Beazer shall adjust said cost estimate and the associated letter of credit financial instrument within 60 days of receipt of written notice by the Department of such deficiencies. Beazer expressly reserves any right to pursue an appeal of the Department's determination under this paragraph that it may have.

F. In the event Beazer fails to timely comply with the deadlines provided in Paragraphs A, B, C, D, and E, of this Consent Order, Beazer shall pay stipulated penalties as follows:

A. \$100.00 per day per occurrence for the first 15 days of noncompliance;

B. \$500.00 per day per occurrence for the second 15 days of noncompliance; and

C. \$1,000.00 per day per occurrence for each day thereafter of noncompliance.

G. The Department shall not publish or communicate the terms and/or conditions of this Consent Order except as required by Code of Alabama Section §§22-22A-5(18)(a), documents included in the public record, and routinely compiled Departmental reports to the EPA and other Alabama Governmental reports.

H. In consideration of such payment and timely, complete, specific performance of the terms of this Consent Order, the Department agrees that any and all claims, rights, demands, and causes of action against Beazer concerning financial assurance requirements of ADEM. Admin. Code R. 335-14-6-.08 for the hazardous waste management units at the Facilities are satisfied, discharged and settled and hereby releases and forever discharges Beazer, its agents, employees, officers, directors, attorneys and representatives from any and all liability for all claims it now has, or may have, arising out of the matters set forth in this Consent Order. However, said release or discharge does not affect Beazer's statutory or regulatory obligation, duty, and responsibility to obtain and comply with the post-closure permits to be issued for these Facilities, and Beazer's obligation to comply with all

applicable regulations prior to and thereafter obtaining closure and post-closure permits, or any other legal obligations that arise due to Beazer's obligation to conduct permitted post-closure activities.

I. That this Consent Order shall apply to and be binding upon both parties, their successors and assigns, 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.

J. 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 alleged past violations which are cited in this Order.

K. That for the purposes of this Order only, Beazer agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court for Montgomery County. Beazer also agrees that in any action brought by the Department to compel compliance with the terms of this Order, Beazer shall be limited to the defenses of Force Majeure, compliance with this Order, and physical impossibility.

L. 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 in the FINDINGS OF FACT. These allegations relate solely to the requirements of ADEM Admin. Code Div. 335-14. This Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs, or should additional facts and circumstances be discovered in the future concerning Beazer which would constitute possible violations not addressed in this Order, or if the violations noted herein continue, then such future violations shall be addressed in Orders as may be issued by the Department, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Beazer shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order.

M. That, by agreement of the parties, this Consent Order shall be considered final and effective upon the signature of all parties. This Consent Order shall not be appealable and Beazer does hereby waive any administrative hearing on terms and conditions of same.

BEAZER EAST, INC.

By: _____

Its: Vice President, Chief Financial
Officer and General Manager,
Environmental

Date: September 30, 1994

 James W. Warr, Director
 Alabama Department of
 Environmental Management

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