

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In The Matter Of:

NHB INDUSTRIES, INC.

Talladega, Talladega County, Alabama

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ORDER NO. 99-043-CAP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended, the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended, and the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Alabama Department of Environmental Management (hereinafter, "the Department") makes the following FINDINGS:

1. NHB Industries, Inc., an Alabama corporation, is the owner and/or operator of a kitchen cabinet manufacturing facility located on East Parkway, Talladega, Talladega County, Alabama.
2. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended.
3. Pursuant to §22-22A-4(n), Code of Alabama (1975), as amended, the Department is the state air pollution control agency for purposes of the federal Clean Air Act, 42 U.S.C. 7401

through 7671q, as amended. In addition, the Department is authorized to administer and enforce the provision of the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended.

4. Pursuant to ADEM Admin. Code R. 335-3-3-.01, no person shall ignite, cause to be ignited, permit to be ignited, or maintain any open fire not expressly permitted by regulation or permitted by the Director.

5. On April 9, 1998, Department personnel observed NHB Industries, Inc. open burning waste in violation of ADEM Admin. Code R. 335-3-3-. 01. Air Division personnel conducted an investigation and discovered that wood waste was being burned in a large pit behind NHB Industries' facility.

6. On April 16, 1998, the Department issued a Warning Letter to NHB Industries, Inc. for the open burning observed on April 9, 1998. The Department requested that NHB Industries, Inc. reply by May 15, 1998, committing to cease open burning.

7. On April 23, 1998, prior to receiving NHB Industries, Inc. commitment to cease open burning, Department personnel observed open burning taking place in the same location as the previous open burning.

8. On May 1, 1998, Mr. Henry Polek, on behalf of NHB Industries, Inc., responded in writing to the Warning Letter issued on April 16, 1998, and committed to cease open burning.

9. On May 14, 1998, Department personnel observed NHB Industries, Inc. open burning waste.

10. On May 18, 1998, Mr. Henry Polek, on behalf of NHB Industries, Inc, responded in writing to the inspection that revealed open burning taking place that same day by again

committing to cease open burning and outlining the actions they would take to ensure it would not occur again.

11. On May 27, 1998, the Department issued a Notice of Violation to NHB Industries, Inc. for the open burning observed on May 14, 1998, and informed NHB Industries that we were considering the issuance of an Order with a penalty. The Department requested that NHB Industries reply by June 12, 1998, providing any information relevant to the proposed course of action.

12. On May 29, 1998, prior to receiving NHB's response to the Notice of Violation, Department personnel observed open burning taking place at NHB Industries, Inc.

13. On June 12, 1998, Mr. Henry Polek, on behalf of NHB Industries, Inc., replied to the NOV issued on May 27, 1998.

14. NHB Industries, Inc. neither admits nor denies the Findings contained in this Consent Order. However, in an effort to cooperate with the Department and to resolve the allegations cited above, NHB Industries, Inc. consents to the terms of this Order.

15. The Department agrees to this Order upon a determination that the terms contained herein are in the best interests of the citizens of the State of Alabama in resolving the cited allegations.

ORDER

Based upon the foregoing FINDINGS and pursuant to §§22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-28-10(2) and 22-28-18, Code of Alabama (1975), as amended, and with the consent of NHB Industries, Inc., it is hereby ORDERED:

A. That there is hereby assessed a civil penalty against NHB Industries, Inc. in the amount of One Thousand Dollars (\$ 1,000.00) to be paid to the Alabama Department of Environmental Management within thirty (30) days of issuance of this Order.

B. That NHB Industries, Inc. shall cease any open burning at its kitchen cabinet manufacturing facility located in Talladega, Talladega County, Alabama.

C. That from receipt of this current order through August 31, 2000, if NHB Industries, Inc. fails to comply with the requirements of Paragraph B above, it shall pay to the Department stipulated penalties as follows in the amount of Twenty Five Hundred Dollars (\$2,500.00) for each violation at the facility.

D. That the Department will notify NHB, Industries, Inc. of any violations subject to Paragraph C above via a Notice of Violation. All stipulated penalties assessed pursuant to Paragraph C shall be paid to the Alabama Department of Environmental Management within 30 days of receipt of the Notice of Violation.

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 this Consent Order on behalf of the party represented and to legally bind such party.

F. That subject to the terms contained herein and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations cited in this Order.

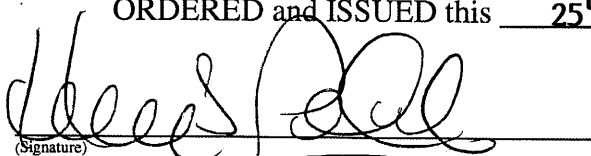
G. That NHB Industries, Inc. is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. That for the purposes of this Order only, NHB Industries, Inc. agrees that the Department may 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 of Montgomery County, Alabama. NHB Industries, Inc. further agrees that in any action brought by the Department to compel compliance with the terms of this Order, NHB Industries, Inc. shall be limited to the defenses of Force Majeure, compliance with this Consent Order and physical impossibility.

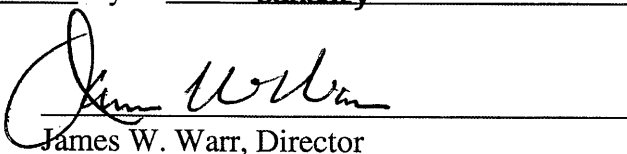
I. That this Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning NHB Industries, Inc., which would constitute possible violations 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 NHB Industries, Inc. shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

J. By agreement of the parties, this Order shall be considered final and effective immediately upon execution by the Director. This Consent Order shall not be appealable, and NHB Industries, Inc. does hereby waive any hearing on the terms and conditions contained herein.

ORDERED and ISSUED this 25th day of January, 1999.


(Signature)

Henry S. Polek / Administration Mgr.
(Print Name and Title of Authorized Officer)


James W. Warr, Director

Alabama Dept. of Environmental Management

NHB Industries, Inc.