

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:

**Buffalo Fuel Corp.
Emelle, Sumter County, Alabama
EPA Identification Number NYR000045724**

ORDER NO. 16-XXX-CHW

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department" or "ADEM") and Buffalo Fuel Corp pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16, as amended, and the Alabama Hazardous Wastes Management and Minimization Act (hereinafter "AHWMMA"), Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. Buffalo Fuel Corp. (hereinafter "BFC") is a commercial hazardous waste transporter, operating in Emelle, Sumter County, Alabama, under Alabama Hazardous Waste Transport Permit Number NYR000045724, whose corporate offices are located at 4780 Packard Road in Niagara Falls, Niagara County, New York. At all times relevant to these findings, BFC was a non-rail hazardous waste transporter.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16, as amended.

3. Pursuant to Ala. Code § 22-22A-4(n), (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the federal Solid Waste Disposal Act §§ 1002 to 11012, 42 U.S.C. §§ 6901 to 6992k, as amended. In addition, the Department is authorized to administer and enforce the provisions of the AHWMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended.

DEPARTMENT'S CONTENTIONS

4. On November 30, 2012, the Department issued to BFC Alabama Hazardous Waste Transport Permit Number NYR000045724, thereby permitting BFC to transport hazardous waste within the State of Alabama. Alabama Hazardous Waste Transport Permit NYR000045724 was effective for a term of three years, expiring on November 29, 2015.

5. Before the end of the three year term, BFC did not submit to the Department an application to renew its Alabama Hazardous Waste Transport Permit. As of November 30, 2015, BFC was not permitted to transport hazardous waste within Alabama.

6. On April 18, 2016, approximately four months after its permit expired, BFC submitted a hazardous waste transporter permit application to the Department to renew its permit. This prompted an employee of the Department to contact BFC on May 5, 2016 to request information relating to the transportation of hazardous wastes within the State of Alabama since the expiration date of BFC's 2012 permit.

7. In a letter dated May 5, 2016, BFC reported to the Department that it transported 13 loads of hazardous waste within the State of Alabama after its hazardous waste transporter permit had expired between the dates of December 21, 2015 and April 27, 2016.

8. Based on this admission, the Department determined that BFC violated certain requirements of Division 14 of the ADEM Administrative Code. Specifically, the Department identified the following violation:

(a) Pursuant to ADEM Admin. Code r. 335-14-4-.01(2)(c), a non-rail transporter must not transport hazardous wastes without having received an Alabama Hazardous Waste Transport Permit in compliance with rules 335-14-8-.09 through 335-14-8-.13.

BFC transported 13 loads of hazardous waste within the State of Alabama between December 21, 2015 and April 27, 2016 without having received an Alabama Hazardous Waste Transport Permit from the Department.

9. Pursuant to Ala. Code § 22-22A-5(18)c., as amended, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation(s), 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(s) 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 \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department shall not exceed \$250,000.00. Each day such a violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

(a) **SERIOUSNESS OF THE VIOLATIONS:** The Department noted one violation of ADEM Admin. Code div. 335-14. In arriving at the civil penalty, the Department considered the general nature and magnitude of the violation along with the available evidence of irreparable harm to the environment and threat to the health or safety of the public.

(b) **THE STANDARD OF CARE:** In considering the standard of care manifested by BFC, the Department noted that the violation described above was easily avoidable. The Department also noted that BFC is a hazardous waste transporter that has twice renewed its transporter permit and therefore, it has constructive knowledge of the permitting process and the applicable regulatory requirements.

(c) **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has determined that there was no significant economic benefit conferred upon BFC as a result of the violation referenced herein.

(d) **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** There are no known environmental effects to mitigate as a result of the violation referenced herein.

(e) HISTORY OF PREVIOUS VIOLATIONS: Based on a review of Department records, BFC does not have a history of previous violations with respect to ADEM Admin. Code div. 335-14.

(f) THE ABILITY TO PAY: Buffalo Fuel has not alleged an inability to pay the civil penalty.

(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 that is warranted in the spirit of cooperation and the desire to resolve this matter amicably without incurring the unwarranted expense of litigation (see "Attachment A", which is made a part of the Department's Contentions).

10. The Department neither admits nor denies BFC's contentions, which are set forth below. The Department has agreed to the terms of this Special Order by Consent in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the alleged violations. The Department has determined that the terms contemplated in this Special Order by Consent are in the best interest of the citizens of Alabama.

BUFFALO FUEL CORP'S CONTENTIONS

11. BFC wishes to state for the record that this was a clerical error. We thought we had lost this customer and did not renew our permit as it was the only customer who gave us loads to Alabama. When in fact the customer contacted us to continue doing their loads, there was a lack of communication between dispatch and permit offices. When this was discovered, we immediately called to find out the process for renewing an expired permit. This had never happened to us before.

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

ORDER

Therefore, without admitting that it has violated any statutes or regulations, BFC, along with the Department, desires to resolve and settle the alleged violations 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., as amended, 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 BFC agree to enter into this Special Order by Consent with the following terms and conditions:

A. BFC agrees to pay to the Department a civil penalty in the amount of \$9,000 in settlement of the violations alleged herein within ninety days of the effective date of this Special Order by Consent. Failure to pay the civil penalty within ninety days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. BFC agrees that all penalties due pursuant to this Special Order by Consent shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check or other payment methods acceptable to the Department and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Any payment submitted to the Department pursuant to this Special Order by Consent shall reference BFC's name and address, and the ADEM Administrative Order number of this action.

C. BFC agrees that, independent of this Special Order by Consent, BFC shall comply with all terms, conditions, and limitations of its Alabama Hazardous Waste Transport Permit and all applicable requirements of the AHWMMMA, Ala. Code §§ 22-30-1 to 22-30-24, as amended, and the regulations promulgated pursuant thereto.

D. The Department and BFC (hereinafter 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 Special Order by Consent certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Special Order by Consent, to execute the Special Order by Consent on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these provisions and subject to provisions otherwise provided by statute, this Special Order by Consent is intended to operate as a full resolution of the alleged violations cited herein.

F. BFC agrees that it is not relieved from any liability if it fails to comply with any provision of this Special Order by Consent.

G. For purposes of this Special Order by Consent only, BFC 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.

H. The parties agree that the sole purpose of this Special Order by Consent 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 which would constitute possible violations not addressed in this Special Order by Consent, 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; BFC agrees not to object to such future orders, litigation, or enforcement action based on the issuance of this Special Order by Consent if future orders, litigation, or other enforcement action address new matters not raised in this Special Order by Consent.

I. The parties agree that this Special Order by Consent shall be considered final and effective immediately upon signature of all parties. This Special Order by Consent shall not be appealable, and BFC does hereby waive any hearing on the terms and conditions of this Special Order by Consent.

J. The parties agree that this Special Order by Consent shall not affect BFC's obligation to comply with any Federal, State, or local laws or regulations.

K. The parties agree that final approval and entry into this Special Order by Consent 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 parties agree that, should any provision of this Special Order by Consent 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.

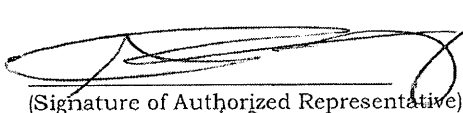
M. The parties agree that any modifications of this Special Order by Consent must be agreed to in writing signed by both parties.

N. The parties agree that, except as otherwise set forth herein, this Special Order by Consent 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 BFC of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

BUFFALO FUEL CORP

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

Lance R. LeFleur
Director

GRANT WOOLEY
(Printed Name)

TREAS.
(Printed Title)

7/29/16
(Date Signed)

(Date Executed)

Attachment A

**Buffalo Fuel Corp.
Niagara Falls, New York
EPA Identification Number NYR000045724**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Transporting Hazardous Waste without a valid Alabama Hazardous Waste Transport Permit	1	\$10,000	\$1,300	\$0	
TOTAL PER FACTOR		\$10,000	\$1,300	\$0	\$11,300

Adjustments to Amount of Initial Penalty*		Economic Benefit (+)*	\$0
Mitigating Factors (-)	\$0	Amount of Initial Penalty	\$11,300
Ability to Pay (-)	\$0	Total Adjustments (+/-)*	(\$2,300)
Other Factors (+/-)	(\$2,300)	FINAL PENALTY	\$9,000
Total Adjustments* (+/-)	(\$2,300)		

Footnote

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.