

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In The Matter Of: _____)

LOGAN'S CLEANERS)
Ozark, Dale County, Alabama)
_____))
_____)

CONSENT ORDER NO. 98-122-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. Logan's Cleaners is the owner and/or operator of a perchloroethylene dry cleaning facility located at 730 S Union Avenue in Ozark, Dale County, Alabama which utilizes one transfer dry cleaning machine.

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. 335-3-11-.06 (12), the Air Division is delegated the responsibility of administering the National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 CFR Part 63, Subpart M, for perchloroethylene dry cleaners.

5. Pursuant to Subpart M, 40 CFR § 63.320 (c), each dry cleaning system that commenced construction or reconstruction before December 9, 1991 and each new transfer machine system and its ancillary equipment that commenced construction or reconstruction on or after December 9, 1991 and before September 22, 1993, shall comply with 40 CFR §§ 63.322 (c), (d), (i), (j), (k), (l), and (m), 63.323 (d), and 63.324 (a), (b), (d) (1), (d)(2), (d)(3), (d)(4), and (e) beginning on December 20, 1993, and shall comply with other provisions of this Subpart M by September 23, 1996.

6. Pursuant to Subpart M, 40 CFR § 63.322 (a)(1), the owner or operator of each existing dry cleaning system and of each new transfer machine system and its ancillary equipment installed between December 9, 1991 and September 22, 1993 shall route the air-perchloroethylene gas-vapor stream contained within each dry cleaning machine through a refrigerated condenser or an equivalent control device.

7. Existing large area sources were required to install a refrigerated condenser or an equivalent control device on previously uncontrolled dry cleaning machines by September 23, 1996.

8. Logan's annual perchloroethylene consumption is greater than 200 gallons per year, therefore it is classified as a "large area source" under the federal NESHAP, Subpart M.

9. In the initial notification report, Logan's Cleaners indicated that a refrigerated condenser would be installed in 1994 on the existing transfer dry cleaning machine.

10. On April 23, 1998, an Air Division inspection revealed that no refrigerated condenser was installed on the machine.

11. On May 29, 1998, a Notice of Violation was issued citing Logan's Cleaners' failure to install a refrigerated condenser or an equivalent control device on their existing transfer dry cleaning machine by September 23, 1996.

12. On June 19, 1998, Logan's Cleaners submitted a response to the May 29, 1998 Notice of Violation.

13. On June 19, 1998, Logan's Cleaners notified the Department that its operations had changed and consequently, Logan's Cleaners no longer is subject to Subpart M of 40 CFR.

14. Logan's Cleaners 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, Logan's Cleaners 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 Logan's Cleaners it is hereby ORDERED:

A. That there is hereby assessed a civil penalty against Logan's Cleaners 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 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.

C. 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.

D. That Logan's Cleaners is not relieved from any liability if it fails to comply with any provision of this Consent Order.

E. That for the purposes of this Order only, Logan's Cleaners 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. Logan's Cleaners further agrees that in any action brought by the Department to compel compliance with the terms of this Order, Logan's Cleaners shall be limited to the defenses of Force Majeure, compliance with this Consent Order and physical impossibility.

F. 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 Logan's Cleaners

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 Logan's Cleaners shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

G. 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 Logan's Cleaners does hereby waive any hearing on the terms and conditions contained herein.

ORDERED and ISSUED this 24th day of September, 1998.

James F. Logan
(signature) 9-18-98

JAMES F. LOGAN-Owner
(Print Name and Title of Authorized Officer)

Logan's Cleaners

James W. Warr
James W. Warr, Director
Alabama Department of Environmental
Management