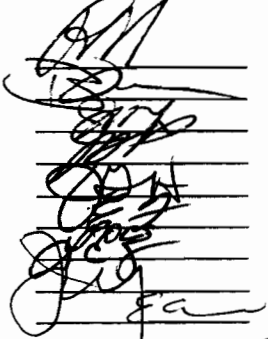


Based upon its review of the record and the arguments of counsel, the Commission hereby affirms the Administrative Order issued by the Director in the Matter of Big Mac Tank Trucks, Inc. (LIS 85-045), a copy of which is attached hereto.

COMMISSIONERS

  
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CHAIRMAN

SUBMITTED BY: Dennis Griesse DATE PASSED: 5-22-87

ARKANSAS DEPARTMENT OF POLLUTION CONTROL & ECOLOGY

IN THE MATTER OF:  
BIG MAC TANK TRUCKS, INC.

LIS 85-045

ADMINISTRATIVE ORDER

This Administrative Order is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended; Ark. Stat. Ann. § 82-1901 et seq.) and the regulations promulgated thereunder; and the Arkansas Solid Waste Management Act (Act 237 of 1971, as amended; Ark. Stat. Ann. §82-2701 et seq.) and the regulations promulgated thereunder. An evidentiary hearing was held in this matter on November 19 and 24, 1986, before Jeff Davis, Jr., Hearing Officer. The Arkansas Department of Pollution Control & Ecology (ADPC&E) was represented by Dennis Griesse, Staff Attorney, and Big Mac Tank Trucks, Inc. (Big Mac) was represented by Charles Baker, Attorney at Law.

Based upon the evidence introduced at this hearing and the Recommended Decision of the Hearing Officer filed in this matter, the Director of ADPC&E hereby makes and issues the following findings, conclusions, and Order herein.

DISCUSSION

The Findings of Fact contained herein reflect and adopt those findings contained in the Recommended Decision of the Hearing Officer and the addition of one finding (No. 9) by the Director.

It is the Director's judgment that the Findings of Facts and Conclusions of Law set forth below justify and mandate the imposition of greater civil penalties than those recommended by the Hearing Officer in the Recommended Decision. In comparing the civil penalties recommended by the Hearing Officer with those proposed in the Notice of Violation (NOV) and the Supplemental Notice of Violation (SNOV) filed herein, I find that the record in this matter supports civil penalties more in line with those initially proposed. A primary factor in making this decision is a determination, reflected in the last Finding of Fact below, that the violations and noncompliant conditions continued unabated and unremedied for a considerable length of time despite notices of deficiencies given to Big Mac.

The Hearing Officer's Recommended Decision set forth specific violations and penalty assessments for each in the Conclusions of Law section therein. Specific reference to that section is made below.

Paragraph 1 finds a violation of permit conditions. The proposed penalties in the SNOV on alleged violations concerning such conduct totaled One Thousand Dollars (\$1,000.00). The Hearing Officer found a specific violation, with which I agree, but I assess a Two Hundred and Fifty Dollar (\$250.00) civil penalty for this violation.

Paragraphs 2 and 3 find similar violations at the same permitted site, and the Hearing Officer found four separate violations. The NOV and SNOV proposed total civil penalties of Six Thousand Five Hundred Dollars (\$6,500.00) on alleged violations concerning this conduct. I agree with the Hearing Officer's findings of violations in these paragraphs for polluting the surface waters of the state and for violations of permit conditions, but, in consideration of my Finding of Fact No. 9 below and the discussion in this section, I assess a civil penalty of Six Thousand Five Hundred Dollars for the four violations.

Paragraph 4 finds a violation and assesses a civil penalty of One Hundred Dollars (\$100.00); I agree with both determinations.

Paragraph 5 dismisses certain alleged violations; I agree with this determination.

Paragraphs 6 and 7 find two violations for similar acts which occurred at the same permitted site. The NOV and SNOV proposed total civil penalties of Ten Thousand Dollars (\$10,000.00) on alleged violations concerning this conduct. I

agree with the hearing officer's finding of violations for causing pollution of the surface and groundwaters of the state and for violation of permit conditions, but, in consideration of my Finding of Fact No. 9 below and the discussion in this section, I assess a civil penalty of Ten Thousand Dollars (\$10,000.00) for these two violations.

Paragraph 8 finds a violation and assesses a civil penalty of One Hundred Dollars (\$100.00); I agree with both determinations.

#### FINDINGS OF FACT

1. On and after December 12, 1984, Big Mac, under and by authority of ADPC&E Permit 2936-W, was the operator of a saltwater disposal well located in Pope County, Arkansas.

2. On and after April 10, 1985, Big Mac, under and by authority of ADPC&E Permit 3086-W, was the operator of a truck washing facility and storage yard located in Johnson County, Arkansas.

3. Monthly reporting requirements set forth as a condition of Permit 2936-W were not followed by Big Mac for the months of November and December, 1985, in that such reports did not reflect the volume of salt water transported by Big Mac for disposal from each production well serviced during these particular months.

4. During the period from December 12, 1984, through February 26, 1986, Big Mac on at least four occasions caused or allowed salt water brought to the Permit 2936-W site for disposal to run off the permitted premises thereby causing pollution to the surface waters of the state; further, such occurrences violated a permit condition providing that no waste be discharged from the permitted site.

5. Big Mac on at least one occasion violated a condition of Permit 2936-W by injecting fluids other than salt water into the injection well.

6. During the month of April, 1985, Big Mac caused or allowed drilling mud to be discharged at the premises of the truck wash site, Permit 3086-W, thereby violating a permit condition providing that no waste be discharged from the permitted premises.

7. During the month of September, 1985, Big Mac caused or allowed the discharge of drilling mud at the Permit 3086-W premises thereby causing pollution of the surface and ground waters of the state.

8. During April, 1985, Big Mac allowed waste demolition materials to remain and accumulate on the Permit 3086-W premises.

9. The violations contained in paragraphs 4, 6, & 7 above occurred at intervals over a considerable period of time during which time ADPC&E repeatedly gave Big Mac notice,

including written notice, concerning these occurrences with requests that the violations be abated and the resultant effects be remedied.

#### CONCLUSIONS OF LAW

1. Big Mac committed separate violations of Ark. Stat. Ann. § 82-1908(1) in each instance, as stated above in paragraphs 3, 4, 5, and 6 of the Findings of Fact, where it violated a condition of Permit 2936-W or Permit 3086-W.

2. Big Mac committed separate violations of Ark. Stat. Ann. § 82-1908(1) in each instance, as stated above in paragraphs 4 and 7 of the Findings of Fact, where it caused pollution of the waters of the state.

3. Big Mac violated Ark. Stat. Ann. § 82-2710 when it, as stated above in paragraph 8 of the Findings of Fact, allowed the unpermitted accumulation of solid waste on the Permit 3086-W premises.

#### CIVIL PENALTY ASSESSMENT

1. For the violation set forth in paragraph 3 of the above Findings of Fact, a civil penalty of Two Hundred Fifty Dollars (\$250.00) is hereby assessed.

2. For the violations set forth in paragraph 4 of the above Findings of Fact, a civil penalty of Six Thousand Five Hundred Dollars (\$6,500.00) is hereby assessed.

3. For the violation set forth in paragraph 5 of the above Findings of Fact, a civil penalty of One Hundred Dollars (\$100.00) is hereby assessed.

4. For the violations set forth in paragraphs 6 & 7 of the above Findings of Fact, a civil penalty of Ten Thousand Dollars (\$10,000.00) is hereby assessed.

5. For the violation set forth in paragraph 8 of the above Findings of Fact, a civil penalty of One Hundred Dollars (\$100.00) is hereby assessed.

ORDER

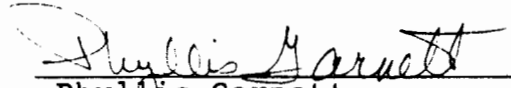
Big Mac Trucks, Inc. is hereby ordered to pay Sixteen Thousand Nine Hundred Fifty Dollars (\$16,950.00) as a civil penalty to the Arkansas Department of Pollution Control & Ecology for causing pollution of the waters of the State, for violating the conditions of Permit Nos. 2936-W and 3086-W, and for illegally disposing of solid waste at the Permit 3086-W permitted site; and Big Mac shall make payment of this assessed Civil Penalty within thirty (30) days of the date hereof.

OPPORTUNITY FOR COMMISSION REVIEW

Big Mac Tank Trucks, Inc. may request review of this Order by the Commission on Pollution Control & Ecology by making written application for such review within thirty (30) days of the date of issuance of this Order in accordance with

Section 7, Part V of Regulation No. 8: Administrative  
Procedures.

SO ORDERED THIS 8th DAY OF January, 1987.



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Phyllis Garnett  
Director