

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
Linden Lumber, LLC)
Linden, Marengo County, Alabama) CONSENT ORDER NO. _____
ADEM Air Facility ID No. 105-S002)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("Department" or "ADEM") and Linden Lumber, LLC ("Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

- 1. The Permittee is the owner and/or operator of Linden Lumber, LLC, a lumber mill, ADEM Air Facility ID No. 105-S002 ("Facility") located in Linden, Marengo County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, as amended.
4. On May 28, 2009, the Department issued Synthetic Minor Operating Permit ("SMOP") Nos. 105-S002-X006 through X009 to the Permittee, which authorizes the operation of

air emission sources at the Facility.

5. Proviso No. 26 of SMOP No. X006 states:

The Permittee shall maintain records, including the dates and times, of all daily visual observation results, corrective actions, and emission-related maintenance performed. These records shall be kept in a permanent form suitable for inspection, shall be retained on-site for a period of five years from the date of generation of each record, and shall be made available for inspection upon request. For any day that a visual observation is not conducted due to the boiler not being operated the entire workday, the records should indicate the non-operational status for that day.

6. Proviso No. 23 of SMOP No. X007 states:

The Permittee shall conduct the following emission monitoring for this boiler:

a. While the boiler is operating, someone familiar with the process shall observe the visible emissions from the boiler exhaust stack a minimum of once daily during daylight hours for greater than normal visible emissions as determined by previous observations.

b. Whenever observed visible emissions are greater than normal from the boiler stack, corrective action to minimize emissions shall be initiated as soon as practicable but no longer than 24 longer from the time of observation, followed by an additional observation to confirm that emissions are reduces to normal.

7. Proviso No. 24 of SMOP No. X007 states:

The Permittee shall maintain records, including the dates and times, of all daily visual observation results, corrective actions, and emission-related maintenance performed. These records shall be kept in a permanent form suitable for inspection, shall be retained on-site for a period of five years from the date of generation of each record, and shall be made available for inspection upon request. For any day that a visual observation is not conducted due to the boiler not being operated the entire workday, the records should indicate the non-operational status for that day.

8. On January 30, 2013, the Department issued SMOP No. 105-S002-X010 to the Permittee, which authorizes the operation of Material Handling and Processing Operations, which include: Sawmill, Unfinished Flooring Mills (Line No. 2 and 3), Planer Mill, and Fuel Transfer

System.

9. Proviso No. 33 of SMOP No. X010 states:

The Permittee shall maintain records, including dates and times, of all daily visual observation results, corrective actions, and emission-related maintenance performed. These records shall be kept in a permanent form suitable for inspection, shall be retained on-site for a period of five years from the date of generation of each record, and shall be made available for inspection upon request. For any day that a visual observation is not conducted due to the boiler not being operated the entire workday, the records should indicate the non-operational status for that day.

DEPARTMENT'S CONTENTIONS

10. On February 13, 2019, the Permittee submitted to the Department the annual monitoring report for the Facility for the calendar year of 2018. The report stated that “visible emission observations were conducted daily when the [process] was operating. An individual [Permittee’s employee] familiar with the process conducted all observations.” The report contained a truth and accuracy statement attested to by the Chief Executive Officer for the Permittee.

11. On July 23, 2019, the Department conducted an inspection of the Facility and noted that the daily visible emission records were reviewed from January 2018 through July 2019. All records reviewed were signed by a part-time employee of the Permittee.

12. On August 8, 2019, the Department issued a Notice of Violation (“NOV”) to the Permittee, for recording certain daily visible emission observations which had not been performed.

13. On September 6, 2019, the Department received a response to the August 8, 2019 NOV from the Permittee confirming that its part-time employee did not perform each daily visible emission observation.

14. On October 1, 2019, the Department met with the Permittee to further discuss a

resolution of the outstanding enforcement issues and expectations for Permittee's Facility going forward.

15. 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, 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 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 violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Department considers the Permittee's falsification of visible emission records for air emission sources to be serious.

B. **THE STANDARD OF CARE:** The Permittee did not exhibit the required standard of care by falsifying visible emission records for air emission sources.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has determined that there was no significant economic benefit gained by the Permittee as a result of the violations 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 alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has no history of violations within the past five years at the Facility.

F. THE ABILITY TO PAY: The Permittee has alleged an inability to pay the civil penalty and this has been taken into consideration.

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 warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

16. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., as amended, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate (*See* “Attachment A”, which is hereby made a part of Department’s Contentions).

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

PERMITTEE’S CONTENTIONS

18. Permittee neither admits nor denies the Department’s contentions. Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein. Permittee contends there was no malicious intent with regard to its recordkeeping.

Since the boiler permit was issued on February 1, 2010, the Vyncke Boiler #001 has not

been in operation. Permittee does not expect to operate this boiler in the future. Since the Material Handling and Processing Operations permit was issued on January 30, 2013, the unfinished Flooring Line 2 has not been in operation. Permittee does not expect to operate that line in the future. The Unfinished Flooring Line 3 was shut down in May of 2016. Permittee ran Line 3 in February of 2018 for 50 hours. The visual records were kept accordingly. The line was shut back down and has not been run since. Permittee does not expect to run Line 3 again.

Based on the above information, when Linden Lumber attested to there being normal emissions, it had a reasonable basis for making that attestation. It had no intent to deceive the Department.

Permittee contends that the six factors for determining a penalty for a violation are as follows:

A. **SERIOUSNESS OF THE VIOLATION:** While Linden Lumber did not intend to deceive the Department and had no malicious intent, and believes it had reasonable evidence to support that the attestation was accurate, Linden Lumber understands that the violation is serious.

B. **THE STANDARD OF CARE:** Linden Lumber agrees that the standard of care is to have someone check the emissions daily when the boiler is in operation and that it did not meet the standard of care.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** There was no economic benefit at all gained by the Permittee as a result of the violation.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECT OF THE VIOLATION UPON THE ENVIRONMENT:** There was no effect upon the environment. The

emissions from the boiler are typically normal and require no corrective action.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has no history of violations within the past five years at the Facility.

F. THE ABILITY TO PAY: The Permittee is currently struggling financially due to the tariffs imposed on exports to China and a severe cutback in orders from Chinese customers. A \$20,000.00 penalty will harm the financial operations of the Permittee.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues 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 has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$20,000.00 in settlement of the violations alleged herein within sixty days from the effective date of this Consent Order. Failure to pay the civil penalty within sixty 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. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

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

C. The Permittee agrees to comply with the terms, limitations, and conditions of the SMOPs and the Department's Regulations immediately upon the effective date of this Consent Order and every day thereafter.

D. 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 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.

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

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

G. For purposes of this Consent Order only, the Permittee 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. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays or prevents performance by a date required by the

Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree 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 herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, 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, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

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

J. The Department and the Permittee agree that this Order shall not affect the

Permittee's obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and the Permittee agree that final approval and entry into this Order 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 Department and the Permittee agree that, should any provision of this Order 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 Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order 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 the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

LINDEN LUMBER, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

MICHAEL S JACKSON
(Printed Name)

ATTORNEY
(Printed Title)

Lance R. LeFleur
Director

Date Signed: Nov 12, 2019

Date Executed: _____

Attachment A

**Linden Lumber, LLC
Linden, Marengo County**

Air Facility ID No. 105-S002

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Falsification of records	>50	\$15,000	\$10,000		
					Total of Three Factors
TOTAL PER FACTOR		\$15,000	\$10,000		\$25,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	\$5,000
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	-\$5,000

Economic Benefit (+)	
Amount of Initial Penalty	\$25,000
Total Adjustments (+/-)	-\$5,000
FINAL PENALTY	\$20,000

Footnotes

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