

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
Bunge North America, Inc.	)	
Decatur, Morgan County, Alabama	)	CONSENT ORDER NO.
	)	
<u>ADEM Air Facility ID No. 712-0026</u>	)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and Bunge North America, Inc. (hereinafter, the “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 operates a soybean processing and edible oil refining, blending, and packaging facility (hereinafter, the “Facility”) located in Decatur, Morgan County, Alabama (ADEM Air Facility ID No. 712-0026).
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. The Permittee operates a hexane solvent extraction process at the Facility pursuant to the authority of Major Source Operating Permit No. 712-0026 (hereinafter, the “Permit”).

5. Emission Standards Proviso No. 2 of the Solvent Extraction Process section of the Permit states:

The facility shall maintain a compliance ratio of less than or equal to 1.00 of actual solvent loss to allowable solvent loss [the “Compliance Ratio Limit”]. The allowable solvent loss is a function of the oilseed processed and the solvent loss factor (SLF) for this facility.

(40 CFR 63 Subpart GGGG, §63.2840(c))

6. Consent Decree CAN: 2:06-CV-02209 requires that the Permittee use a solvent loss factor of 0.19 gallons of solvent lost per ton of oilseed processed (gal/ton) (the “Solvent Loss Limit” or “SLL”) when determining the Compliance Ratio Limit.

#### DEPARTMENT’S CONTENTIONS

7. On September 13, 2018, the Department received an exceedance report from the Permittee stating the solvent loss had exceeded the SLL for the 12-month periods ending July and August 2018.

8. On October 9, 2018, the Department received an exceedance report from the Permittee stating the Facility had exceeded the SLL for the month of September 2018, and the Compliance Ratio Limit of 1.00 had been exceeded for the 12-month period ending in September 2018. The calculated 12-month compliance ratio was 1.08.

9. The Department received additional exceedance reports stating the 12-month rolling SLL and Compliance Ratio Limit were exceeded for the months of September 2018 through July 2019. The most recent 12-month rolling solvent loss for the Facility for the 12-month period ending July 2019 was 0.33 gal/ton, and the compliance ratio for the same period was 1.61.

10. On January 18, 2019, the Department issued a Letter of Inquiry to the Permittee requesting information on the events leading to the exceedances.

11. On February 22, 2019, the Department received a response to the Letter of Inquiry from the Permittee indicating the following:

(a) Following the May 2018 replacement of the existing extractor and related equipment, several operational and equipment issues arose that resulted in increased hexane solvent loss.

(b) A series of equipment repairs have been made, and additional repairs are scheduled for the near future to remediate these issues. The Permittee also indicated that due to the new design of the extractor, other unknown issues could exist that may be contributing to increased solvent loss.

12. On April 3, 2019, the Department met with the Permittee to discuss ongoing issues with the extractor and the anticipated date that it would be back in compliance.

13. On May 2, 2019, the Department received a letter from the Permittee stating that it does not expect to meet the SLL earlier than December of 2020 for the following reasons:

(a) Due to planned repairs to the existing desolventizer/toaster in Summer of 2019.

(b) Due to planned replacement of the desolventizer/toaster in Summer/Fall of 2020.

(c) Both planned repairs and replacement will require a hexane purge and, consequently, higher-than-average hexane losses as well as a period of time to make operational adjustments.

(d) Due to these stated issues and the natural variability in monthly hexane loss due to purges, seasonal weather, etc., Permittee does not anticipate being in compliance with the SLL and the Compliance Ratio Limit of 1.00 until December 2020.

14. 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. Ala. Code § 22-22A-5(18)c., *as amended*, also states that 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 ongoing exceedance of the Solvent Loss Limit to be a serious violation. However, the Department is not aware of any irreparable harm to the environment resulting from this violation.

B. THE STANDARD OF CARE: In spite of efforts to reduce hexane emissions after the May 2018 replacement of the existing extractor and related equipment, the Permittee is still unable to meet a sufficient standard of care to prevent hexane emissions from exceeding the SLL.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any evidence indicating that the Permittee received any significant economic benefit from this violation.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is not aware of any efforts by the Permittee to minimize or mitigate the effects of the violation on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department's records indicate that there are no other similar violations or enforcement actions taken by the Department against the Permittee within the past five years.

F. THE ABILITY TO PAY: The Permittee 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 in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

15. 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 the Permittee's contentions, has concluded that the civil penalty herein is appropriate.

16. 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

17. Permittee is committed to operating the Facility in full compliance with its permit and applicable laws and regulations. Due to unforeseen operational problems encountered when a new vegetable oil extractor was installed at the Facility in May 2018, the Facility has been unable to meet the SLL or its Compliance Ratio Limit. Since discovering these problems, Permittee has devoted considerable internal and external resources to investigate these operational problems and to take significant efforts to find solutions to the permit exceedances. Specifically, Permittee shut down the Facility multiple times in 2018 and 2019 to investigate, identify, and repair equipment malfunctions, leaks, etc. Unfortunately, although necessary to troubleshoot the cause of the increased hexane losses, those shutdowns themselves resulted in additional hexane loss. Because compliance is based on a 12-month rolling average, additional hexane losses during the shutdowns performed to reduce hexane loss are factored into the Facility's compliance demonstration for 12 months until those months of high hexane loss from the shutdowns taken to improve operations to reduce hexane loss are dropped from the compliance demonstration calculation. Moreover, because of the way the applicable regulations and permit require that the SLL be calculated, each month that the calculation of the twelve month rolling average solvent loss shows an exceedance of the SLL

is a one-time non-compliance event and does not give rise to an ongoing daily noncompliance under Ala. Code § 22-22A-5(18)c., *as amended*.

18. Permittee has not gained any economic benefit from this period of non-compliance. During the period, the Facility has purchased hexane (solvent) to replace the additional hexane that was lost. Vegetable oil extraction plants typically operate with a very low hexane loss because hexane is an expensive raw material. Permittee also had to shut down the Facility multiple times during the period which resulted in lost production and increased hexane loss in order to complete necessary repairs. Permittee has paid for extensive internal and external resources to travel to the Facility to investigate the problem. Permittee has paid highly-skilled contractors to make repairs to equipment. Since June 2018, Permittee has spent approximately \$2,000,000 to resolve the issues that have contributed to the hexane loss non-compliance. Permittee spent approximately half of this \$2,000,000 on interim repairs and modifications to equipment that will be lost when it replaces the Desolventizer-Toaster (“DT”).

19. Permittee strives to maintain good relationships with all its various stakeholders and to conduct its operations in compliance. Permittee has been forthcoming and transparent with ADEM regarding the operational difficulties and non-compliance encountered after the extractor replacement. Permittee will continue to work diligently to identify and correct the conditions that have caused this non-compliance.

20. The Permittee neither admits nor denies the Department’s Contentions. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

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 the Department 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 Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$250,000.00 in settlement of the violations from July 2018 through June 2019 alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five 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 to pay to the Department a stipulated penalty in the amount of \$25,000.00 per month, beginning with July 2019 and ending with December 2020, for any month in which the Permittee exceeds the 12-month rolling SLL.

C. The Permittee agrees to pay any stipulated penalties for the months of July 2019 up to and including December of 2019 by February 1, 2020. The Permittee agrees to pay any stipulated penalties for the months of January 2020 up to and including December of 2020 within 30 days of the end of each calendar quarter for the months included in that quarter.

D. For purposes of determining whether stipulated penalties under paragraphs B and C above are owed, the Permittee shall use the same recordkeeping that the Permittee uses in calculating the 12-month rolling SLL under the Permit.



E. 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

F. The Permittee agrees that it shall not exceed a solvent loss ratio of 0.375 gallons of hexane per ton of soybeans processed (gal/ton) on a 12-month rolling average basis from the effective date of this Order through December of 2020 (the "Interim Limit"), and that exceeding the Interim Limit may subject the Permittee to separate enforcement action. For purposes of determining compliance with the Interim Limit, the 12-month rolling period shall include the month that this Order becomes effective and the immediately preceding 11 operating months.

G. The Permittee agrees to comply with all other requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing every day thereafter.

H. 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.

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

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

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

Q. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

R. 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.

S. The Department and the Permittee agree that this Consent Order ~~shall~~ terminate upon payment of the stipulated penalties, if any, for the fourth quarter of 2020 on or before February 15, 2021.

Executed in duplicate, with each part being an original.

BUNGE NORTH AMERICA, INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
Lance R. LeFleur  
Director

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

Date Signed: \_\_\_\_\_

Date Executed: \_\_\_\_\_