

IN THE MATTER OF:	)	
	)	
Alabama Farmers Cooperative, Inc.	)	
Decatur Feed Mill	)	
Decatur, Morgan County, Alabama	)	CONSENT ORDER NO. <u>19-??-CAP</u>
	)	
<u>ADEM Air Facility ID No. 712-0001</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 Alabama Farmers Cooperative, 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 is the owner and/or operator of an animal feed manufacturing facility (hereinafter, the “Facility”) located in Decatur, Morgan County, Alabama (ADEM Air Facility ID No. 712-0001).
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 June 12, 2012, the Department issued Air Permit No. X019 (hereinafter, the

“Permit”) to the Permittee authorizing the construction and operation of 90 TPH Truck Receiving and Storage with Baghouse which includes 50 TPH Truck Receiving Pit #1 and 40 TPH Truck Receiving Pit #2.

5. Proviso No. 7 of the Permit states:

In the event there is a breakdown of equipment in such a manner as to cause increased emission of air contaminants for a period greater than 1 hour, the person responsible for such equipment shall notify the Air Division within an additional 24 hours and provide a statement giving all pertinent facts, including the duration of the breakdown. The Air Division shall be notified when the breakdown has been corrected.

6. Proviso No. 8 of the Permit states:

This process, including all air pollution control devices and capture systems for which this permit is issued, shall be maintained and operated at all times in a manner so as to minimize the emissions of air contaminants. Procedures for ensuring that the above equipment is properly operated and maintained so as to minimize the emission of air contaminants shall be established.

DEPARTMENT'S CONTENTIONS

7. On June 27, 2019, the Department conducted an unannounced annual inspection of the Facility and noted unauthorized emissions from the receiving conveyance system located above the storage bins.

8. On July 16, 2019, the Department issued a Notice of Violation (hereinafter, “NOV”) to the Permittee for failure to notify the Department of the unauthorized emissions and not maintaining the system as required by the Permit.

9. On July 18, 2019, and July 24, 2019, the Department received responses from the Permittee to the July 16, 2019 NOV, stating that the conveyance was not designed to have emissions and that a lid was found to be malfunctioning due to wear. The responses indicated a malfunctioning lid on the conveyance transfer point to be the cause of the unauthorized emissions. The responses

also indicated that a temporary patch has been installed until a new lid could be delivered and installed.

10. 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 failure to report unauthorized emissions and failure to maintain the system to be serious.

B. **THE STANDARD OF CARE:** The Permittee did not exhibit the required standard of care in failing to report unauthorized emissions and failing to maintain the system.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has determined that the Permittee likely derived an economic benefit by deferring maintenance at the Facility.

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: No enforcement actions have been taken by the Department against the Permittee at the Facility within the last five years related to the violations included in this Order. However, enforcement actions have been taken by the Department against the Permittee at the Facility within the last five years for demolition without the required asbestos inspection and notice to the Department. In addition, the Permittee was cited for operating a receiving pit without the associated baghouse. These actions resulted in a NOV being issued October 11, 2018, and Consent Order No. 19-057-CAP being issued April 16, 2019.

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

11. 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).

12. 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

13. 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.

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above by this Consent Order. 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 \$5,000.00 in settlement of the violations 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 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

In the alternative, payment of the civil penalties assessed herein can be made online with a credit card or e-check via the ADEM website. Additional instructions to be provided by the Department.

C. The Permittee agrees to comply with the terms, limitations, and conditions of the Permits 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.

ALABAMA FARMERS  
COOPERATIVE, INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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

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

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

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

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

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



# Attachment A

## Alabama Farmers Cooperative, Inc. Decatur Feed Mill Decatur, Morgan County

Facility ID No. 712-0001

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to notify of unauthorized emissions	1	\$1,250	\$1,250		
Failure to maintain conveyance system	1	\$1,250	\$1,250		
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$2,500</b>	<b>\$2,500</b>		<b>\$5,000</b>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	\$0

Economic Benefit (+)	
Amount of Initial Penalty	\$5,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$5,000

### Footnotes

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

*me*  
*2-19*