

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
Escambia Operating Co., LLC)	CONSENT ORDER NO. XX-XXX-CAP
Escambia County)	
)	
<u>ADEM Air Facility ID No. 502-0007</u>)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“Department” or “ADEM”) and Escambia Operating Co., 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 operates the Big Escambia Creek Plant (“Facility”), an oil and gas production facility and natural gas processing plant located at 38888 Sardis Church Road, Escambia 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. The Permittee operates the Facility pursuant to the authority of Major Source Operating Permit No. 502-0007 (“Permit”). The Permit includes requirements for the sulfur recovery unit (SRU) and thermal oxidizer’s (“SRU/Thermal Oxidizer”) located at the Facility.

5. Emission Standards No. 3 & 4 of the Permit for the SRU/Thermal Oxidizer state that no person shall cause or permit the sulfur oxide emission from any facility, designed to dispose of or process natural gas or refinery gas containing more than 0.10 grain of hydrogen sulfide (H₂S) per standard cubic foot, to exceed the permitted emissions of SO₂ averaged over a three-hour period.

6. Emission Standard No. 6 of the Permit for the SRU/Thermal Oxidizer states that SO₂ emissions from the SRU/Thermal Oxidizer shall not exceed 1,818 pounds of SO₂ based on a daily 24-hour averaging period [Regulation 40 CFR 51.308(d)(3) & 40 CFR 51.308(e)].

DEPARTMENT’S CONTENTIONS

7. On January 20, 2022, the Permittee informed the Department that the Facility was exceeding the 1,818 pound per 24-hour SO₂ limit as of January 17, 2022.

8. On January 24, 2022, the Permittee informed the Department that, in addition to continuing to exceed the 1,818 pounds per 24-hour SO₂ limit, the Facility had also exceeded the three hour average SO₂ allowable under ADEM Administrative Code r. 335-3-5-.03(3).

9. Between January 20, 2022 and February 22, 2022, the Department received multiple deviation notifications from the Permittee regarding its failure to comply with the three-hour and/or 24-hour SO₂ emission limits for the SRU/Thermal Oxidizer.

10. On February 23, 2022, the Permittee notified the Department that it had shut down the Facility and expected it to be shut down for about two days due to issues with the solar compressor and solvent pump.

11. On February 25, 2022, the Permittee informed that Department that it had started up the Facility on February 24, 2022; however, the SO₂ emission issues had not been resolved.

12. On February 25, 2022, the Department issued a notice of violation (“NOV”) to the Permittee for violation of the three-hour and 24-hour SO₂ emission limits.

13. Between February 24, 2022 and March 2, 2022, the Permittee submitted multiple deviations notifications to the Department for failure to comply with three-hour and/or 24-hour SO₂ emission limits for the SRU/Thermal Oxidizer.

14. On March 2, 2022, the Permittee notified the Department that it had started shutdown procedures and it was depressuring the Facility. The Permittee expected the Facility to be down for at least 30 days.

15. On April 1, 2022, the Permittee’s response to the NOV was received at the Department; however, the response did not include the requested SO₂ emission data.

16. On April 4, 2022, a revised NOV response was submitted to the Department clarifying some of the Permittee’s previous responses and providing the missing exhibits referenced in the original NOV response. In the response, the Permittee identified, based on a rolling average for each deviation event, 881 violations of the three-hour average SO₂

allowable under ADEM Admin. Code r. 335-3-5-.03(3) and 854 violations of the 24-hour average SO₂ allowable under 40 CFR 51.308(d)(3) & 40 CFR 51.308(e).

17. 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 comply with the SO₂ emission limits to be serious violations. However, the Department is not aware of any irreparable harm to the environment resulting from these violations.

B. **THE STANDARD OF CARE:** The Permittee failed to exhibit a sufficient standard of care by failing to comply with multiple SO₂ emission standards.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Permittee likely derived an unquantifiable economic benefit by

continuing to operate the Facility knowing that it was not complying the SO₂ emission limits of the Permit.

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 these violations on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued Consent Order No. 16-001-CAP to the Permittee on October 6, 2015, in part, for its failure to meet the 24-hour SO₂ standard.

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.

18. 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 the Department's Contentions).

19. 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

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.

21. The Permittee had been under new management since January of 2021. However, the Alabama Oil and Gas Board (OGB), which has to approve any change in control of the facility, had not yet approved a transfer of ownership and control to the new owner. Despite the potential that the OGB could deny its request for permission to transfer and its investment in repairs to the facility could be lost, the new management had invested in excess of one million dollars making necessary repairs and evaluating the plant in preparation for a major overhaul, which would allow the plant to remain functional and comply with its permits more easily long-term, which was tentatively scheduled for February 2022.

22. Between January 20 and March 2, 2022, the Permittee made continuous attempts to diagnose and fix the cause or causes of its noncompliance.

23. In late March, after eliminating other potential causes, the Permittee was able to diagnose the problem as prematurely-failed catalyst beds following an unscheduled shutdown in December 2021 for solvent pump repairs.

24. Due to the nature of the failure, the Permittee was unable to diagnose the problem without first bringing the plant online multiple times and eliminating other potential causes. Some of the adjustments that were required to be made in order to diagnose

the problem could only be done while the plant was operating and required that the plant remain operating for a period of time in order to determine if they had been successful.

25. The OGB finally approved the Permittee's request for approval of a change in ownership and control on March 31, 2022.

26. The Permittee kept the Department informed regarding its compliance status and its ongoing efforts to diagnose and remedy the cause or causes thereof.

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 \$160,000.00 in settlement of the violations alleged herein, payable as follows:

(1) One initial payment of \$13,337.00 due within forty-five days from the effective date of this Consent Order; and

(2) Eleven (11) monthly installments of \$13,333.00 due on the 15th of each month beginning the month following the initial payment.

Failure to pay the civil penalty as set forth above 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 all requirements of ADEM Administrative Code div. 335-3 and the Permit immediately upon the effective date of this 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, 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.

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 BEC Plant 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.

ESCAMBIA OPERATING CO., LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

Thomas Swank
(Printed Name)

Member
(Printed Title)

Lance R. LeFleur
Director

Date Signed:

7-25-22

Date Executed: _____

Attachment A

**Escambia Operating Co., LLC
Escambia County**

ADEM Air Facility ID No. 502-0007

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Failure to meet the 3-hour SO ₂ emission limit in the Permit	41**	\$50,000.00	\$30,000.00		\$80,000.00
Failure to meet the 24-hour SO ₂ emission limit in the Permit	42**	\$75,000.00	\$30,000.00	\$15,000.00	\$120,000.00
TOTAL PER FACTOR		\$125,000.00	\$60,000.00	\$15,000.00	\$200,000.00

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-\$40,000.00
Total Adjustments (+/-)	-\$40,000.00

Economic Benefit (+)	
Amount of Initial Penalty	\$200,000.00
Total Adjustments (+/-)	-\$40,000.00
FINAL PENALTY	\$160,000.00

Footnotes

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

** Though the Permittee cited over 800 violations of each standard (on a rolling hour basis), pursuant to Ala. Code § 22-22A-5(18)c., continuous violations are per day limited.