

IN THE MATTER OF:)	
)	
Kronospan, LLC)	
Eastaboga, Calhoun County, Alabama)	CONSENT ORDER NO. <u>25-XXX-CAP</u>
)	
Air Facility ID No. 301-0079)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“Department” or “ADEM”) and Kronospan, 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 owns and operates Kronospan, LLC, a medium density fiberboard and particle board facility, ADEM Air Facility ID No. 301-0079 (“Facility”), located in Eastaboga, Calhoun 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 a 122.84 MMBtu/hr Thermal Oil Heater (“K4”) pursuant to the authority of Air Permit No. 301-0079-X051 (“Air Permit X051”) and Major Source Operating

Permit No. 301-0079 (“the MSOP”).

5. Air Permit. X051 Unit Specific Proviso No. 2(m) states in part, “The permittee shall comply with the following emission limits for K4: Carbon Monoxide (CO):720 ppm by volume on a dry basis corrected to 3% oxygen (30-day rolling average) [40 CFR §63.7500(f); 40 CFR §63.7500(a)].

6. 40 CFR §63.7575 states in part: “For demonstration of compliance with a CO Continuous Emissions Monitoring System (CEMS)-based emission limit based on CO concentration a 30-day rolling average is comprised of the average of all the hourly average concentrations over the previous 720 operating hours calculated each operating day.”

DEPARTMENT'S CONTENTIONS

7. On December 17, 2024, Kronospan personnel notified the Air Division of the exceedance of the CO emission limit listed in stipulation 5, above.

8. On February 1, 2025, Kronospan personnel notified the Air Division that the CO 30-day rolling average for K4 was below the emission limit. An attachment sent with the notification demonstrated the duration of the exceedance.

9. According to the letter received on February 1, 2025, the Permittee operated the K4 process for 40 operational days, of 30-day rolling averages, during which the process failed to comply with the CO emission limit stated in stipulation 5 above.

10. On February 10, 2025, the Air Division issued Kronospan a Notice of Violation for failure to comply with the CO emission limit.

11. On March 12, 2025, the Air Division received the response to the Notice of

Violation where the Permittee explained the increase in CO readings was the result of a low combustion chamber temperature operation.

12. 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 meet emission limits 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: The Permittee failed to exhibit a sufficient standard of care by failing to meet the emission standard of Air Permit X051, the MSOP, and 40 CFR Part 63, Subpart DDDDD.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee likely derived some economic benefit by continuing to operate K4 instead of shutting down the process, investigating the cause, and making timely operational adjustments; however, the realized economic benefit could not be quantified by the Department.

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 the Permittee received a Notice of Violation (issued June 29, 2023) and a Consent Order (executed November 27, 2023) for constructing process equipment without first submitting an application and receiving a permit determination. The Permittee also received a Consent Order (executed March 27, 2024) for not having an operational continuous opacity monitoring system and for not notifying the Department that the monitoring system was down. The Permittee also received a Consent Order (executed December 5, 2024) for continuing to operate Cogen Nos. 4 and 6 without a control device, exceeding Best Available Control Technology (BACT) limits, failure to notify of permit deviations, failure to monitor (temperature), and late submission of Annual Compliance Certification (ACC).

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.

13. 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 made a part of Department's

Contentions).

14. The Department neither admits nor denies the 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

15. 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 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 \$80,000 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

C. The Permittee agrees to meet all conditions of the following compliance schedule. This section or any other terms and conditions of this Consent Order shall not preclude the Permittee from requesting and obtaining an update or modification of the Permit in the future to incorporate applicable regulatory changes and/or more current operating conditions including, but not limited to, updates or modifications to the Permit.

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.

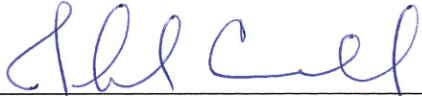
M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

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.

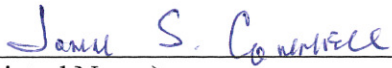
KRONOSPAN, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



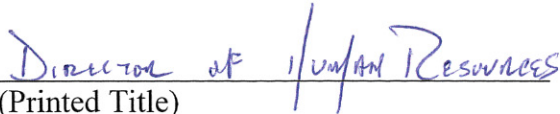
(Signature of Authorized Representative)

Lance R. LeFleur
Director

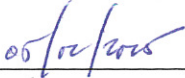


(Printed Name)

Date Executed



(Printed Title)



Date Signed

Attachment A
Kronospan, LLC
Eastaboga, Calhoun County, Alabama

Facility ID No. 301-0079

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
CO emission limit violations	40	\$50,000	\$15,000	\$15,000	
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$50,000</i>	<i>\$15,000</i>	<i>\$15,000</i>	<i>\$80,000</i>

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	\$80,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$80,000

Footnotes

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