

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



IN THE MATTER OF:)
)
Browder and Sons Veneer Company, Inc.)
Thomasville, Clarke County, Alabama) CONSENT ORDER NO. _____
)
Air Facility ID No. 102-S012)

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 Browder and Sons Veneer Company, Inc. (hereinafter, the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee is the owner and/or operator of a hardwood veneer production facility, ADEM Air Facility ID No. 102-S012 (hereinafter, the "Facility") located in Thomasville, Clarke 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-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §§ 22-22A-4(n) (2006 Rplc. Vol.), 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 (2006 Rplc. Vol.).

4. In January 1988, the Permittee submitted to the Department an application for the construction of a new veneer mill in Thomasville, Alabama. This proposed facility was to include an 8.4 MMBtu/hr wood-fired boiler, a hardwood veneer dryer, and log soaking vats.

5. On May 10, 1988, the Department issued Air Permit No. 102-S012-X001 to the Permittee authorizing the construction of an 8.4 MMBtu/hr wood-fired boiler and the Department determined that the veneer dryer did not require an air permit at that time.

6. In February 1994, the Permittee submitted to the Department an application for the construction of a second hardwood veneer dryer and the Department determined that this veneer dryer did not to require an air permit at that time.

7. In March 2005, the Permittee submitted an application for the modification of the existing 8.4 MMBtu/hr wood-fired boiler that included uprating the boiler to 17.55 MMBtu/hr and installing a multiclone.

8. On March 24, 2005, the Department issued Air Permit No. 102-S012-X001 (hereinafter, "Permit No. X001") to the Permittee authorizing the operation of a 17.55 MMBtu/hr Wood Waste Boiler with multiclone (hereinafter, the "Boiler").

9. Proviso No. 3 of Permit No. X001 states that "A new permit application must be made for new sources, replacements, alterations or design changes which may result in the issuance of, or an increase in the issuance of, air contaminants, or the use of which may eliminate or reduce or control the issuance of air contaminants."

10. On June 30, 2009, the Permittee installed and commenced operation of a third veneer dryer at the Facility without first submitting an application for this dryer to the Department.

11. On March 9, 2010, the Permittee commenced replacement of the existing boiler with a 19.136 MMBtu/hr boiler, which was completed later that year, without first submitting an

application for this boiler to the Department. This boiler is equipped with an oxygen trim system and the existing multiclone.

12. On September 12, 2012, the Department conducted an inspection of the Facility and reminded the Permittee to submit the proper forms before installing, replacing, or modifying any equipment that might affect air emissions.

13. On April 10, 2015, the Permittee installed and commenced operation of a fourth veneer dryer at the Facility without first submitting an application for this dryer to the Department.

DEPARTMENT'S CONTENTIONS

14. On July 28, 2016, the Department conducted an inspection of the Facility and noted the Permittee was operating four hardwood, natural gas-fired veneer dryers, although the Department had only been notified of the initial two dryers.

15. On August 18, 2016, the Department issued a Notice of Violation (hereinafter, the "NOV"), for the installation and operation of two natural gas-fired hardwood veneer dryers, in violation of ADEM Admin. Code r. 335-3-14-.01(a), and inability to demonstrate compliance with the Area Source Boiler MACT.

16. On September 9, 2016, the Department received a response to the NOV. The Permittee provided installation dates for veneer dryer nos. 3 and 4, along with an application for said dryers. The Permittee stated that a compliance program was in place for its boiler.

17. On September 28, 2016, the Department issued a follow-up letter requesting additional information from the Permittee including, confirmation of installation dates for the dryers, specific compliance documents related to Area Source Boiler MACT compliance, and additional specific information regarding emission factors for the dryers and facility as a whole.

18. On October 28, 2016, the Permittee provided the Department the additional

information addressing the concerns and questions raised in the NOV issued on August 18, 2016. The Permittee confirmed the installation dates for veneer dryers nos. 3 and 4, stated that the Permittee "will complete the required MACT notifications", and provided a revised application for the veneer dryers containing emission calculations. The Permittee provided information regarding the replacement of the permitted boiler (Permit No. 102-S012-X011) with a higher capacity boiler on March 9, 2010.

19. On November 23, 2016, the Permittee submitted the Initial Notification of Applicability as required by 40 CFR §63.11225 of the Area Source Boiler MACT. The compliance date prescribed by the MACT was January 20, 2014.

20. On December 8, 2016, the Permittee completed the one-time Energy Assessment as required by Table 2 of the Area Source Boiler MACT. The Permittee submitted the Notification of Compliance Status using the Compliance and Emissions Data Reporting Interface (CEDRI) on the EPA website on the same day. The compliance date prescribed by the MACT was March 21, 2014.

21. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), 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 submit applications for new and replacement processes to be serious.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care commensurate with applicable regulatory standards and the Permits by failing to submit an application for new and replacement processes that might affect air emissions.

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 Department issued a Warning Letter to the Permittee on August 5, 1997, for open burning. The Department issued a Notice of Violation on December 3, 2004, for failure to comply with the particulate emission limit in ADEM Admin. Code r 335-3-4-.08(2) and for allowing visible emissions greater than 20 % opacity during two 6-minute periods from the boiler stack.

F. THE ABILITY TO PAY: The Permittee has 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.

21. 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).

22. 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

23. 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. 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 \$12,000.00 in settlement of the violations alleged herein in twelve monthly installment payments.

The first payment of \$1,000.00 shall be paid in full within forty-five days from the date of issuance of this Consent Order. The remaining eleven installment payments of \$1,000.00 each shall be paid in full by the first of each month thereafter. Failure to pay the civil penalty within the specified timeframe from the issuance 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 Permit 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.

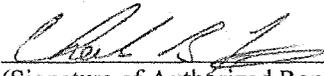
N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of

its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

BROWDER AND SONS VENEER
COMPANY, INC.

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT


(Signature of Authorized Representative)

Lance R. LeFleur
Director

Charles B Farrow
(Printed Name)

Pres
(Printed Title)

Date Signed: 2/6/12

Date Executed: _____

Attachment A

**Browder & Sons Veneer Co., Inc.
Thomasville, Clarke County**

Facility ID No. 102-S012

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to submit an application	2	\$6,000	\$3,000		
					Total of Three Factors
TOTAL PER FACTOR		\$12,000	\$6,000	\$0	\$18,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	-\$4,000
Other Factors (+/-)	-\$2,000
Total Adjustments (+/-) Enter at Right	-\$6,000

Economic Benefit (+)	
Amount of Initial Penalty	\$18,000
Total Adjustments (+/-)	-\$6,000
FINAL PENALTY	\$12,000

Footnotes

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