

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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|-------------------------------------|---|------------------------------|
| IN THE MATTER OF: |) | |
| |) | |
| Alabama River Cellulose, LLC |) | |
| Perdue Hill, Monroe County, Alabama |) | CONSENT ORDER NO. 22-XXX-CAP |
| |) | |
| ADEM Air Facility ID No. 106-0010 |) | |

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 River Cellulose, LLC (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 through 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 Pulp Mill, Air Division Facility No. 106-0010 (hereinafter, the “Facility”), located in Perdue Hill, Monroe 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 Department issued the current Major Source Operating Permit No. 106-0010 (hereinafter, “the Permit”) to the Permittee on September 9, 2015, with an effective date of January 1, 2016 and an expiration date of December 31, 2020. A Title V Permit renewal application was received on June 26, 2020. As a result, the Facility currently operates under a Permit Application Shield.

5. Permit Proviso No. 1 of the Emission Standards Section for the No. 8 Smelt Dissolving Tank states: *“Particulate matter emissions shall not exceed the more stringent of 0.12 pounds per ton of black liquor solids (dry weight) and 16.0 pounds per hour.”*

6. Permit Proviso No. 8 of the Emission Standards Section for the No. 8 Recovery Furnace states: *“Carbon monoxide emissions shall not exceed the more stringent of 200 parts per million by volume at eight percent oxygen and 312.6 pounds per hour.”*

DEPARTMENT’S CONTENTIONS

7. On December 2, 2021, the Department received the November 4, 2021, particulate matter (PM) stack test report from the Permittee and on December 8, 2021, the Department completed its evaluation of the report. The report showed that the No. 8 Smelt Dissolving Tank exceeded the permitted PM emission limit of 0.12 pounds per ton of black liquor solids (dry weight), specifically indicating PM emissions of 0.13 pounds per ton black liquor solids (dry weight).

8. On December 9, 2021, the Facility was scheduled to conduct five-year gaseous emissions testing for sulfur dioxide, nitrogen oxides, carbon monoxide, volatile organic compounds, and sulfuric acid mist. Due to instrumental data indicating the recovery furnace

was operating above the carbon monoxide (CO) limit, the performance tests were not started. The Department considers the instrumental data that indicated the No. 8 Recovery Furnace was operating in excess of its CO limit, and the Facility's subsequent decision to not proceed with the scheduled stack test to be indicative of a violation of the limit.

9. On December 20, 2021, the Department issued a notice of violation (NOV) to the Permittee for the failure to comply with the permitted emission limits during the aforementioned stack tests.

10. On January 20, 2022, the Department received a response to the NOV from the Permittee stating that the failure to meet the PM limit on the No. 8 Smelt Dissolving Tank was due to an unusual increased smelt loading event to the smelt tank during the second run of the performance test.

11. In the January 20, 2022, NOV response, the Permittee also stated that the high CO readings during the December 9, 2021, stack test were the result of a faulty pressure transmitter that controls air dampers on the secondary air system of the recovery furnace. Furthermore, the Permittee stated that they do not believe the high CO readings would have resulted in a failed stack test.

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 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 permitted emission limits to be a serious violation.

B. THE STANDARD OF CARE: The Permittee did not exhibit the required standard of care with the requirements of the Permit and applicable regulatory standards.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any economic benefits the Permittee may have gained as a result of the violations referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIROMENT: The Permittee implemented corrective actions on the No. 8 Smelt Dissolving Tank scrubber once upset conditions were observed. The Permittee also stabilized the No. 8 Recovery Furnace by placing the air damper in manual mode.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee was previously issued an NOV on September 29, 2020, as a result of a failed PM stack test on the No. 8 Smelt Dissolving Tank. It is also noted the No. 8 Smelt Dissolving Tank failed a November 7, 2019, PM stack test, which makes this failure the third consecutive year of a failed stack test on this unit.

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 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 is appropriate (*See* “Attachment A”, which is hereby made a part of Department’s Contentions).

14. 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 unwarranted expenditure of State resources in 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 pay the civil penalty assessed herein.

16. The Permittee contends that, contrary to the Department’s contentions above, its decision not to proceed with stack testing on December 9 was not based on the brief increases in carbon monoxide seen on instrumentation that morning, but was due solely to its belief that manual control of the air system as necessitated by the malfunction of a pressure transmitter (as fully explained in Permittee’s January 20 NOV response) was not indicative of representative operating conditions, as gaseous pollutants such as carbon monoxide are mainly generated as a

function of combustion in the boiler, and manual control of that system (which can be used to closely regulate combustion air input) did not represent normal operations. Testing must be performed under representative operating conditions, and Permittee states that it feared the test would be invalidated if it were conducted with the air system in manual mode.

17. The Permittee states further with respect to its postponement of the December 9 test that prior to postponing the testing activities, ARC consulted with the on-site ADEM representatives observing the testing and did not understand, at that time, that ADEM would consider the postponement of the testing activities to be a violation. In fact, the Permittee believed at the time that the ADEM representatives did not disagree with the proposed decision to postpone the test, and indeed concurred with it.

18. With respect to the actual CO emissions observed on the stack tester's instrumentation on December 9, the Permittee contends that the brief 26-minute spike in carbon monoxide emissions was not of sufficient magnitude or duration to have caused an exceedance of the relevant three-hour carbon monoxide emission standard. ARC is confident that outside of the brief process upset period (one 26-minute period and one 1-minute period), the unit was operating in compliance with the carbon monoxide emission limit, and it is highly unlikely that an exceedance of a three-hour emission limit would have occurred as a result of the brief period of time where elevated emissions were observed while the stack testing group was preparing their equipment.

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 Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$30,000.00 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

Or, in the alternative, payment of the civil penalties assessed herein shall be made in the form of a wire transfer payable to the Alabama Department of Environmental Management pursuant to the wire transfer instructions to be provided to the Permittee by the Department.

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 continuing 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 reference 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 addresses 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 the 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.

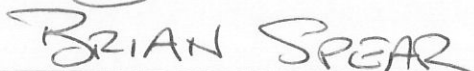
ALABAMA RIVER CELLULOSE, LLC

ENVIRONMENTAL MANAGEMENT

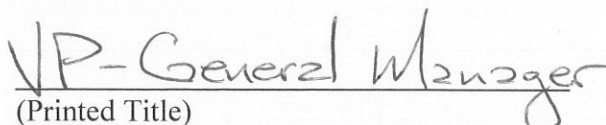


(Signature of Authorized Representative)

Lance R. LeFleur
Director



(Printed Name)



(Printed Title)



(Date)

(Date Executed)

Attachment A

Alabama River Cellulose, LLC

Perdue Hill, Monroe County

ADEM Air Facility ID No. 106-0010

| Violation | Number of Violations | Seriousness of Violation | Standard of Care | History of Previous Violations | |
|--------------------------------------------------------------------------------------------------|-----------------------------|---------------------------------|-------------------------|---------------------------------------|-----------------|
| Failure to meet PM emission limits on the No. 8 Smelt Dissolving Tank as required by the Permit. | 1 | \$12,500 | \$2,500 | \$10,000 | \$25,000 |
| Failure to meet CO emission limits on the No. 8 Recovery Furnace as required by the Permit. | 1 | \$2,500 | \$2,500 | - | \$5,000 |
| TOTAL PER FACTOR | | \$15,000 | \$5,000 | \$10,000 | \$30,000 |

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

| | |
|----------------------------------|----------|
| Economic Benefit (+) | \$0 |
| Amount of Initial Penalty | \$30,000 |
| Total Adjustments (+/-) | \$0 |
| FINAL PENALTY | \$30,000 |

Footnote:

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