

IN THE MATTER OF:)	
)	
Scotch and Gulf Lumber, LLC)	
Mobile, Mobile County, Alabama)	CONSENT ORDER NO. <u>25-###-CAP</u>
)	
Air Facility ID No. 503-2003)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“Department” or “ADEM”) and Scotch and Gulf Lumber, 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 Scotch and Gulf Lumber, LLC, a sawmill facility, ADEM Air Facility ID No. 503-2003 (“Facility”), located in Mobile, Mobile 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. On January 27, 2020, ADEM issued a Major Source Operating Permit (“Permit”), to the Permittee, which authorizes the operation of the significant air emissions sources at the Facility, to include a 68 MMBTU/hr wood-fired boiler (Unit 001) that is equipped with a wet scrubber to control particulate emissions.

5. 40 CFR 63, Subpart DDDDD—National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters, requires that the concentration of oxygen emitted from Unit 001 be continuously measured to determine 30-day rolling averages, as outlined in 40 CFR §63.7525(a).

6. Permit Unit Specific Proviso 4(e) for Unit 001 states that, the Permittee must maintain the 30-day rolling average oxygen content at or above the lowest one-hour average oxygen concentration measured during the CO performance test in accordance with 40 CFR §63.7525(a) and Table 7 to 40 CFR 63, Subpart DDDDD.

7. 40 CFR §63.7535(b) specifies that the monitoring system must be operated and data collected at all times while the boiler is operating, except during specific periods to include malfunctions. The section defines a malfunction as any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data.

DEPARTMENT'S CONTENTIONS

8. On April 7, 2021, the Permittee submitted an email to the Department stating the oxygen monitor on Unit 001 was “Out-of-Control” from April 5, 2021, to April 7, 2021, due to a calibration failure. The cause of the calibration failure was unknown.

9. On April 16, 2021, Jeff Davis of Conversion Technology submitted an email to the Department stating the manufacturer had indicated the cause of the monitor calibration failure was having “a residue buildup over time in the probe that causes an increase in resistance.”

10. On April 26, 2021, Jeff Davis of Conversion Technology submitted an email to the Department stating that a new probe was installed on April 23, 2021, and the oxygen monitor brought back online on April 24, 2021.

11. On August 2, 2021, William Cook of Conversion Technology submitted a

Semiannual Compliance Report as required by 40 CFR Part 63, Subpart DDDDD, signed by the Permittee. The report indicated a deviation from monitoring requirements for the oxygen monitor on Unit 001 from April 5, 2021, to April 24, 2021, due to a "dying O2 analyzer probe". The report also stated the Permittee would maintain a refurbished probe on site as an immediate replacement in case of another failure.

12. On May 19, 2024, the Permittee submitted an email to the Department stating that the oxygen monitor on Unit 001 had failed its daily calibration on May 16, 2024. It was later determined that the calibration failure was the result of a broken probe.

13. On June 19, 2024, the Permittee submitted an email to the Department which stated, "At approximately 07:45 on 6/19/2024, the connection was restored, and data is recording again properly, effectively ending the monitor down time."

14. On June 20, 2024, the Department sent a letter of inquiry to the Permittee requesting the cause of the monitor failure, why a backup probe was not maintained onsite, and how the Permittee was demonstrating compliance with the Boiler MACT while the oxygen monitor was offline.

15. On July 11, 2024, the Department received a response from the Permittee which stated the old probe was not returned to the Facility in a refurbished state. The Permittee also stated that, "SGLC cannot demonstrate compliance with the Boiler MACT carbon monoxide standard while the oxygen monitor was offline."

16. On August 27, 2024, William Cook of Conversion Technology submitted a Semiannual Compliance Report (dated August 21, 2024), as required by 40 CFR Part 63, Subpart DDDDD. The report was signed by the Permittee. The report indicated a deviation from monitoring requirements for the oxygen monitor on Unit 001 from May 15, 2024, to June 19, 2024,

due to “an internal failure caused by the presence of water and oil in the air system”.

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 continuously monitor the oxygen content for Unit 001 for a prolonged period a serious violation. However, the Department is not aware of any harm to the environment resulting from this violation.

B. **THE STANDARD OF CARE:** The Permittee did not exhibit a standard of care commensurate with the requirements of State regulations by failing to continuously monitor the oxygen content for Unit 001.

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

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There are no significant effects upon the environment to mitigate as all other monitoring parameters indicate the Permittee continued to operate Unit 001 normally while the continuous oxygen monitor remained offline.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department's records indicate the Permittee was issued an Order with penalty on February 27, 2024, for failing to continuously monitor the differential pressure of the scrubber for Unit 001.

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.

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 made a part of Department's Contentions).

19. 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

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.

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 \$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

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 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

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.

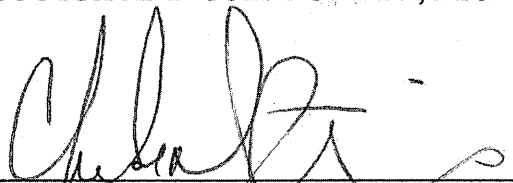
M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

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.

SCOTCH AND GULF LUMBER, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Chelsea Fisher

(Printed Name)

Environmental Manager

(Printed Title)

November 13, 2024

Date Signed

Lance R. LeFleur
Director

Date Executed

Attachment A

**Scotch and Gulf Lumber, LLC
Mobile, Mobile County, Alabama**

Facility ID No. 503-2003

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failed to continuously monitor the oxygen content for the boiler as required by Subpart DDDDD, the Boiler MACT	34	\$20,000		\$10,000	
TOTAL PER FACTOR		\$20,000		\$10,000	\$30,000

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

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

Footnotes

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

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