

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
NSSG Holdings, LLC)
Fulton, Clarke County, Alabama) CONSENT ORDER NO. _____
Air Facility ID No. 102-S003)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (the "Department" or "ADEM") and NSSG Holdings, LLC (the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act ("AEMA"), Ala. Code §§ 22-22A-1 to 22-22A-17, as amended, the Alabama Air Pollution Control Act ("AAPCA"), Ala. Code §§ 22-28-1 to 22-28-23, as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

- 1. The Permittee is the owner and/or operator of Scotch Gulf Lumber, LLC-Fulton, a sawmill facility, ADEM Air Facility ID No. 102-S003 (the "Facility") located in Fulton, Clarke County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to the AEMA.
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 AAPCA.
4. On September 13, 2016, the Department issued Major Source Operating Permit No.

102-S003 (the "Permit") to the Permittee, which authorizes the operation of the significant air emission sources at the Facility.

5. Permit General Proviso No. 21(b) requires the Permittee to report deviations from Permit requirements within forty-eight hours or two working days of such deviations.

6. In Unit Specific Proviso No. 1(b) for Emission Unit No. 001 of the Permit, the 98.5 MMBtu/hr Wellons wood-fired boiler is subject to the applicable requirements of 40 CFR Part 63, Subpart DDDDD (the "Boiler MACT").

DEPARTMENT'S CONTENTIONS

7. On September 29, 2020, Conversion Technology Inc. ("CTI"), a consultant for the Permittee, discovered an error in the remote access program for monitoring Emission Unit No. 001. This discovery led to the Permittee to find the empty gas cylinder and replace the calibration tank within hours.

8. On December 9, 2020, ADEM was contacted by CTI regarding notification of deviations prior to submitting semiannual reporting. ADEM personnel advised CTI that any deviations should be reported within 48 hours or two working days in accordance with General Proviso 21(b) the Permit. This email correspondence included the Permittee's Responsible Official.

9. On January 28, 2021, the Permittee submitted to the Department the Boiler MACT Semiannual Compliance Report for Emission Unit No. 001 for the reporting period of July 1, 2020 to December 31, 2020. The report stated the oxygen continuous monitoring system ("CMS") was "out-of-control" from August 17th at 13:30 to September 29th at 12:29. This deviation covered 22.38% of the reporting period. The oxygen CMS was failing daily gas calibration due to an empty gas cylinder.

10. On February 16, 2021, ADEM issued a Notice of Violation (“NOV”) to the Permittee, for deviations from the monitoring requirements of Boiler MACT and failure to notify the Department.

11. On March 15, 2021, the Department received a response to the February 16, 2021 NOV from the Permittee stating that the full extent of the oxygen CMS outage was not discovered until the week of January 25, 2021 when the report was generated for the Boiler MACT.

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:

(1) The Department considers the Permittee’s failure to notify the Department to be serious.

(2) The Department considers the Permittee’s deviation from the monitoring requirements under the Permit and Boiler MACT to be serious.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care

commensurate with the Permit by failing to notify the Department of deviations within the requirement time period. The Permittee did not exhibit the required standard of care commensurate by deviating from the monitoring requirements of the Permit and Boiler MACT.

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 Notice of Violation to the Permittee on February 20, 2018, for thirty-seven daily block average opacity readings exceeding the established operating parameter, failure to notify the Air Division of deviations, and removal of oxygen monitoring equipment without notification. The Department issued Consent Order No. 18-106-CAP on August 30, 2018, in the amount of \$40,000, for the violations listed in the Notice of Violation of February 20, 2018. The Department issued a Notice of Violation to the Permittee on August 21, 2018, for thirty-five daily block average opacity readings exceeding the established operating parameter under Boiler MACT. The Department Issued Consent Order No. 19-030-CAP on January 19, 2019, in the amount of \$60,000, for the violations listed in the Notice of Violation on August 21, 2018, and violation Consent Order No. 18-106-CAP.

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.

14. 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).

15. 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

16. 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 \$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 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.

D. 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.

E. The Permittee agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

F. 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

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

M. 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.

NSSG HOLDINGS, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

PHIL WITTER

(Printed Name)

ENV. MANAGER. US

(Printed Title)

Lance R. LeFleur
Director

Date Signed: 5-18-21

Date Executed: _____

Attachment A

**NSSG Holdings, LLC
Fulton, Clarke County**

Facility ID No. 102-S003

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to Notify ADEM of Deviations	120	\$12,000	\$6,000	\$10,000	
Failure of Daily Gas Calibration on Oxygen Monitor	43	\$2,000			
					Total of Three Factors
TOTAL PER FACTOR		\$14,000	\$6,000	\$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 (+)	
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.