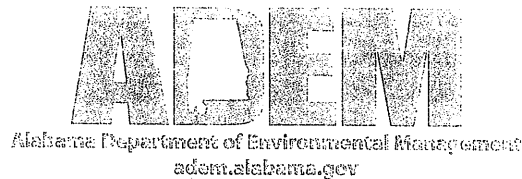


ONIS "TREY" GLENN, III  
DIRECTOR



BOB RILEY  
GOVERNOR

1400 Coliseum Blvd. 36110-2059 ♦ Post Office Box 301463  
Montgomery, Alabama 36130-1463  
(334) 271-7700  
FAX (334) 271-7950

September 11, 2008

**CERTIFIED MAIL NO. 7005 1820 0003 1877 5574**  
**RETURN RECEIPT REQUESTED**



Mr. Kermit Stephens  
President  
Cahaba Pressure Treated Forest Products, Inc.  
P. O. Box 160  
Brierfield, AL 35035

Dear Mr. Stephens:

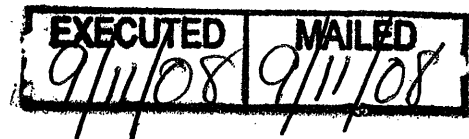
**RE: Consent Order No. 08-207-CAP**  
**Facility No. 401-0011**  
**Cahaba Pressure Treated Forest Products, Inc.**

Please find enclosed ADEM Consent Order No. 08-207-CAP which requires Cahaba Pressure Treated Forest Products, Inc. to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of Cahaba Pressure Treated Forest Products, Inc. and the Department. Please note that the assessed civil penalty is due within 45 days of the effective date of the Order.

If you have any questions concerning this matter, please contact Kimberly Andrews at (334) 271-7883 in Montgomery.

Sincerely,

Ronald W. Gore, Chief  
Air Division



Enclosure

RWG/KMA

Birmingham Branch  
110 Vulcan Road  
Birmingham, AL 35209-4702  
(205) 942-6168  
(205) 941-1603 (Fax)

Decatur Branch  
2715 Sandlin Road, S.W.  
Decatur, AL 35603-1333  
(256) 353-1713  
(256) 340-9359 (Fax)

Mobile Branch  
2204 Perimeter Road  
Mobile, AL 36615-1131  
(251) 450-3400  
(251) 479-2593 (Fax)

Mobile - Coastal  
4171 Commanders Drive  
Mobile, AL 36615-1421  
(251) 432-6533  
(251) 432-6598 (Fax)

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF: )

**Cahaba Pressure Treated Forest Products, Inc.** )

Lumber Production and Pole Treating Facility )

Brierfield, Bibb County, AL )

Air Facility ID No. 401-0011 )

**CONSENT ORDER NO. 08-207-CAP**

***PREAMBLE***

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department") and Cahaba Pressure Treated Forest Products, Inc. (hereinafter, "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 lumber production and pole treating facility (hereinafter, the "Facility") located in Brierfield, Bibb 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. On July 26, 2005, the Department issued the renewal Major Source Operating Permit No. 401-0011 (hereinafter, "MSOP") to the Permittee authorizing the operation of various pieces of equipment that discharge air pollutants into the atmosphere.

5. General Permit Proviso No. 21(a) of the MSOP states: "Reports to the Air Division of any required monitoring shall be submitted at least every 6 months." These reports are known as Semiannual Monitoring Reports (SMR).

6. On September 26, 2006, the Department issued Air Permit No. X006 (hereinafter, the "Permit") to the Permittee for the construction of a 144 MBF lumber/pole dry kiln (hereinafter, the "new kiln") at the Facility.

7. Proviso No. 12 of the Permit states:

On completion of construction of the device for which this permit is issued, notification of the fact is to be given to the Chief of the Air Division. Authorization to operate the unit must be received from the Chief of the Air Division. Failure to notify the Chief of the Air Division of completion of construction and/or operation without authorization could result in revocation of this permit.

The transmittal letter accompanying the Permit reiterated this requirement and also reminded the Permittee that an application to modify the MSOP would be due within twelve months of commencing operation of the new kiln.

8. On April 12, 2007, Department personnel conducted an inspection of the Facility and observed the new kiln operating without the Department having received written notification of the completion of construction of the unit.

9. The Department issued a warning letter to the Permittee on May 18, 2007, for failing to comply with Proviso No. 12 of Air Permit No. X006, and the letter requested that the Permittee respond in writing by June 15, 2007. The letter also reminded the Permittee that an application for a significant modification to the MSOP would be required to be submitted within twelve months of the start date that the kiln began operation.

10. On June 15, 2007, the Department received the Permittee's response to the May 18, 2007, letter and it stated that the new kiln began operation on October 26, 2006. Therefore, an application for a significant modification of the MSOP was due no later than October 26, 2007.

11. On September 13, 2007, the Department sent the Permittee a letter documenting its review of the Permittee's SMR for the period of February 26, 2007 through August 25, 2007. The letter reminded the Permittee that the next SMR would be due on April 26, 2008.

12. On December 13, 2007, the Department issued the Permittee a Notice of Violation (NOV) for failing to submit a significant modification application within the twelve month period, as required by the MSOP

13. On December 27, 2007, the Department received the Permittee's response to the December 13, 2007, NOV.

14. On January 2, 2008, the Department received the Permittee's application for a significant modification of the MSOP.

15. On May 5, 2008, Department personnel contacted the Permittee via telephone to inquire about the status of its SMR for the period of August 26, 2007 through February 25, 2008, since it had not been received as of that date.

16. On May 6, 2008, the Department received the SMR from the Permittee.

17. On May 16, 2008, the Department issued an NOV to the Permittee for failing to submit the SMR in a timely manner, and it requested that a written response be submitted by June 16, 2008.

18. On June 9, 2008, the Department received the Permittee's response to the May 16, 2008, NOV.

19. The Permittee consents to abide by the terms of the following Order and to pay the civil penalty assessed herein.

20. The Department has agreed to the terms of this Consent Order in an effort to resolve the violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above alleged violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

### ***CONTENTIONS***

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 be less than \$100.00 or 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 Permittee's failure to submit a written notification for the completion of construction of the new kiln and a significant modification application for the MSOP are procedural violations and resulted in minimal, if any, excess emissions into the environment. The Permittee's failure to submit a SMR in a timely manner is a reporting violation and resulted in minimal, if any, excess emissions into the environment.

B. **THE STANDARD OF CARE:** The failure to follow the proper procedural and reporting requirements demonstrates that the Permittee did not have appropriate measures in place to ensure compliance with the applicable regulatory requirement.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Permittee did not gain any significant economic benefit due to the procedural nature of the above-mentioned violations.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** There are no known environmental effects as a result of the alleged violations.

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Department issued an NOV to the Permittee on May 17, 2000, for failing to report exceedances of the periodic monitoring parameters on several occasions within the required twenty-four hour

reporting time period. On December 3, 1997 and November 26, 1996, respectively, the Department issued an NOV to the Permittee for visible emissions in excess of the State standard. On September 1, 1992, the Department issued an NOV to the Permittee for constructing a boiler without receiving prior authorization from the Department.

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 it believes is warranted in this matter in the spirit of cooperation and the desire to resolve this matter amicably, without incurring the unwarranted expense of litigation.

### ***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. (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and the Department believes 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 \$6,000.00 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 the terms, limitations, and conditions of the MSOP and Department regulations immediately upon the effective date of this Consent Order and each and every day hereafter, until such time that the permit is renewed, revoked, or voided.

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.

**Cahaba Pressure Treated Forest  
Products, Inc.**

Kermit Stephens

(Signature of Authorized Representative)

KERMIT STEPHENS

(Printed Name)

OWNER

(Printed Title)

7/30/08

Date Signed

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

Onis "Trey" Glenn, III

Director

9-11-2008

Date Executed