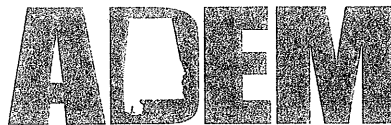


ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management

adem.alabama.gov

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

BOB RILEY
GOVERNOR

October 16, 2007

**CERTIFIED MAIL NO. 7005 1820 0003 1877 5369
RETURN RECEIPT REQUESTED**

Mr. David Riggs
Director of Feed
Alabama Farmers Cooperative, Inc.
P.O. Box 2227
Decatur, AL 35609-2227



Dear Mr. Riggs:

**RE: Consent Order No. 08-006-CAP
Facility No. 712-0001
Alabama Farmers Cooperative, Inc. – Decatur Feed Mill**

Please find enclosed ADEM Consent Order No. 08-006-CAP which requires Alabama Farmers Cooperative, 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 Alabama Farmers Cooperative, Inc. and the Department. Please note that the assessed civil penalty is due within 45 days of the effective date of the Order.

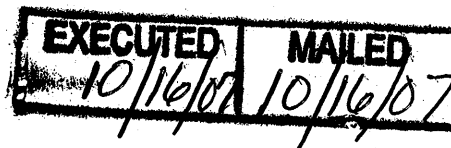
If you have any questions concerning this matter, please contact Jenny Koslow at (334) 271-7813 in Montgomery.

Sincerely,

Ronald W. Gore, Chief
Air Division

Enclosure

RWG/JEK



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)

IN THE MATTER OF:)
)
Alabama Farmers Cooperative, Inc.)
Decatur Feed Mill)
Decatur, Morgan County, AL)
)
Air Facility ID No. 712-0001)

CONSENT ORDER NO. 08-006-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department") and Alabama Farmers Cooperative, 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 an animal food manufacturing facility located in Decatur, Morgan 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 February 15, 1990, the Department issued the Permittee Air Permit No. 712-0001-Z001 authorizing the construction and operation of a truck and railcar unloading and conveying system (hereinafter “Unit Z001”) controlled by a baghouse. The baghouse is a Carter Day Baghouse Model No. 144RJ120 (hereinafter, “Carter Day Baghouse”).

5. On October 19, 1993, the Department issued the Permittee Air Permit No. 712-0001-X009 authorizing the construction and operation of a 15 TPH hammermill (hereinafter “Unit X009”) controlled by the existing Carter Day Baghouse.

6. On July 22, 1999, the Department issued the Permittee Air Permit No. 712-0001-X012 authorizing the construction and operation of a pellet mill/cooler (hereinafter “Unit X012”) with two cyclones controlled by the existing Carter Day Baghouse.

7. Permit Proviso No. 6 of Air Permit Nos. 712-0001-Z001 and 712-0001-X009 and Permit Proviso No. 7 of Air Permit No. 712-0001-X012 require that all air pollution control devices and capture systems for which the permit is issued must be maintained and operated at all times in a manner so as to minimize emissions of air contaminants. Procedures must be established to ensure that the above equipment is properly operated and maintained so as to minimize the emission of air contaminants.

8. Permit Proviso No. 18 of Air Permit No. 712-001-X012 states that the baghouse shall not be by-passed without prior written approval from the Department.

9. On April 12, 2007, Department personnel inspected the Permittee's facility and noted that the Carter Day Baghouse was not being utilized to minimize emissions from Unit Z001, Unit X009, and Unit X012.

10. On April 27, 2007, the Department issued a Notice of Violation (NOV) to the Permittee for failing to maintain and operate all air pollution control devices and capture systems in a manner so as to minimize the emissions of air contaminants and for failing to establish procedures to ensure that the above equipment is operated so as to minimize emissions. The Permittee also failed to obtain written approval from the Air Division prior to allowing emissions from Unit X012 to by-pass the baghouse.

11. On May 18, 2007, the Department received the Permittee's response to the April 27, 2007 NOV.

12. The Permittee does not admit that there have been any violations or other wrongdoing on its part, but the Permittee has agreed to the terms of this Consent Order as a means of resolving all disputes and in the best interest of all concerned. Notwithstanding the foregoing, the Permittee consents to abide by the terms of the following Consent Order and to pay the civil penalty assessed herein.

13. 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

The Permittee denies that the aforementioned violations occurred and enters into this Consent Order with the understanding that this Consent Order shall not be deemed or

construed at any time for any purpose by anyone (including but not limited to other parties who bring claims in any legal, administrative, or other proceeding) as an admission by the Permittee of liability.

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 failed to properly maintain and operate the Carter Day Baghouse as required by Air Permit Nos. 712-0001-Z001, 712-0001-X009, and 712-0001-X012. While the allowed emission limits may not have been met at all times due to these violations, the Department is not aware of any irreparable harm to human health or the environment.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care commensurate with applicable regulatory standards.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is unaware of any significant economic benefit that the Permittee may have achieved as a result of the above-mentioned violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Department is unaware of any efforts taken by the Permittee to minimize or mitigate the effects of the violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee has been issued three warning letters, two Notices of Violation, and one Consent Order in the past for failing to properly maintain and operate the Carter Day Baghouse.

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. As noted above, the Permittee denies any violations or wrongdoing but is agreeing to amicably resolve the issue, and this factor is also considered by the Department in entering into this Consent Order.

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 \$30,000 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 that, immediately upon the effective date of this Consent Order, it will take measures to ensure that all air pollution control devices and capture systems shall be properly maintained and operated in a manner as to minimize emissions of air contaminants.

D. The Permittee agrees to comply with the terms, limitations, and conditions of each Permit 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.

E. 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.

F. 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 any and all violations known to the Department of the Alabama Air Pollution Control Act and/or ADEM Administrative Code ch. 335-3-4 at the Facility up through the effective date of the Consent Order arising under or in relation to the Facility or Air Permit Nos. 712-0001-Z001, 712-0001-X009, and 712-0001-X012.

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

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

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

O. 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 FARMERS
COOPERATIVE, INC.**

Tommy Paulk

(Signature of Authorized Representative)

Tommy Paulk

(Printed Name)

President & CEO

(Printed Title)

9-4-07

Date Signed

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

Manly Elliott

Onis "Trey" Glenn, III

Director

9-14-07 ^{ME}

10-16-07

Date Executed