

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

|  |   |                                     |
|--|---|-------------------------------------|
| <u>IN THE MATTER OF:</u>                 | ) |                                     |
|  | ) |                                     |
| Alabama Farmers Cooperative, Inc.        | ) |                                     |
| Decatur Feed Mill                        | ) |                                     |
| Decatur, Morgan County, Alabama          | ) | CONSENT ORDER NO. <u>19-???-CAP</u> |
|  | ) |                                     |
| <u>ADEM Air Facility ID No. 712-0001</u> | ) |                                     |

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 Farmers Cooperative, Inc. (hereinafter, “the Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§22-22A-1 to 22-22A-17 (2015 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2015 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee is the owner and/or operator of an animal feed manufacturing facility (hereinafter, the “Facility”) located in Decatur, Morgan County, Alabama (ADEM Air Facility ID No. 712-0001).
2. Johnson, Bates & Leg is a contractor and was hired by the Permittee to perform the demolition of the Permittee’s existing animal feed manufacturing mill in Decatur, Morgan County, Alabama.
3. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-17 (2015 Rplc. Vol.).

4. Pursuant to Ala. Code §§22-22A-4(n) (2015 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 (2015 Rplc. Vol.).

5. The U.S. Environmental Protection Agency's National Emission Standard for Hazardous Air Pollutants (NESHAP), found at 40 C.F.R. Part 61, Subpart M, is incorporated by reference in ADEM Admin. Code r. 335-3-11-.02(12).

6. 40 C.F.R. §61.141 defines regulated asbestos-containing material (RACM) as (a) friable asbestos material, (b) Category I nonfriable asbestos-containing material (ACM) that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

7. 40 C.F.R. §61.145(a)(1) states that in a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is at least 260 linear feet on pipes, at least 160 square feet on other facility components, or at least 35 cubic feet off facility components where the length or area could not be measured previously.

8. 40 C.F.R. §61.145(b)(3)(i) requires the owner or operator of a demolition or renovation activity for a subject facility to provide written Notice of Intention to Demolish or Renovate (hereinafter, "Notice") at least ten workdays before demolition, asbestos stripping or removal work, or any other activity which disturbs the asbestos.

9. 40 C.F.R. §61.145(c)(1) requires the removal of all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

10. ADEM Admin. Code r. 335-3-11-.05(1) states that any person, firm, organization, or corporation who is the owner or operator of any asbestos removal project for which notification is required pursuant to ADEM Admin. Code r. 335-3-11-.02(12) shall ensure that the parties executing the asbestos removal project are certified by the Department.

11. On June 12, 2012, the Department issued Air Permit No. X019 (hereinafter, the “Permit”) to the Permittee authorizing the construction and operation of 90 TPH Truck Receiving and Storage with Baghouse which includes 50 TPH Truck Receiving Pit #1 and 40 TPH Truck Receiving Pit #2.

12. Unit Specific Proviso No. 8 of the Permit states:

This process, including all air pollution control devices and capture systems for which this permit is issued, shall be maintained and operated at all times in a manner so as to minimize the emissions of air contaminants. Procedures for ensuring that the above equipment is properly operated and maintained so as to minimize the emission of air contaminants shall be established.

#### DEPARTMENT'S CONTENTIONS

13. On September 18, 2018, the Department conducted an unannounced annual inspection of the Facility and noted that a warehouse at the existing animal feed manufacturing mill had been demolished without the required Notice to the Department, in violation of ADEM Admin. Code r. 335-3-11-.02(12), and that the Permittee was operating a receiving pit without the associated baghouse in operation as required by the Permit.

14. On September 27, 2018, the Department sent an Information Request (hereinafter, “IREQ”) email to the Permittee requesting additional information in regards to the demolition of the warehouse at the Facility.

15. On September 28, 2018, the Department received the Permittee’s response to the September 27, 2018, IREQ stating that that Johnson, Bates & Leg was hired to demolish the existing warehouse at the facility and that no formal asbestos inspection had been performed at the Facility prior to demolition.

16. On October 11, 2018, the Department issued a Notice of Violation (hereinafter, “NOV”) to the Permittee for failure to notify the Department prior to demolition at the Facility, in violation of ADEM Admin. Code r. 335-3-11-.02(12) and for receiving grain while the associated baghouse was not in operation as required by the Permit.

17. On October 23, 2018, the Department received a response from the Permittee to the October 11, 2018 NOV, stating that the baghouse must be manually turned on/off but that it was not operating due to an issue with a conveyor that was corrected that day.

18. Pursuant to Ala. Code §22-22A-5(18)c. (2015 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 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 perform, or have performed, the required certified asbestos inspection of the warehouse, and failure to notify the Department of the demolition at the Facility and the resulting handling of potentially asbestos laden material to be serious.

(2) The Department considers the Permittee's failure to operate the baghouse associated with the receiving system to be serious.

B. THE STANDARD OF CARE: The Permittee did not exhibit the required standard of care in the demolition at the Facility and failing to operate the permitted control equipment.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that the Permittee likely derived an economic benefit by not performing the required asbestos inspection before the demolition of the Permittee's Facility.

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: No other enforcement actions have been taken by the Department against the Permittee at the Facility within the last five years.

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.

19. 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).

20. 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

21. 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 \$15,000.00 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 Permits and the Department's Regulations immediately upon the effective date of this Consent Order and 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 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.

ALABAMA FARMERS  
COOPERATIVE, INC.

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
Lance R. LeFleur  
Director

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Title)

Date Signed: \_\_\_\_\_

Date Executed: \_\_\_\_\_

## Attachment A

### Alabama Farmers Cooperative, Inc. Decatur Feed Mill Decatur, Morgan County

**Facility ID No. 712-0001**

| <b>Violation*</b>              | <b>Number of Violations*</b> | <b>Seriousness of Violation*</b> | <b>Standard of Care*</b> | <b>History of Previous Violations*</b> |                               |
|--------------------------------|------------------------------|----------------------------------|--------------------------|--|-------------------------------|
| Asbestos failure to notify     | 1                            | \$5,000                          | \$500                    |  |                               |
| Asbestos failure to inspect    | 1                            | \$5,000                          | \$500                    |  |                               |
| Failure to operate baghouse    | 1                            | \$2,000                          | \$500                    |  |                               |
|                                |                              |                                  |                          |  | <b>Total of Three Factors</b> |
| <b><i>TOTAL PER FACTOR</i></b> |                              | <b>\$12,000</b>                  | <b>\$1,500</b>           | <b>\$0</b>                             | <b>\$13,500</b>               |

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

|                                  |                 |
|----------------------------------|-----------------|
| <b>Economic Benefit (+)</b>      | <b>\$1,500</b>  |
| <b>Amount of Initial Penalty</b> | <b>\$13,500</b> |
| <b>Total Adjustments (+/-)</b>   | <b>\$0</b>      |
| <b>FINAL PENALTY</b>             | <b>\$15,000</b> |

#### Footnotes

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