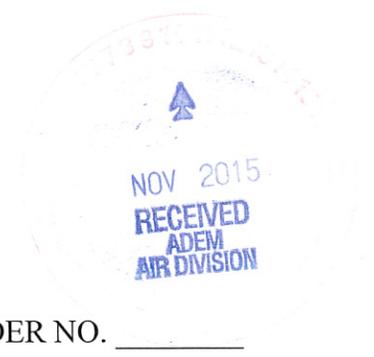


ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



IN THE MATTER OF:)
Lee Energy Solutions, LLC)
Crossville, DeKalb County, Alabama)
Air Facility ID No. 703-0041)

CONSENT ORDER NO. _____

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 Lee Energy Solutions, LLC (hereinafter, the "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 wood pellet facility, ADEM Air Facility ID No. 703-0041 (hereinafter, the "Facility") located in Crossville, DeKalb 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 November 13, 2013, the Department issued Air Permit No. 703-0041-X009 (hereinafter, "Permit No. X009") to the Permittee authorizing the operation of Size Reduction and Drying System which included a Rotary Dryer with a 57 MMBtu/hr Direct-fired Sawdust burner and multiclone (hereinafter, the "Dryer").

5. Proviso No. 20 of Permit No. X009 states:

The permittee shall not cause or allow the aggregate particulate matter emissions from this unit to exceed the particulate matter (as TSP) emission limitation of ADEM Admin. Code R. 335-3-4-.04 for Process Industries-General. The allowable emission rate is calculated using the following process weight equations:

$$E = 3.59P^{0.62} \quad (P < 30 \text{ tons per hour})$$

Or

$$E = 17.31P^{0.16} \quad (P \geq 30 \text{ tons per hour})$$

where E = Emissions in pounds per hour

P = Process weight in tons per hour

6. Proviso No. 25 of Permit No. X009 states: "The permittee shall not cause or allow particulate emissions from the Drying System Multiclone to exceed 26.37 lb/hr, as measured in accordance with 40 CFR Part 60, Appendix A, Method 5."

7. On March 26, 2015, the Department issued Air Permit No. X010 (hereinafter, "Permit No. X010") to the Permittee authorizing the operation of the Size Reduction and Drying System.

8. Proviso No. 14 of Permit No. X010 states :

Emissions tests are to be conducted for the following pollutants at intervals not to exceed 12 months following the date of permit issuance for the Drying System Multiclone. All test reports must be submitted to the Air Division within 30 days of completion of testing.

Particulates(X) Carbon Monoxide(X)

Sulfur Dioxide() Nitrogen Oxides(X)
Volatile Organic Compounds..(X)

9. Proviso No. 21 of Permit No. X010 states:

The permittee shall not cause or allow the aggregate particulate matter emissions from this unit to exceed the particulate matter (as TSP) emission limitation of ADEM Admin. Code R. 335-3-4-.04 for Process Industries-General. The allowable emission rate is calculated using the following process weight equations:

$$E = 3.59P^{0.62} \quad (P < 30 \text{ tons per hour})$$

Or

$$E = 17.31P^{0.16} \quad (P \geq 30 \text{ tons per hour})$$

where E = Emissions in pounds per hour
 P = Process weight in tons per hour

10. Proviso No. 26 of Permit No. X010 states: "The permittee shall not cause or allow particulate emissions from the Drying System Multiclone to exceed 26.37 lb/hr, as measured in accordance with 40 CFR Part 60, Appendix A, Method 5."

DEPARTMENT'S CONTENTIONS

11. On March 18, 2015, the Department conducted an inspection of the Facility and it was operating at an estimated 23 tons of green material per hour through the dryer and 1.5 tons per hour of burner fuel, which is considered "normal operation" for the Permittee.

12. On March 19 and 20, 2015, the Department conducted compliance testing for particulate matter and visible emissions on the Dryer Multiclone at the Facility.

13. On April 1, 2015, the Department finalized the compliance testing report for the March 19th and 20th testing it conducted at the Facility and the results showed the Permittee operating the Dryer at an average particulate matter emission rate of 65.09 lb/hr during the test.

14. On April 15, 2015, the Department issued a Notice of Violation (NOV) to the Permittee for exceeding its permitted emission limits. Included with the NOV was a copy of the final report for the March 19th and 20th testing that the Department had conducted.

15. On May 19, 2015, the Department received the Permittee's response to the April 15, 2015 NOV stating that it had hired a contractor to conduct emission testing on the Dryer Multiclone on June 5, 2015. No test protocol was submitted with Permittee's response.

16. On June 3, 2015, the Department performed an announced inspection and observed Permittee's contractor conducting engineering testing at the Facility to determine the emission rate of filterable particulate matter on the Dryer Multiclone exhaust.

17. On July 15, 2015, the Department received a copy of the stack test report prepared by Permittee's contractor showing particulate emissions from the Dryer at 68.03 and 65.58 lb/hr averages during the test.

18. On August 25, 2015, the Department met with the Permittee regarding the failed stack tests and subsequent engineering testing conducted at the Facility and the Permittee agreed to provide a compliance schedule to the Department by September 8, 2015.

19. On August 27, 2015, the Department sent a letter to the Permittee outlining the deadlines, as discussed on August 25, 2015, for providing a compliance schedule to the Department.

20. On September 8, 2015, the Department received a compliance schedule from the Permittee outlining a time-line for compliance with permitted emission limits and on September 9, 2015, the Permittee provided a revised cover letter, including compliance testing dates as requested by the Department.

21. 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 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 emitting of air pollutants in excess of its permitted limits to be serious.

B. THE STANDARD OF CARE: The Permittee did not exhibit a standard of care commensurate with applicable regulatory standards and the Permits by failing to properly operate the Dryer Multiclone in such as manner to minimize particulate emissions.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has determined that there was significant economic benefit gained by the Permittee as a result of the violations referenced herein. The Department has estimated economic benefit at \$40,000 due to delayed capital costs of control equipment.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee has taken no actions to cease emitting pollutants in violation of the Permits. 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 July 2, 2009, for beginning construction without permits. The Department issued a Warning Letter to the Permittee on August 22, 2011, for failure to maintain records of weekly visible emissions observations. The Department issued a Warning Letter to the Permittee on November 1, 2013, for excessive particulate emissions noted during an inspection of the Facility on October 15, 2013. The Department issued a Warning Letter to the Permittee on November 3, 2014, for accumulated wood dust noticed on inspections conducted on October 6 and 16, 2014. The Department issued a Notice of Violation to the Permittee on February 17, 2015, for exceeding the permitted 12-month rolling hourly limit. The Department issued a Notice of Violation to the Permittee on April 15, 2015, for exceeding the permitted particulate matter limit for the Dryer Multiclone emission point in Permit X009.

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.

22. 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).

23. 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

24. During the time period described during this Consent Order, Lee Energy took several steps to mitigate the potential environmental effects from the multiclone. Lee Energy experimented with various damper settings to determine which setting would allow the multiclone to operate most efficiently, and applied the most optimal setting to its daily operations. Lee Energy changed its screening techniques to ensure that larger material was entering the drying system, which reduced the amount of small material needed to be separated by the multiclone. Lee Energy made it a practice to shut down the drying system and inspect and/or clean the multiclone anytime its employees feared the multiclone particle emissions were excessive, based on visual inspections.

25. 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 \$60,000.00 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 meet all conditions of the following compliance schedule:

(1) The Permittee shall complete all necessary modifications to ensure that it operates the Facility in such a manner as to emit particulate matter at or below the permitted rate of 26.37 lb/hr from the Dryer exhaust no later than February 1, 2016. Emissions testing to demonstrate compliance shall be conducted no later than February 18, 2016 and the test report shall be submitted to the Air Division by March 18, 2016.

(2) The Permittee shall prepare and submit detailed Monthly Progress Reports to the Department describing the Permittee's progress towards achieving compliance with the items presented in the Compliance Plan. The Progress Reports should be submitted so that they are received by the Department not later than thirty days after the date of the issuance of this Consent Order and continuing by the tenth day of every month until the Permittee's obligations under this Consent Order are completed.

(3) Upon completion of the design and planning process, the Permittee shall apply for any necessary Permits in a timely manner.

This section or any other terms and conditions of this Consent Order shall not preclude the Permittee from requesting and obtaining an update or modification of any of the Permits for the Facility in the future to incorporate applicable regulatory changes and/or more current operating conditions including, but not limited to, updates or modifications of the Permits.

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.

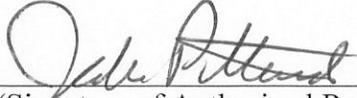
M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

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.

LEE ENERGY SOLUTIONS, LLC

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

John Pittard

(Printed Name)

Date Executed

President

(Printed Title)

11/6/15

Date Signed

Attachment A

**Lee Energy Solutions, LLC
Crossville, DeKalb County**

Facility ID No. 703-0041

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Excessive PM Emissions	250	\$10,000	\$10,000		
					Total of Three Factors
TOTAL PER FACTOR		\$10,000	\$10,000	\$0	\$20,000

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

Economic Benefit (+)	\$40,000
Amount of Initial Penalty	\$60,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$60,000

Footnotes

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