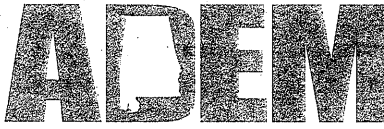


ONIS "TREY" GLENN, III
DIRECTOR



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

December 4, 2007

CERTIFIED MAIL NO. 7005 1820 0003 1877 5345
RETURN RECEIPT REQUESTED

Mr. Brian Tucker
Managing Member
Tucker Milling, L.L.C.
P.O. Box 112
Guntersville, AL 35976



Dear Mr. Tucker:

RE: Consent Order No. 08-051-CAP
Facility No. 711-0004
Tucker Milling, L.L.C.

Please find enclosed ADEM Consent Order No. 08-051-CAP which requires Tucker Milling, L.L.C. 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 Tucker Milling, L.L.C. 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)

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

Tucker Milling, L.L.C.)
Guntersville, Marshall County, AL)

Air Facility ID No. 711-0004)

CONSENT ORDER NO. 08-051-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department") and Tucker Milling, L.L.C. (hereinafter, "Tucker") 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. Tucker is the owner and/or operator of an animal feed manufacturing facility (hereinafter, the "Facility") located in Guntersville, Marshall 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. ADEM Admin. Code r. 335-3-14-.01(1)(a) states:

Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction.

5. ADEM Admin. Code r. 335-3-14-.01(1)(b) states:

Before any article, machine, equipment, or other contrivance described in subparagraph (a) of this paragraph may be operated or used, authorization shall be obtained from the Director in the form of an Air Permit. No Permit shall be granted for any article, machine, equipment, or contrivance described in subparagraph (a) of this paragraph, constructed, constructed or installed without notification as required by subparagraph (a) of this paragraph, until the information required is presented to the Director and such article, machine, equipment or contrivance is altered, if necessary and made to conform to the standards established by the Department.

6. ADEM Admin. Code r. 335-3-14-.04 states:

. . . A new major source must under go a Prevention of Significant Deterioration (PSD) review and obtain Air Permits authorizing operation prior to operating in a clean air area . . .

7. On July 19, 2007, the Department documented that Tucker was operating the Facility without the required Air Permits (hereinafter, "Permit" or "Permits")

8. On July 30, 2007, the Department sent a letter to Tucker requesting additional information regarding operation of the Facility.

9. On August 16, 2007, the Department received a response to the July 30, 2007 inquiry letter from Tucker, which included Permit applications.

10. On August 28, 2007, the Department issued a Notice of Violation (hereinafter, "NOV") to Tucker for failure to submit the required Permit applications to the Department and failing to obtain authorization from the Department before operating the process and indirect heating equipment. Additionally, the NOV cited Tucker for operating a new major source in a clean air area prior to undergoing a Prevention of Significant Deterioration (PSD) review and without first obtaining Permits from the Department authorizing operation of the Facility.

11. On September 19, 2007, the Department received a response to the August 28, 2007 NOV from Tucker.

12. Tucker consents to abide by the terms of the following 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

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 violations are procedural in nature and there is no indication any emission limitations were exceeded as a result of this facility operating without the required Permits. The Department is not aware of any adverse effects on human health or the environment due to these violations.

B. THE STANDARD OF CARE: Tucker did not exhibit a standard of care commensurate with applicable air pollution control rules and regulations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any significant economic benefit that Tucker may have received as a result of the above-mentioned violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: There are no known environmental effects as a result of the alleged violations. Tucker has submitted permit applications for all process equipment and indirect heating equipment located at the Facility.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department is not aware of any past violations at this Facility.

F. THE ABILITY TO PAY: Tucker 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, Tucker, 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 Tucker agree to enter into this ORDER with the following terms and conditions:

A. Tucker agrees to pay to the Department a civil penalty in the amount of \$4,000.00 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. Tucker 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. Tucker agrees that, immediately upon the effective date of this Consent Order, it will take measures to ensure that the required applications are submitted to the

Department and that authorization is received prior to the installation and operation of any process equipment or indirect heating equipment at this Facility in the future.

D. Tucker agrees that, immediately upon the effective date of this Consent Order and every day hereafter, it will comply with the terms, limitations, and conditions of Department regulations and each permit issued to it in the future.

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 the violations which are cited in this Consent Order.

G. Tucker 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, Tucker 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. Tucker also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Tucker 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 Tucker, 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 Tucker) 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 Tucker, 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 Tucker 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 Tucker 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 Tucker 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 Tucker does hereby waive any hearing on the terms and conditions of same.

K. The Department and Tucker agree that this Order shall not affect Tucker's obligation to comply with any Federal, State, or local laws or regulations.

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

O. The Department and Tucker 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 Tucker of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

TUCKER MILLING, L.L.C.

Brian Tucker

(Signature of Authorized Representative)

Brian Tucker

(Printed Name)

Managing Member

(Printed Title)

10-22-07

Date Signed

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Marilyn Elliott

Onis "Trey" Glenn, III

Director

12-4-07

Date Executed