

LANCE R. LEFLEUR
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

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ROBERT J. BENTLEY
GOVERNOR

SEP 12 2013

CERTIFIED MAIL 91 7199 9991 7030 3430 4273
RETURN RECEIPT REQUESTED

Mr. Scott Fryer
Vice President
MeadWestvaco Coated Board, LLC
Post Office Box 910
Phenix City, Alabama 36868

RE: Consent Order No. 13-143-CWP
NPDES Permit AL0000817
MeadWestvaco Coated Board, LLC
Highway 165 South
Russell County (113)

Dear Mr. Fryer:

Please find the enclosed ADEM Consent Order No. 13-143-CWP which requires you to take certain actions at the MeadWestvaco Coated Board, LLC at Highway 165 South in Cottonston, AL in regard to alleged violations of the Alabama Water Pollution Control Act. This Consent Order has been issued with the consent of MeadWestvaco Coated Board, LLC. Please note that the assessed civil penalty is due within 45 days.

Sincerely,

Glenda L. Dean, Chief
Water Division

GLD/kbj

File: ECO/13-143-CWP

Enclosure

cc: Tom Johnston/ADEM, Office of General Counsel
Schuyler Espy/ADEM, Office of General Counsel
Daphne Smart/ADEM, Industrial Municipal Branch/Water Division
Scott Ramsey/ ADEM, Industrial Municipal Branch/Water Division
Kimberly Minton/ADEM, Industrial Municipal Branch/Water Division

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:)

MeadWestvaco Coated Board, LLC)
Highway 165 South)
Cottonton, Russell County, Alabama)

Consent Order No. 13-143-CWP

Permit No. AL0000817)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and MeadWestvaco Coated Board, 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 Water Pollution Control Act (hereinafter "AWPCA"), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342.

STIPULATIONS

1. The Permittee operates an integrated pulp and paperboard facility (hereinafter "the Facility") located on Highway 165 South in Cottonton, Russell County, Alabama. The Permittee discharges pollutants from point sources to the Chattahoochee River and to an unnamed tributary to the Chattahoochee River.

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 § 22-22A-4(n), Ala. Code (2006 Rplc. Vol.), the Department is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 to 1387. In addition, the Department is authorized to administer and enforce the provisions of the AWPCA, Ala. Code §§ 22-22-1 through 22-22-14 (2006 Rplc. Vol.).

4. The Department issued National Pollutant Discharge Elimination System (hereinafter "NPDES") Permit Number AL0000817 (hereinafter "the Permit") to the Permittee on May 2, 2006, effective June 1, 2006, establishing limitations on the discharges of pollutants from such point sources, designated therein as outfall numbers DSN001 through DSN018, into the Chattahoochee River and an unnamed tributary to the Chattahoochee River, waters of the state. The Permit requires that the Permittee monitor its discharges and submit periodic Discharge Monitoring Reports (hereinafter "DMRs") to the Department describing the results of the monitoring. In addition, the Permit requires that the Permittee properly operate and maintain all facilities and systems of treatment and control which are installed or used by the Permittee to achieve compliance with the terms and conditions of the Permit. On November 23, 2010, the Permittee filed a timely and complete application for renewal; therefore, the Permit is still in effect.

5. During the months of May through October, when the stream flow in the Chattahoochee River is less than 6,000 cubic feet per second (hereinafter "cfs"), Permit Condition I.A requires the Permittee to calculate the allowable DSN001 Five Day Biochemical Oxygen Demand (hereinafter "BOD₅") discharge using the following equation: $BOD_5 \text{ (lbs/day)} = 3.267 * Q_s$, where Q_s is the stream flow in the Chattahoochee River in cfs.

6. The Permittee indicated that it conducted an internal environmental audit in late April and early May 2013 and identified a problem in its data control system that resulted in discharges of BOD₅ in exceedance of the calculated daily maximum permit limit. It was also determined as a result of the audit that the flowmeter used by the Permittee to measure the flow in the Chattahoochee River was not functioning properly, resulting in incorrect BOD₅ limit calculations, in violation of the Permit.

7. Permit Condition I.A requires that discharges be limited and monitored as specified in the Permit. The DMRs listed in Attachment 1 indicate that the Permittee has discharged BOD₅ from outfall DSN001 into waters of the State in violation of the limitations established in the Permit.

8. Permit Condition I.A contains limitations for DSN018, which is described as an

outfall discharging storm water associated with industrial activity including runoff from landfill, general construction material, equipment storage area, pine log storage area, access roads, decant from oil skimmer, and strong waste pond. The Department conducted an inspection of the Facility on March 30, 2010, and noted evidence of an unpermitted discharge of landfill leachate through outfall DSN018.

9. Permit Condition I.A contains limitations for DSN002, which is described as an outfall discharging non-contact cooling water, raw water clarifier blowdown, and storm water. The Department conducted an inspection of the Facility on October 21, 2010, and noted evidence of an unpermitted discharge of wood ash through outfall DSN002.

10. Permit Condition I.A contains limitations for DSN017, which is described as an outfall discharging storm water associated with industrial activity including runoff from log storage areas, material storage areas, wooded areas, and access road. The Permittee reported that a bulldozer used in onsite non-hazardous landfill operations was washed off in the vicinity of outfall DSN017. A heavy rain event that followed resulted in an unpermitted discharge of a sediment-type mixture of lime, wood ash, and grit through outfall DSN017 on June 17, 2013.

11. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

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

DEPARTMENT'S 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 that delayed compliance may have conferred 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 that such violation continues shall constitute a separate violation. In arriving at this civil penalty (summarized in Attachment 2), the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATIONS AND BASE PENALTY:** Based on information available to the Department, violations of the Permit, ADEM Admin. Code chap. 335-6-6, and the AWPCA were noted. Considering the general nature of each violation, the magnitude and duration of each non-compliant discharge, the characteristics of each pollutant discharge, the effects, if any, on impaired waters, and any available evidence of irreparable harm to the environment or threat to the public, the Department determined the base penalty to be \$80,900.00

B. **THE STANDARD OF CARE:** The Department considers some of the violations, such as the failure to properly record and report stream flow, easily avoidable. In consideration of the standard of care provided by the Permittee, the Department enhanced the penalty by an additional \$29,000.00.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Department has not been able to determine if there has been a significant economic benefit associated with the violations cited above.

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

E. **HISTORY OF PREVIOUS VIOLATIONS:** The Department is unaware of any violations prior to those noted herein.

F. **THE ABILITY TO PAY:** The Permittee has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: This Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty the Department 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. In addition, the Permittee self reported the effluent and improper flow measurement violations found during an audit, which have been promptly corrected. The Department has reduced the penalty by \$35,400.00 in consideration of these factors.

H. The civil penalty is summarized in Attachment 2.

PERMITTEE'S CONTENTIONS

A. Had the Permittee discovered and adjusted the malfunctioning flowmeter, it had available storage capacity to hold its wastewater until conditions allowed its release within the confines of the Permit without incurring additional expense. None of the violations cited herein resulted in economic benefit to the Permittee.

B. Because the violations were stopped immediately upon discovery by the Permittee, and because there was no significant harm to the environment as a result of the violations, no efforts to minimize or mitigate the effects of the violations upon the environment were necessary or appropriate.

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 penalty assessed below and the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this CONSENT ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$74,500.00 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 prepare and submit to the Department, not later than sixty days after the effective date of this Consent Order, an Engineering Report that identifies the changes that have been and will be implemented by the Permittee to achieve and maintain compliance with the Permit. The Engineering Report should also describe the Facility's methodology for determining stream flow and for estimating the daily discharge flow rate so that compliance with the BOD₅ limits will be achieved. The Engineering Report shall be prepared by a professional engineer licensed to practice in the State of Alabama. If the Department determines through its review of the submitted Engineering Report that the report is not sufficient to accomplish compliance with the Permit, then the report shall be modified so that it does accomplish compliance. Modifications to the Engineering Report, if required, shall be submitted to ADEM no later than thirty days after receipt of the Department's comments.

D. The Permittee agrees to comply with all terms, conditions, and limitations of its Permit immediately upon the effective date of this Consent Order.

E. The Department and the Permittee (hereinafter "Parties") agree that, should violations continue to occur following 180 days after the effective date of this Consent Order, then the Department shall be free to issue an additional order or file suit against the Permittee in the Circuit Court of Montgomery County or other court of competent jurisdiction to enforce compliance of this Consent Order.

F. 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.

G. The Parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Consent Order.

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

I. 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.

J. The Parties 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 other Orders as may be issued by the Director, by litigation initiated by the Department, or by 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.

K. The Parties 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.

L. The Parties agree that this Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations.

M. The Parties agree that final approval and entry into this Consent Order are subject to the requirements that the Department provide notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Consent Order.

N. The Parties agree that, should any provision of this Consent 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.

O. The Parties agree that any modifications of this Consent Order must be agreed to in writing signed by both parties.

P. The Parties agree that, except as otherwise set forth herein, this Consent 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.

**MEADWESTVACO COATED
BOARD, LLC**

By: 

Its: V.P. Manager OPER - MWV

Date: 7/30/13

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

By: 

Its: Deputy Director

Date: SEP 12 2013

Attachment 1: Effluent Violations

Date	Calculated Stream Flow (cfs)	Calculated BOD₅ limit (lbs/day)	BOD₅ Discharged (lbs/day)
August 2, 2008	1,596	5,214	7,523
August 3, 2008	1,557	5,087	6,977
August 5, 2008	1,752	5,723	6,280
October 30, 2008	2,258	7,377	8,045
October 3, 2010	2,225	7,270	11,098
October 4, 2010	2,196	7,174	7,364
October 23, 2010	2,055	6,712	6,760
October 24, 2010	2,187	7,144	12,518
October 25, 2010	2,440	7,970	8,691
October 26, 2010	953	3,114	9,096
October 27, 2010	853	2,785	9,514
October 28, 2010	1,284	4,193	7,263
May 7, 2011	1,793	5,857	9,558
June 13, 2012	2,370	7,742	7,841
September 2, 2012	-647	0	832
September 3, 2012	-717	0	1,351
September 17, 2012	-8	0	1,050

MeadWestvaco Corporation AL0000817**Attachment 2****Penalty Synopsis Worksheet**

Violation	Number of Violations	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
Effluent Violations	17	\$5,400.00	\$0.00	\$0.00
Improper Flow Measurement	5	\$72,500.00	\$27,500.00	\$0.00
Unpermitted Discharge	3	\$3,000.00	\$1,500.00	\$0.00
Totals:	25	\$80,900.00	\$29,000.00	\$0.00
Economic Benefit*:				\$0.00
Mitigating Factors:				\$0.00
Ability to Pay*:				\$0.00
Other Factors*:				(\$35,400.00)
Final Penalty:				\$74,500.00

* Refer to the "Findings" of the Order for a description of each penalty factor