

ONIS "TREY" GLENN, III
DIRECTOR



Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700
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BOB RILEY
GOVERNOR



June 14, 2007

CERTIFIED MAIL NO. 7005 1820 0003 1875 9048
RETURN RECEIPT REQUESTED

Mr. James Bennett
Bennett Lumber Company
P. O. Box 307
Piedmont, AL 36272

Dear Mr. Bennett:

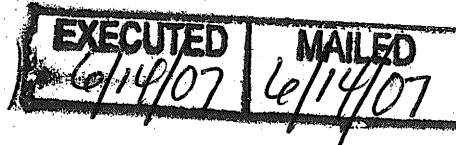
RE: Consent Order No. 07-129-CAP
Facility No. 301-S001
Bennett Lumber Company

Please find enclosed ADEM Consent Order No. 07-129-CAP which requires Bennett Lumber Company 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 Bennett Lumber Company 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 Kimberly Meigs at (334) 271-7883 in Montgomery.

Sincerely,

Ronald W. Gore, Chief
Air Division



Enclosure

RWG/KSM

cc: OGC

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:)

Bennett Lumber Company)

Lumber Production Facility)

Piedmont, Calhoun County, AL)

Air Facility ID No. 301-S001)

CONSENT ORDER NO. 07-129-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter "the Department") and Bennett Lumber Company (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.), as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

1. The Permittee is the owner and/or operator of a lumber production facility located in Piedmont, Calhoun 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. 335-3-3-.01(2) prohibits the open burning of any material except vegetation and untreated wood and prohibits open burning within 500 feet of an off-site occupied dwelling.

5. On March 14, 2001, Department personnel observed open burning of wood waste at the Permittee's facility.

6. The Department issued a letter to the Permittee on March 19, 2001, for the open burning observed on March 14, 2001, and the letter requested the Permittee to respond in writing by April 9, 2001.

7. On May 23, 2001, the Department received the Permittee's response to the March 19, 2001 letter, stating that it agreed to cease all illegal burning.

8. On March 16, 2006, the Department issued the Permittee Air Permit No. 301-S001-X002 (hereinafter, the "Permit") authorizing the construction and operation of a 14.02 MMBtu/hr wood-fired boiler. Permit Proviso No. 20 states that precautions shall be taken to ensure that no person shall ignite, cause to be ignited, permit to be ignited, or maintain any open fire in such a manner as to cause the Department's rules and regulations applicable to open burning to be violated.

9. On January 17, 2007, Department personnel observed open burning of wood waste, tires, insulation, and other refuse. It was also observed that the burn pile was located within 500 feet of an occupied dwelling located on property not owned by the Permittee.

10. On January 23, 2007, the Department issued a Notice of Violation (NOV) to the Permittee for the open burning observed on January 17, 2007. The NOV requested that a written response be submitted by February 20, 2007.

11. On February 21, 2007, the Department received the Permittee's response to the January 23, 2007 NOV.

12. The Permittee 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 Permittee's open burning of unauthorized material did not cause irreparable harm to the environment.

B. THE STANDARD OF CARE: The Permittee's burning of unauthorized materials and burning within 500 feet of an occupied dwelling demonstrates that the Permittee did not have appropriate measures in place to ensure that facility personnel understood and abided by the conditions of the Permit and the State's regulations.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee realized a small benefit by burning the unauthorized material instead of paying to have it properly disposed of off-site.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: No apparent efforts were made to minimize the effects of the violation upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee was warned by a letter dated March 19, 2001, about unauthorized burning of wood waste.

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.

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 \$1,500.00 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 that, immediately upon the effective date of this Consent Order, it will take measures to ensure that all applicable laws and regulations regarding open burning shall be abided in the future.

D. The Permittee agrees to comply with the terms, limitations, and conditions of the Air 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. The Permittee further agrees to abide by all future permits issued for Facility No. 301-S001.

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. 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.

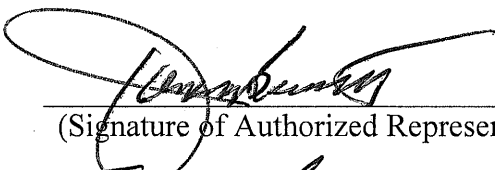
M. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full 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 International Paper of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

Bennett Lumber Company

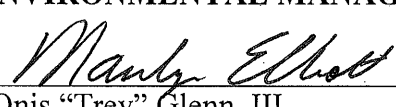

(Signature of Authorized Representative)

James W. Bennett
(Printed Name)

President
(Printed Title)

4-19-07
Date Signed

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**


Onis "Trey" Glenn, III
Director

6-14-07
Date Executed