

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

In The Matter Of:

Johnny Lee
Tumbleton, Henry County, Alabama

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) **Consent Order No. 03-080 -CAP**
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FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended, the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended, and the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties concerned hereto, the Alabama Department of Environmental Management (hereinafter, "the Department") makes the following FINDINGS:

1. **Johnny Lee**, (hereinafter, "Owner") owns and operates a seed cleaning facility located on County Road 12, Tumbleton, Henry County, Alabama.

2. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended.

3. Pursuant to §22-22A-4(n), Code of Alabama (1975), as amended, the Department is the State air pollution control agency for purposes of the Federal Clean Air Act, 42 U.S.C. 7401 through 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended.

4. ADEM Administrative Code R. 335-3-14 requires that any source of air pollution must apply for and obtain an Air Permit from the Department for operation of said source.

5. On September 13, 2001, the Department sent a letter to the Owner requesting that Air Permit applications be completed and submitted to the Department.

6. On November 11, 2001, the Department issued a Warning Letter to the Owner for failing to respond to the letter of inquiry and not submitting the required applications.

7. On January 11, 2002, the Department issued a Notice of Violation to the Owner for failing to respond to the Warning Letter. A response was due to the Department no later than February 15, 2002.

8. On February 22, 2002, the Owner stated in a telephone conversation with the Department that the seed cleaning equipment would no longer be operated and would be sold.

9. On February 27, 2002, the Department sent a certified letter to the Owner confirming his commitment to sell the seed cleaning equipment and to inform the Department at least ten days prior to operating any type of seed cleaning equipment. The letter also stated that a lack of response from the Owner would indicate that he agreed with the aforementioned conditions. This letter was returned unclaimed.

10. On March 27, 2002, the Department sent a second certified letter to the Owner confirming his commitment to sell the seed cleaning equipment and to inform the Department at least ten days prior to operating any type of seed cleaning equipment. The letter also stated that a lack of response from him would indicate that he agreed with the aforementioned conditions. The letter was claimed on March 29, 2002 and no response was received from the Owner regarding the conditions of the letter.

11. On August 21, 2002, the Department received a complaint stating that the Owner was operating the seed cleaning equipment.

12. On August 22, 2002, Department personnel conducted an inspection and observed the seed equipment operating. The Department did not receive notification from the Owner that the seed cleaning facility would resume operation and the Department had not received Air Permit applications for the seed cleaning facility.

13. On September 17, 2002, the Owner was served with a Proposed Administrative Order and accompanying Cover Letter. The Cover Letter, which

sets out the factors the Department considers when issuing an Administrative Order, requested that the Owner to submit written comments and/or request an informal meeting with the Department to discuss the Proposed Administrative Order

14. The Owner contacted the Department's Office of General Counsel within the time required by the Proposed Administrative Order Cover Letter to request an informal meeting. The Owner and Department personnel met on October 21, 2002 at the Department's main office in Montgomery and discussed the Proposed Administrative Order.

15. Administrative Order No. 03-015-AP was issued to the Owner on October 29, 2002 and the Owner requested an Appeal of the Administrative Order before the Environmental Management Commission on November 13, 2002.

16. The Owner has agreed to dismiss the Appeal of Administrative Order No. 03-015-AP to facilitate the terms of this Consent Order.

17. During the process of negotiating the terms of this Consent Order, the Department has informed the Owner, and the Owner has indicated his understanding, that operating the aforementioned seed cleaning equipment without an Air Permit would be a violation of this Consent Order.

18. The Owner agrees with the Findings presented in this Consent Order, and in an effort to cooperate with the Department and to comply with the provisions of the Alabama Air Pollution Control Act, the Owner has consented to the terms of this Consent Order.

19. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in this Consent Order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

ORDER

Based upon the foregoing FINDINGS and pursuant to §§22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-28-10(2) and 22-28-18, Code of Alabama (1975), as amended, and by agreement and consent of the Owner, it is hereby ORDERED:

A. That, immediately upon the effective date of this Consent Order, the Owner shall pay to the Department a civil penalty in the amount of Two Thousand Dollars (\$2,000.00), in the form of certified funds, for the violations cited herein.

B. That Administrative Order No. 03-015-AP, issued to the Owner on October 29, 2002, is hereby rescinded.

C. That, immediately upon the effective date of this Consent Order, the Owner shall not operate the seed cleaning facility or equipment until such time as he has applied for and received authorization from the Department to operate the seed cleaning facility or equipment in the form of an Air Permit.

D. 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. 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.

F. That the Owner is not relieved from any liability if it fails to comply with any provision of this Consent Order.

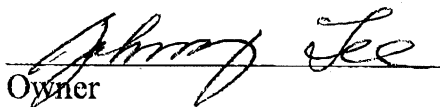
G. That, for purposes of this Consent Order only, the Owner agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. The Owner also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Owner 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 Owner, 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 be beyond the reasonable control of the Owner) and which delays or prevents performances 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*.

H. That, other than rescinding Administrative Order No. 03-015-AP, 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

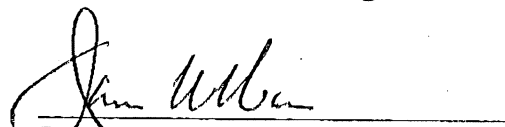
facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations shall be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Owner 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. That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and the Owner does hereby waive any hearing on the terms and conditions of same.

Johnny Lee


Owner

**Alabama Department of
Environmental Management**


James W. Warr
Director

Date Signed: 1-14-03

Date Signed: 26 FEB 2003