

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
and)	Civil No. 1:20-cv-01720 - ACA
)	
ALABAMA DEPARTMENT OF)	
ENVIRONMENTAL MANAGEMENT,)	
)	
Plaintiffs,)	
)	
v.)	
)	
KRONOSPAN, LLC,)	
)	
Defendant.)	
_____)	

CONSENT DECREE

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I. INTRODUCTION

1. WHEREAS, Plaintiffs, the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”), and the Alabama Department of Environmental Management (“ADEM”), an agency of the State of Alabama, have filed a complaint in this action concurrently with this Consent Decree, alleging that Defendant, Kronospan, LLC (“Kronospan”), violated Section 307(d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (collectively referred to as the “Clean Water Act” or “CWA”), 33 U.S.C. § 1317(d); violated the Alabama Water Pollution Control Act, Ala. Code § 22-22-1 et seq. (“AWPCA”); and seeking injunctive relief and civil penalties pursuant to the CWA, 33 U.S.C. 1319(b) and (d); the AWPCA, Ala. Code § 22-22-9; and the Alabama Environmental Management Act (“AEMA”), 22-22A-5. See also Ala. Admin. Code r. 335-6-5-.20(2).

2. WHEREAS, the EPA is charged with the statutory duty of enforcing the CWA, pursuant to 33 U.S.C. § 1251 et seq. and the regulations promulgated pursuant thereto.

3. WHEREAS, pursuant to Ala. Code § 22-22A-4(n), ADEM is the state agency responsible for the promulgation and enforcement of water pollution control regulations in accordance with the CWA, and is authorized to administer and enforce the provisions of the AWPCA and the regulations promulgated pursuant thereto.

4. WHEREAS, pursuant to Section 307 of the CWA, 33 U.S.C. § 1317, the EPA has established standards that govern discharges into publicly-owned treatment works (“POTWs”) that discharge to waters of the United States. The General Pretreatment Regulations, found at 40 C.F.R. Part 403, are designed to ensure that each

POTW can comply with its National Pollutant Discharge Elimination System (“NPDES”) permit. These Regulations are intended to prevent discharges to a POTW from non-domestic users that can either interfere with its operations or lead to the discharge of untreated or inadequately treated wastewater into waters of the United States. In addition to the General Pretreatment Regulations, the EPA has promulgated pretreatment standards for specific categories of industrial users pursuant to Section 307(b) of the CWA, 33 U.S.C. § 1317(b). These categories of industrial users, or “categorical” industrial users, are subject to specific pretreatment requirements set forth at 40 C.F.R. Parts 405-471. See also Ala. Admin. Code r. 335-6-5-.06.

5. WHEREAS, ADEM is the state agency with the authority to administer the Pretreatment Program in Alabama, pursuant to 33 U.S.C. § 1342(b).

6. WHEREAS, pursuant to 40 C.F.R. § 403.10(e), ADEM has assumed responsibility for implementing the Pretreatment Program in Alabama in lieu of requiring POTWs to develop independent pretreatment programs. As such, ADEM is the “Control Authority” as defined by 40 C.F.R. § 403.3(f) and is responsible for the requirements in 40 C.F.R. § 403.8(f), including issuing permits to categorical industrial users.

7. WHEREAS, Defendant owns and operates the facility located at 1 Kronospan Way, Eastaboga, Calhoun County, Alabama (“Facility”), where Defendant manufactures reconstituted wood products. The Facility is an integrated pulp and fiberboard mill.

8. WHEREAS, the pulp, paper, and paperboard manufacturing industry is one of the specified industries subject to categorical pretreatment standards. See

40 C.F.R. Part 430, Subpart G. These categorical pretreatment standards apply to process wastewater discharges resulting from, among other things, integrated pulp mills and molded fiber product production. See 40 C.F.R. § 430.70.

9. WHEREAS, Defendant began discharging wastewater from the Facility to the Oxford Water Works and Sewer Board's ("OWSB") POTW in late 2007 with trial applications without first obtaining a valid SID Permit from ADEM, as required by Ala. Admin. Code r. 335-6-5-.04(2).

10. WHEREAS, OWSB operates its POTW pursuant to NPDES Permit No. AL0058408, issued by ADEM, which requires, among other things, that OWSB "at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by [OWSB] to achieve compliance with the conditions of the [NPDES] permit. Proper operation and maintenance includes effective performance"

11. WHEREAS, on January 15, 2008, after having commenced discharging several months prior, Defendant applied to ADEM for an SID permit.

12. WHEREAS, Plaintiffs allege that, beginning in 2008 and continuing through at least 2015, OWSB's POTW experienced chronic violations of its permitted effluent limitations, including for total suspended solids ("TSS"), ammonia-nitrogen, fecal coliform, carbonaceous biochemical oxygen demand ("CBOD"), and total residual chlorine, as documented in OWSB's discharge monitoring reports ("DMRs").

13. WHEREAS, Plaintiffs allege that OWSB's POTW's effluent limitation violations began several months after Defendant's Facility began discharging to it.

14. WHEREAS, Plaintiffs allege that the Facility's discharge to the POTW routinely contained TSS, ammonia-nitrogen, and oxygen-demanding pollutants during the period concurrent with the POTW's effluent limit violations for TSS, ammonia-nitrogen, and CBOD.

15. WHEREAS, Plaintiffs allege that, beginning in April 2008, OWSB believes that it experienced interference with the proper operation of its POTW due to the pollutants in the discharge from Defendant's Facility, which was observed and measured in some samples to have high temperatures (in excess of 130 Degrees Fahrenheit ("°F")), low pH levels, very high levels of TSS, excessive wood chips, high levels of formaldehyde, and high biochemical oxygen demand ("BOD"). This alleged interference included: a deterioration in performance of the POTW's wastewater treatment plant ("WWTP"); damages to POTW transmission equipment; increased solids loading and solids handling; significant foaming at the Headworks to the WWTP; and the need at times for OWSB to sequester all or a portion of Defendant's discharge from the normal treatment train at the WWTP.

16. WHEREAS, ADEM issued Defendant SID Permit No. IU350801146, which was effective July 1, 2012.¹

17. WHEREAS, the EPA and ADEM conducted inspections at both OWSB's POTW and Defendant's Facility in November 2012. ADEM sent a Notice of Violation ("NOV") letter to Defendant dated December 13, 2012.

¹ The SID Permit expired on June 30, 2017. However, Defendant made a timely and complete application to ADEM for renewal of its SID Permit on or about December 19, 2016. ADEM is currently processing Defendant's application for renewal of the Permit. Until a new Permit is issued, the requirements of Defendant's July 1, 2012 Permit are applicable to its operations, pursuant to Ala. Admin. Code r. 335-6-5-.11.

18. WHEREAS, the EPA issued Defendant an Administrative Order, Docket No. CWA-04-2013-4756 (“EPA AO”), effective April 29, 2013, which required Defendant to, inter alia: install pretreatment equipment to control the discharge from the Facility to the POTW to meet the maximum standard of 600 milligram per liter (“mg/L”) for TSS on or before June 1, 2013; install pretreatment equipment to control the discharge from the Facility to the POTW to meet the temperature and pH limitations identified in the SID Permit on or before December 1, 2013; install and calibrate equipment to monitor and report flow from the Facility to the POTW, and commence using that flow equipment to report flow to ADEM on or before June 1, 2013; maintain full compliance with monitoring and reporting requirements of the SID Permit; and submit a status report of Defendant’s compliance with the terms of the EPA AO to the EPA beginning on June 1, 2013, and every June 1 and December 1 thereafter for the term of the EPA AO.

19. WHEREAS, Defendant completed timely installation of the pollution control equipment to manage TSS, temperature, and pH, and also timely installed the flow monitoring system.

20. WHEREAS, Plaintiffs allege that, despite installing the required pollution control equipment, Defendant’s discharge from the Facility has caused or contributed to interference and/or pass-through at OWSB’s POTW.

21. WHEREAS, Defendant entered into Consent Order No. 13-145-CWP with ADEM on September 16, 2013 (“ADEM CO”), which required Defendant to, inter alia, fully comply with the SID Permit limitation for temperature without the use of non-process water for dilution and/or without the use of increased process water for dilution.

22. WHEREAS, the Complaint against Defendant alleges that Defendant violated the CWA, 33 U.S.C. § 1317(d), by:

- a. Discharging wastewater without a valid SID Permit from 2007 until June 30, 2012;
- b. Causing or contributing to interference at the POTW;
- c. Causing or contributing to pass-through at the POTW;
- d. Discharging pollutants to the POTW with pH levels lower than 5.0 standard units on at least four (4) occasions between 2007 and June 30, 2012;
- e. Discharging pollutants to the POTW at temperatures higher than 104 °F on at least fifty-seven (57) occasions between 2007 and June 30, 2012;
- f. Failing to install and have in operating condition all pollution control equipment required to meet applicable Pretreatment Standards prior to beginning discharge to the POTW;
- g. Failing to submit to ADEM, and maintain records of, certain required reports of its compliance with categorical Pretreatment Standards on at least ten (10) occasions;
- h. Failing to comply with requirements of its SID Permit, No. IU350801146 in the following manners: at least 644 effluent limit violations; over 1,100 instances of failing to fully and accurately monitor and/or report its wastewater discharges; and failing to timely submit required discharge monitoring reports (“DMRs”) on at least twenty-two (22) occasions; and

i. Failing to fully comply with the EPA AO by: failing to submit timely status reports to the EPA on at least seven (7) occasions; and by failing to use the installed flow monitoring equipment to report flow.

23. WHEREAS, Defendant has undertaken several investigations regarding its wastewater. In addition, Defendant has evaluated, installed, and is operating a grinder pump at the Highway 202 Lift Station.

24. WHEREAS, Defendant's agreement to this Consent Decree is not an admission of liability to the United States or the State arising out of the transactions or occurrences alleged in the Complaint, except for its consent to the jurisdiction and venue as provided in Section II (Jurisdiction and Venue) of this Consent Decree, nor is it an adjudication or admission of any fact or law.

25. WHEREAS, the Parties stipulate that settlement of Plaintiffs' claims in accordance with the terms of this Consent Decree is in the public interest and have agreed to entry of this Consent Decree without trial of any issues, and the Parties hereby stipulate that, in order to resolve these claims stated in the Plaintiffs' complaint, this Consent Decree should be entered.

26. WHEREAS, the Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and will avoid litigation between the Parties and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, in consideration of the recitals and alleged violations described above and in the interest of settling all civil claims and controversies before the taking of any testimony, without the adjudication or admission of any issue of fact or

law except as provided in Section II, and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED as follows:

II. JURISDICTION AND VENUE

27. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367(a).

28. Venue is proper in the Northern District of Alabama pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a) (Fine, penalty or forfeiture), and pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), because it is the judicial district where the Defendant is located, where a substantial part of the events or omissions giving rise to the claims occurred, and where the alleged violations occurred.

29. For purposes of this Consent Decree, or any action to enforce this Consent Decree, Defendant consents to the Court's jurisdiction over this Consent Decree and any such action and over Defendant and consents to venue in this judicial district.

30. For purposes of this Consent Decree, Defendant agrees that the Complaint states claims upon which relief may be granted pursuant to Sections 309(b) and (d) of the CWA, 33 U.S.C. § 1319(b) and (d), and Section 22-22A-5(18)b. of the AEMA.

III. APPLICABILITY

31. The obligations of this Consent Decree apply to and are binding upon the United States and ADEM, and upon Defendant and any successors, assigns, or other entities or persons otherwise bound by law.

32. No transfer of ownership or operation of the Facility, whether in compliance with the procedures of this Paragraph or otherwise, shall relieve Defendant of its obligation to ensure that the terms of this Consent Decree are implemented. At least thirty (30) Days prior to such transfer, Defendant shall provide a copy of this Consent Decree to the proposed transferee and shall simultaneously provide written notice of the prospective transfer, together with a copy of the proposed written agreement, to the United States Attorney for the Northern District of Alabama, the United States Department of Justice, EPA Region 4, and ADEM, in accordance with Section XVIII (Notices). Any attempt to transfer ownership or operation of the Facility without complying with this Paragraph constitutes a violation of this Consent Decree.

33. Defendant shall provide a copy of this Consent Decree to all officers, employees, and agents whose duties might reasonably include compliance with any provision of this Consent Decree, as well as to any contractor retained to perform work required under this Consent Decree. Defendant shall condition any such contract upon performance of the work in conformity with the terms of this Consent Decree.

34. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any of its officers, directors, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

IV. OBJECTIVE

35. The objective of this Consent Decree is for Defendant to eliminate discharge of Objectionable Solids into the POTW, and to achieve and maintain full compliance with the CWA, the AWPCA, and the SID Permit.

V. DEFINITIONS

36. Headings are provided for convenience only. Terms used in this Consent Decree that are defined in the CWA, the AWPCA, or the AEMA, or in regulations promulgated pursuant to the CWA, the AWPCA, or the AEMA shall have the meanings assigned to them in those acts or such regulations, unless otherwise provided in this Consent Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

- a. “ADEM” shall mean the Alabama Department of Environmental Management.
- b. “ADEM CO” shall mean Consent Order No. 13-145-CWP issued to Defendant by ADEM on September 16, 2013.
- c. “Best Management Practices” or “BMPs” means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 C.F.R. § 403.5(a)(1) and (b). BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.
- d. “Calendar Year” shall mean the twelve (12) month period starting on January 1 and ending on December 31.
- e. “Certification” or “Certify,” when used in this Consent Decree, shall require Defendant to comply with Paragraph 48 of this Consent Decree.
- f. “Complaint” shall mean the complaint filed by the United States and ADEM in this action.

g. “Compliance Standards” shall mean the General Pretreatment Regulations for Existing and New Sources of Pollution (the “General Pretreatment Regulations”) at 40 C.F.R. Part 403, including the requirements to not cause or contribute to Pass-Through and/or Interference at the POTW; the Categorical Pretreatment Standards for New Sources for the Mechanical Pulp Subcategory (“PSNS”) at 40 C.F.R. § 430.77; the requirements of the SID Permit; and local limits established and incorporated in a future or modified SID Permit.

h. “Consent Decree” or “Decree” shall mean this Decree and all appendices attached hereto (listed in Section XXVII).

i. “CWA” shall mean the Clean Water Act, as amended, 33 U.S.C. §§ 1251 et seq.

j. “Date of Entry” shall mean the date on which this Consent Decree is entered by the United States District Court for the Northern District of Alabama.

k. “Date of Lodging” shall mean the date on which this Consent Decree is lodged with the Clerk of the Court for the United States District Court for the Northern District of Alabama.

l. “Day” (whether or not capitalized) shall mean a calendar day unless expressly stated to be a business day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next business day.

- m. “Defendant” shall mean Kronospan, LLC, and any successor and assign thereto.
- n. “Deliverable” shall mean any written document required to be prepared and/or submitted by or on behalf of Defendant pursuant to this Consent Decree.
- o. “Discharge” or “Indirect Discharge” (whether or not capitalized) shall mean the introduction of pollutants into a POTW from any non-domestic source regulated under Section 307(b), (c) or (d) of the CWA.
- p. “Discharge Limit Violation” shall mean: (i) any exceedance of Discharge Limitations set forth in Part I.A of the SID Permit; (ii) any violation of the Specific Prohibitions in 40 C.F.R § 403.5(b), other than Pass-Through or Interference, as determined by sampling required by the SID Permit or sampling conducted by OWSB, the EPA, ADEM, or the Third-Party Team.
- q. “EPA” shall mean the United States Environmental Protection Agency and any of its successor departments or agencies.
- r. “EPA AO” shall mean Administrative Order, Docket No. CWA-04-2013-4756 (“EPA AO”) issued by the EPA to Defendant, effective April 29, 2013.
- s. “Effective Date” shall have the definition provided in Section XIX.
- t. “Facility” shall mean Defendant’s integrated pulp and fiberboard mill located at 1 Kronospan Way, Eastaboga, Calhoun County, Alabama.
- u. “Highway 202 Lift Station” shall mean the OWSB pump station located approximately 400 feet west of Bridgewater Interiors on the south side of Bynum Boulevard in Eastaboga, Alabama, at the following global positioning system coordinates: N 33.60685, W 85.98864.

v. “Interference” shall mean a Discharge which, alone or in conjunction with a discharge or discharges from other sources, both: (i) inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and (ii) therefore is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the statutory provisions and regulations or permits issued thereunder. 40 C.F.R. § 403.3(k).

w. “Kronospan Sample Preparation Technique” shall mean the use of an electric hand blender to obtain homogeneity in lieu of a magnetic stirrer, where mixing is specified in an approved analytical method under 40 C.F.R. Part 136.²

x. “Month” shall mean one calendar month running from the numbered day to the same numbered day of the following calendar month, regardless of whether the month has 28, 29, 30, or 31 days. In the case where a triggered event would occur on a day of the month which does not exist (e.g., February 30), then the event shall be due on the first day of the following month (e.g., March 1).

y. “NPDES” shall mean National Pollutant Discharge Elimination System, as established by 33 U.S.C. § 1342.

z. “NPDES Permit” shall mean NPDES Permit No. AL0058408, issued by ADEM to OWSB, effective on September 1, 2013, and expiring on August 31, 2018;

² Due to the sample matrix when Objectionable Solids are present, OWSB has found this technique necessary to properly prepare wastewater introduced by Defendant to the POTW for analysis.

- aa. “Objectionable Solids” or “Solids” shall mean thin, fabric-like material having a high plasticity, tan-colored appearance, slippery texture, and sweet odor. This material demonstrates an ability to accumulate upon itself and other objects at the Highway 202 Lift Station and elsewhere within the sewer system, and to fragmentize when limited force is applied, contributing problematic suspended solids loading to wastewater;
- bb. “OWSB” shall mean the Oxford Water Works and Sewer Board;
- cc. “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral;
- dd. “Parties” shall mean the United States, ADEM, and Defendant;
- ee. “Pass-Through” shall mean a Discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation).
- ff. “POTW” shall mean the OWSB’s publicly-owned treatment works, including the Tull C. Allen Wastewater Treatment Plant and all transmission equipment appurtenant thereto.
- gg. “Quarter” or “Quarterly” shall mean calendar quarters (i.e., three-month periods from January 1 to March 31; from April 1 to June 30; from July 1 to September 30; and from October 1 to December 31).
- hh. “Responsible Corporate Officer” shall mean: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business

function, or any other person who performs similar policy- or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure that the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

ii. “Sampling Evaluation and Performance Audit Inspection Report” shall mean the report prepared by the EPA’s Science and Ecosystem Support Division, pursuant to an inspection of the POTW conducted on March 28 and 29, 2017, attached hereto as Appendix A.

jj. “Section” shall mean a portion of this Decree identified by a Roman numeral;

kk. “SID Permit” shall mean the version of State Indirect Discharge Permit No. IU350801146 effective as of the Date of Lodging of this Consent Decree.

ll. “State” shall mean the State of Alabama, including all its departments, agencies, and instrumentalities, and any successor departments, agencies, and instrumentalities;

mm. “Subparagraph” shall mean a portion of a Paragraph identified by lowercase letters.

nn. “Third-Party” or “Third-Party Team” shall mean the independent, third-party inspection team retained by Defendant and meeting the requirements for independence outlined in Section IX of this Consent Decree.

oo. “Timely,” when applied to the submittal of a Deliverable, shall mean submitted no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and containing all of the elements pertaining to the submittal as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree). “Timely,” when applied to the implementation of any Work, shall mean implemented no later than the deadline established in this Consent Decree (or in a document approved pursuant to this Consent Decree) and in accordance with the elements pertaining to such Work as set forth in this Consent Decree (or in a document approved pursuant to this Consent Decree).

pp. “United States” shall mean the United States of America, acting on behalf of EPA.

qq. “Work” shall mean all activities Defendant is required to perform under this Consent Decree.

VI. CIVIL PENALTY

37. No later than thirty (30) Days after the Effective Date of this Consent Decree, Defendant shall pay the sum of \$450,000 (four-hundred and fifty thousand dollars) as a civil penalty, together with interest accruing from the date on which the

Consent Decree is lodged with the Court, to the United States, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging.

a. Defendant shall pay the civil penalty due by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account, in accordance with instructions provided to Defendant by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the Northern District of Alabama after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System ("CDCS") number, which Defendant shall use to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Anthony Athienitis
One Kronospan Way
Eastaboga, Alabama 36260
Tel: (256) 741-8757
Email: aathienitis@kronospanusa.com

on behalf of Defendant. Defendant may change the individual to receive payment instructions on its behalf by providing written notice of such change to the United States and EPA in accordance with Section XVIII (Notices).

b. At the time of payment, Defendant shall send notice that payment has been made: (i) to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; (ii) to the United States via email or regular mail in accordance with Section XVIII; and (iii) to EPA in accordance with Section XVIII. Such notice shall state that the payment is for the civil penalty owed pursuant to the Consent Decree in United States et al. v. Kronospan, LLC

and shall reference the civil action number, CDCS Number and DOJ case number 90-5-1-1-10934.

38. No later than thirty (30) Days after the Effective Date, Defendant shall pay a civil penalty of \$450,000 (four-hundred and fifty thousand dollars) to ADEM. The payment to ADEM shall be made by corporate check payable to: “Alabama Department of Environmental Management” and delivered to:

Alabama Department of Environmental Management
Montgomery Office
ATTN: Office of General Counsel
1400 Coliseum Boulevard
Montgomery, AL 36110-2400

39. Defendant shall not deduct any penalties paid under this Decree pursuant to this Section or Section XII (Stipulated Penalties) in calculating its federal, State, or local income tax.

VII. REVIEW, APPROVAL, AND IMPLEMENTATION OF DELIVERABLES

40. This Section applies to all Deliverables required under this Consent Decree.

41. EPA Action on Deliverables. After review of any Deliverable that is required to be submitted pursuant to this Consent Decree, the EPA, after consultation with ADEM, shall in writing:

- a. approve the submission;
- b. approve the submission upon specified conditions;
- c. approve part of the submission and disapprove the remainder; or
- d. disapprove the submission.

42. Approved Deliverables. If the submission is approved pursuant to Subparagraph 41.a, Defendant shall take all actions required by the Deliverable in accordance with the schedules and requirements of the Deliverable as approved. If the submission is conditionally approved or approved only in part, pursuant to Subparagraphs 41.b or 41.c, Defendant shall, upon written direction from the EPA, after consultation with ADEM, take all actions required by the approved plan, report, or other item that the EPA, after consultation with ADEM, determines are technically severable from any disapproved portions, subject to Defendant's right to dispute only the specified conditions or the disapproved portions under Section XIV of this Decree (Dispute Resolution). Following EPA approval of any Deliverable or portion thereof, such Deliverable or portion thereof so approved shall be incorporated into and become enforceable under this Consent Decree.

43. Disapproved Deliverables. If the submission is disapproved in whole or in part pursuant to Subparagraphs 41.c or 41.d, subject to Defendant's right to dispute only the specified conditions or the disapproved portions under Section XIV of this Consent Decree (Dispute Resolution), Defendant shall, within fourteen (14) Days or such other time as the Parties agree to in writing, correct all deficiencies and resubmit to the EPA and ADEM the Deliverable, or disapproved portion thereof, for approval, in

accordance with the Paragraphs 41 and 42. If the resubmission is approved in whole or in part, Defendant shall proceed in accordance with the Paragraph 42.

44. Stipulated Penalties Accruing. Subject to Defendant's right to dispute only the specified conditions or the disapproved portions under Section XIV of this Consent Decree (Dispute Resolution), any stipulated penalties applicable to the original Deliverable, as provided in Section XII of this Consent Decree (Stipulated Penalties), shall accrue during the fourteen (14)-Day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or in part; provided that, if the original submission was so deficient as to constitute a material breach of Defendant's obligations under this Consent Decree, the stipulated penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

45. Resubmitted Deliverable. If a resubmitted Deliverable, or portion thereof, is disapproved in whole or in part, the EPA, after consultation with ADEM, may again require Defendant to correct any deficiencies, in accordance with Paragraph 43, or may itself/themselves correct any deficiencies, subject to Defendant's right to invoke Dispute Resolution pursuant to Section XIV of this Consent Decree (Dispute Resolution) and the right of the EPA, in consultation with ADEM, to seek stipulated penalties as provided in the Paragraph 44. Upon the EPA's correction, in consultation with ADEM, of any deficiencies, such resubmitted Deliverable or portion thereof shall be incorporated into and become enforceable under this Consent Decree and shall be implemented by Defendant according to the approved schedule, subject to Defendant's

right to invoke Dispute Resolution pursuant to Section XIV of this Consent Decree (Dispute Resolution).

46. Timing of Review of Deliverables. The EPA and ADEM agree to use best efforts to expeditiously review and comment on all Deliverables required pursuant to this Consent Decree. If the EPA issues written comments and decisions on any Deliverable more than sixty (60) Days after receipt of such submission, any subsequent deadline or milestone that is dependent upon such comments or decisions shall be extended. The length of the extension shall be determined by calculating the number of Days between the EPA's receipt of the submission and the date of the EPA's written response, less sixty (60) Days. Within thirty (30) Days of the date that Defendant knows or should know of a deadline or milestone that Defendant believes is extended under this Paragraph, Defendant shall inform the EPA and ADEM, in writing, of its belief and the amount of time Defendant believes the deadlines or milestones are extended. If the EPA disagrees, after consultation with ADEM, with Defendant's determination that a deadline is dependent upon such comments or decisions, the EPA, after consultation with ADEM, shall inform Defendant in writing. Defendant may dispute the EPA's conclusion regarding whether a deadline is dependent upon such comments or decisions pursuant to Section XIV of this Consent Decree (Dispute Resolution).

47. The Parties recognize that Defendant may need or want to revise certain Deliverables submitted pursuant to this Consent Decree during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XXI of this Consent Decree (Modification). Defendant must obtain the EPA's prior written approval of any revision to the substance of any Deliverable

submitted pursuant to this Consent Decree. Defendant may revise the form, but not substance, of any Deliverable submitted pursuant to this Consent Decree without consulting the EPA. Defendant shall provide copies of any such revised Deliverable to the EPA and ADEM within seven (7) Days after making such revision.

48. Certification. In all Deliverables, notices, documents, or reports required to be submitted to the United States and ADEM pursuant to this Consent Decree, Defendant shall, by a Responsible Corporate Officer, sign and certify such Deliverables, notices, documents, or reports as follows:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This Certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

VIII. COMPLIANCE REQUIREMENTS

49. This Consent Decree in no way affects or relieves Defendant of its obligation to comply with applicable federal, State, and local laws, regulations, and permits, including its SID Permit.

50. At all times, Defendant shall operate the Facility to achieve compliance with all applicable federal, State, and local environmental laws, including, without limitation, the Compliance Standards and other applicable permits, approvals, regulations, or requirements.

51. Defendant shall perform the Work required by this Consent Decree in compliance with the requirements of all federal, State, and local laws, regulations, and permits. This Consent Decree is not a permit issued pursuant to any federal, State, or local statute or regulation.

52. Permits. Where any compliance obligation under this Section or Section IX (Work to be Performed) requires Defendant to obtain a federal, State, or local permit or approval, Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals. Defendant may seek relief under the provisions of Section XIII (Force Majeure) for any delay in the performance of any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or approval required to fulfill such obligation, if Defendant has submitted timely and complete applications and has taken all other actions necessary to obtain all such permits or approvals.

53. Pursuant to the authorities of Sections 309(a) of the CWA, 33 U.S.C. § 1319(a), and the AWPCA, Ala. Code. § 22-22-1 et seq., Defendant hereby consents to the performance of the Work as described in Section IX of this Consent Decree.

IX. WORK TO BE PERFORMED

54. Objectionable Solids Identification and Removal.

a. Objectionable Solids Identification Plan.

i. Within ninety (90) Days after the Effective Date of this Consent Decree, Defendant shall submit an “Objectionable Solids

Identification Plan” to the EPA and ADEM for review and approval.

ii. The purpose of the Objectionable Solids Identification Plan is to prepare a methodology for identifying the origins of the Objectionable Solids found in the Facility’s combined process and/or non-process wastewater streams being discharged into the POTW, which the EPA and ADEM deem to be causing or contributing to Interference and/or Pass-Through.

iii. The Objectionable Solids Identification Plan shall detail the Defendant’s step-wise actions and timeframes for performing an in-depth diagnostic evaluation of all wastewater streams discharging from the Facility to identify the pollutant loadings and the mechanisms leading to the formation and discharge of the Objectionable Solids. This Plan shall incorporate, at a minimum:

(a) Methodology for obtaining a current analysis of both process and non-process (e.g., sanitary, stormwater, cooling water) wastewater streams, regardless of whether they are normally monitored, to contemporaneously identify the pollutants present that might be contributory to Objectionable Solids formation, the contributing flow rates, and the equivalent pollutant loadings (mass or concentration) in each wastewater stream. Preparation of process samples for analyses that

contain solids shall employ the Kronospan Sample Preparation Procedure in Subparagraph 36.w;

- (b) Methodology for evaluating the pollution control equipment or measures (e.g., best management practices) currently in-place for each wastewater stream, and the estimated or actualized pollutant reductions that each one achieves;
- (c) Methodology for evaluating the chemical interactions between pollutants in each source wastewater stream, as well as following points where a wastewater stream combines with other wastewater streams from the Defendant prior to entering the POTW system. The intent of this effort will be to identify if the Objectionable Solids are being formed as a chemical intermediate and the mechanism for it; and
- (d) An implementation schedule for applying these methodologies that identifies dates for both intermediate steps and completion of the diagnostic evaluation, as well as a date for the submittal of the resulting Objectionable Solids Report and Objectionable Solids Remedial Plan identified in Subparagraphs 54.b. and c. below. The schedule for submittal of the Objectionable Solids Report shall not exceed ninety (90)

Days from the approval of the Objectionable Solids Identification Plan, and the schedule for submittal of the Objectionable Solids Remedial Plan shall not exceed one hundred twenty (120) Days from the approval of the Objectionable Solids Report.

iv. Upon Defendant's receipt of any comments by the EPA, in consultation with ADEM, pursuant to their review under Section VII (Review, Approval, and Implementation of Deliverables), Defendant shall make any changes to the Objectionable Solids Identification Plan in accordance with their comments and instruction.

v. Upon approval of the Objectionable Solids Identification Plan by the EPA, in consultation with ADEM, Defendant shall fully implement such Plan in accordance with the methodologies and schedule of implementation contained therein.

b. Objectionable Solids Report. In accordance with the implementation schedule contained in the approved Objectionable Solids Identification Plan, Defendant shall timely submit an "Objectionable Solids Report" to the EPA and ADEM for review and approval. The Objectionable Solids Report shall, at a minimum, include:

i. A summary of the findings resulting from implementation of the Objectionable Solids Identification Plan, including the identified source(s) of the Objectionable Solids, if any;

- ii. Descriptive photographs, with captions, documenting implementation of the Objectionable Solids Identification Plan; and
- iii. Tabulations of the analytical data (supplied both in hard copy and digitally as manipulatable spreadsheets) collected and analyzed during implementation of the Objectionable Solids Identification Plan, clearly identifying the waste stream(s) monitored, sampling locations (description or supplied drawing references), 40 C.F.R. Part 136 analytical methods used (and confirming sample preparation step indicated in Subparagraph 53.a.iii.(a). above), analytical results, and units of measurement.

c. Objectionable Solids Remedial Plan.

- i. If the Objectionable Solids Report identifies sources of Objectionable Solids, in accordance with the implementation schedule contained in the approved Objectionable Solids Identification Plan, Defendant shall timely submit an “Objectionable Solids Remedial Plan” to the EPA and ADEM for review and approval. The Objectionable Solids Remedial Plan shall, at a minimum, include specific remedial plans which will either prevent any Objectionable Solids from forming in the Facility’s wastewater discharge, or to remove any entrained Solids. These specific plans may take either an immediate or phased approach. This “Remedial Plan” shall include, at a minimum:

- (a) Descriptions of the actions necessary to prevent formation and/or discharge of the Objectionable Solids to the POTW by Defendant, including, as appropriate, optimization of existing treatment systems and best management practices, any new pollution control equipment and/or best management practices, and their applicable locations;
- (b) Schedule(s) of implementation and/or construction to effect the actions necessary to prevent the formation and/or discharge of Objectionable Solids to the POTW by Defendant, which are not to exceed one hundred eighty (180) Days from the Day of the EPA's approval of the Remedial Plan under Section VII;
- (c) Schedule(s) of implementation to submit necessary complete applications, including any required letter of acceptance from the POTW, for any new or modified State permits necessary to implement the Objectionable Solids Remedial Plan and to ensure the Facility's discharge into the POTW is being monitored at locations appropriate for the types of pretreatment standards applied; and
- (d) The Third-Party Retention Plan identified in Subparagraph 54.d below.

ii. Within thirty (30) Days of completion of all aspects of the Remedial Plan, Defendant shall submit certification to the EPA and ADEM that it has fully completed implementation of the Remedial Plan, and that the finalized Audit contract, approved pursuant to Subparagraph 53.d.iv below, is now engaged.

d. Third-Party Verification of Effective Objectionable Solids Removal.

i. Pursuant to Subparagraph 54.c.i.(d) above, Defendant shall submit a “Third-Party Retention Plan” for approval under Section VI that will engage a Third-Party audit of Defendant’s discharge (“Audit”) upon completion of the approved Remedial Plan schedule.

ii. The Third-Party Retention Plan shall include, at a minimum:

(a) Description of the Third-Party’s qualifications, including how the Third-Party meets each of the following required criteria:

(1) No representative of the Third-Party shall receive compensation or financial benefit from Defendant based on the outcome of the Audit, apart from payment for the Audit as performed pursuant to this Consent Decree;

(2) No representative of the Third Party shall have performed work for Defendant prior to the contract between Defendant and the Third-Party for the Audit;

(3) Third Party representatives involved in the Audit shall be knowledgeable of the federal, state, and local compliance standards applicable to the tasks they will perform;

(4) Third Party representatives leading the Audit shall have empirical knowledge of the type of manufacturing operations performed by Defendant, as well as the recognized and generally-accepted environmental management practices applicable to Defendant's type of facility; and

(5) Third Party representatives leading the Audit shall have received prior training in the techniques necessary to perform an audit of industrial wastewater and its impacts on a POTW.

(b) A conflict of interest statement, signed and dated by all representatives of the Third-Party to be involved in the Audit,

verifying their eligibility to perform the Audit under the terms of this Consent Decree; and

(c) A copy of the draft Third-Party contract, which shall include, at a minimum:

(1) The intended timeframes for Audit planning, implementation, and reporting, which shall begin within fourteen (14) Days of the Defendant's transmittal of the certified completion of its Remedial Plan to the EPA and ADEM;

(2) Provision of copies of the approved Objectionable Solids Report and Remedial Plan and the Sampling Evaluation and Performance Audit Inspection Report to the Third-Party by Defendant;

(3) The contract's deliverable, which shall be submittal of a "Verification Report" to Defendant, EPA, and ADEM within sixty (60) Days of Third-Party's completion of the screening events described in Subparagraph 54.d.ii(c)(4)1.1(v), as specified in Subparagraph 54.d.vi below; and

(4) The scope of the Audit work, which shall include, at a minimum:

(i) A primary objective to verify that Objectionable Solids have been effectively removed, supported by documented visual inspections collected at the Defendant's Facility as well as multiple points within the POTW system;

(ii) Requirement for Defendant to supply the Third Party with forecasts for daily production during the term of the contract;

(iii) Requirement that activities within the POTW system must first obtain approval from OWSB;

(iv) Requirement that the Third-Party visually inspect Defendant's Facility to verify that all necessary pollution control equipment and/or best management practices have been properly installed and are operating in accordance with design specifications; and

(v) Requirement that the Third-Party shall, at a minimum, perform a series of three (3) screening and visual inspection events as described below, with an allowance that the Third-Party, in its sole discretion, may select more events or manhole

locations if deemed necessary to meet the primary objective.

(a) Event Locations. Each event shall include concurrent activity at the Highway 202 Lift Station and two specific OWSB manholes, which are numbers M-21-018 and M-21-016, on a 10-inch sewer segment that only receives flow from the Defendant's Facility. The interval between each event shall be at least one (1) calendar month apart, and at a time when the Third-Party is aware the Defendant's Facility:

(i) has been at full production for at least eight (8) Days prior to the beginning of the screening period, and will remain so for the duration of the event; and (ii) has not discharged from a Facility cleaning cycle in the last thirty (30) Days that could scour the receiving sewer.

(b) Event Description. Each event shall meet the following criteria:

i. *Screen design*. Each screen shall cover the bottom two-thirds ($2/3$) of the pipe opening that supplies flow into the selected manhole. The screens must be

uncoated to improve adhesion. The screen opening size selected by the Third-Party will correspond to the average flow rate, but in no case be larger than one (1) square inch. A valid event requires that the screens stay flush to the pipe opening, remaining functional for the duration of the activity without short-circuiting.

ii. *Screening Duration.* A clean screen inserted into the manhole shall remain in place for at least a 24-hour period prior to visual inspection, but may remain in place for a longer duration at the discretion of the Third Party and with approval from OWSB.

iii. *Visual Inspection.* At the end of the event, the Third-Party shall inspect the wet well at the Highway 202 Lift Station for signs of Objectionable Solids prior to removing each emplaced manhole screen. Manhole screens shall be removed sequentially in an upstream direction to visually inspect each screen and supply

pipe for signs of Objectionable Solids
accumulation. Each event shall include
concurrently narrated and photo-
documented visuals of the Highway 202
Lift Station wet well and the manhole
interiors and appurtenances.

iii. Upon Defendant's receipt of any comments by the EPA
and ADEM pursuant to their review under Section VII (Review,
Approval, and Implementation of Deliverables), Defendant shall
make any changes to the Third-Party Retention Plan in
accordance with their comments and instruction.

iv. Upon approval of the Third-Party Retention Plan by the
EPA, in consultation with ADEM, Defendant shall finalize the
draft contract contained therein.

v. Defendant may not hire, as employees, consultants, or
contractors, any representatives of the Third-Party for a period of
two years following the submission of the Verification Report.

vi. The Verification Report produced solely and
independently by the Third Party shall, at a minimum, include:

(a) A copy of the finalized contract with the
Defendant, including the terms for the Audit;

(b) Identification of the individuals conducting the
Audit, and any other key persons participating in the

Audit, including names, titles, and summaries of qualifications;

- (c) Narrative observations and descriptive photographs with captions concerning the detected presence, or potential for the presence, of Objectionable Solids at Defendant's Facility, at manholes, at the Highway 202 Lift Station, or otherwise within the POTW system; as well as the impact of such Solids on the functionality POTW appurtenances, or Facility equipment;
- (d) Other information documenting implementation of the Audit and the conclusions of the Verification Report;
- (e) Information pertaining to the production rate at the Facility for the eight (8) Days prior to the screening and visual inspection events;
- (f) Tabulations (supplied in both hard copy and digitally) of any analytical data collected and analyzed during implementation of the Audit, clearly identifying the: waste stream monitored, sampling location(s) (description and spatial drawing reference), pollutant parameter, 40 C.F.R. Part 136 analytical method, analytical result, and units of measurement;
- (g) Narrative conclusions, including recommendations of any additional pollution control equipment and/or best

management practices that would be effective at either preventing the formation of Objectionable Solids or removing Objectionable Solids from the Facility discharge to the POTW, in the event the Third-Party concludes such Solids are either still present to any degree or still have the potential to form; and

(h) The following certification, signed and dated by the supervising manager for the Third-Party:

I certify that this compliance audit report was prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information upon which the audit is based. I further certify that the audit was conducted, and this report was prepared pursuant to all applicable auditing, competency, independence, impartiality, and conflict of interest standards and protocols. Based on my personal knowledge and experience, the inquiry of personnel involved in the audit, the information submitted herein is true, accurate, and complete. I am aware that there are significant penalties for making false material statements, representations, or certifications, including the possibility of fines and imprisonment for knowing violations.

e. Supplemental Objectionable Solids Remedial Plan.

- i. If the Third-Party's Verification Report finds that Objectionable Solids are still present or otherwise still have credible potential to appear in the Facility's discharge to the POTW, then within sixty (60) Days, Defendant shall submit to the EPA and ADEM for review and approval a "Supplemental Objectionable Solids Remedial Plan," including a schedule of

implementation, not to exceed ninety (90) Days from approval of the Supplemental Objectionable Solids Remedial Plan by EPA and ADEM, to implement any recommended additional pollution control equipment and/or best management practices recommended by the Third-Party.

- ii. The Supplemental Objectionable Solids Remedial Plan shall also include a draft contract between Defendant and Third-Party for another independent audit to verify that the Objectionable Solids have been effectively removed from the Facility's discharge. The process of planning, implementation, and reporting for this "Supplemental Audit" shall proceed according to the same provisions for the first Audit, as presented above in Subparagraph 54.d.
- iii. Within thirty (30) Days of completion of all aspects of the Supplemental Objectionable Solids Remedial Plan, Defendant shall submit certification to the EPA and ADEM that it has completed implementation of the Plan, and that the finalized Supplemental Audit contract, approved pursuant to Subparagraph 54.d.iv above, is now engaged.
- iv. In the event observations of Objectionable Solids are made during a Supplemental Audit, Defendant shall implement another Supplemental Objectionable Solids Remedial Plan, following the same stepwise approach outlined in Subparagraphs

1.1.e above, until the Third-Party certifies that such Solids are not present to any degree or do not have the potential to form Objectionable Solids. Continued observations of Objectionable Solids and/or the credible potential for formation of such Objectionable Solids may be considered pass-through or interference subject to the assessment of stipulated penalties under Section XII.

55. Standard Operating Procedure for Flow Reporting.

- a. Within ninety (90) Days of the Effective Date of this Consent Decree, Defendant shall prepare and submit for EPA and ADEM review and approval a Standard Operating Procedure for Flow Reporting (“SOP”).
- b. The SOP shall detail the stepwise methodology that the Defendant employs to accurately collect flow data from the Facility’s flow metering equipment, and to accurately report it to ADEM pursuant to the terms of the Defendant’s SID Permit.
- c. If, at any time during the term of this Consent Decree, the methodology in the approved SOP needs to be modified, then Defendant shall propose such modification to the EPA and ADEM under Section VI for review and approval.

56. Slug Discharge Control Plan.

- a. Within one-hundred and eighty (180) Days of the Effective Date of this Consent Decree, Defendant shall prepare and submit for EPA and

ADEM review and approval an accidental and slug discharge control plan (“Slug Discharge Control Plan”).

b. The Slug Discharge Control Plan shall describe the Facility’s procedures to prevent a non-routine, episodic type of discharge to the POTW, including, but not limited to, an accidental spill or a non-customary batch discharge, which has reasonable potential to cause or contribute to Interference and/or Pass-Through, or in any other way violate the Compliance Standards.

c. The Slug Discharge Control Plan submitted to EPA and ADEM shall be developed pursuant to the EPA Office of Water’s Control of Slug Loadings to POTW Guidance Manual (Feb. 1991), and sufficiently address all eight (8) of the components identified in Section 2.3.4 of that manual.

57. Pretreatment Compliance Training Program.

a. Within ninety (90) Days after the Third-Party’s submittal of the Verification Report for the Audit to Defendant, EPA and ADEM, or, if required under Subparagraph 54.e, submittal of the Verification Report for the Second Audit, Defendant shall submit to the EPA and ADEM for review and approval an Implementation Plan for the Pretreatment Compliance Training Program (“Training Program”). This submittal shall include the job titles identified for training, course syllabi, and the daily agendas for training course(s), as well as the calendar for the initial and first two annual refresher trainings.

b. Training materials supplied in the Defendant's Training Program shall include, at a minimum, an in-depth review of the following

components:

- i. Operating instructions for all pollution control equipment and best management practices designed to achieve compliance with the Compliance Standards, whether such equipment and best management practices were installed pursuant to this Consent Decree or were previously installed. Information should include, as appropriate: equipment manuals; cut sheets; specifications; chemical dosing instructions; material safety data sheets (MSDS) for chemicals; and proper storage and handling for chemicals;
- ii. Requirements and procedures for notification of the EPA, ADEM, and/or OWSB under the terms of this Consent Decree and/or the Compliance Standards, including contact names, phone numbers, reporting time-frames, and any standard forms required to be used for reporting;
- iii. SID Permit limitations and requirements, including sampling and reporting requirements;
- iv. Flow Reporting SOP;
- v. Slug Discharge Control Plan;
- vi. The terms and conditions of this Consent Decree.

c. The Training Program shall be conducted on the following frequencies for the duration of this Consent Decree:

- i. Initial Training. Within ninety (90) Days after the EPA's approval of the Training Program in consultation with ADEM, Defendant shall conduct an initial training on the components listed in Subparagraph 57.b for all Defendant's employees, contractors, consultants, and other personnel charged with the installation, operation, and/or maintenance of pollution control equipment and/or best management practices to achieve Compliance Standards, as well as any employees, contractors, consultants, and other personnel responsible for sampling or reporting obligations under the terms of this Consent Decree, the SID Permit, or any other Compliance Standard.
- ii. Annual Refresher Training. Defendant shall conduct an Annual Refresher Training for all employees, contractors, consultants, and other personnel identified in the Training Program once per year submitted pursuant to Subparagraph 57.b above. The Annual Refresher Training may be an abbreviated version of the Initial Training; however, to the extent that Defendant implements any modifications or changes to its processes; pollution control equipment; best management practices; sampling methodology, frequency, or locations; or any other component of the Training Program, Defendant shall repeat a full Initial Training for the impacted components.

iii. New Employee Training. Any employee, contractor, consultant, or other personnel charged with the installation, operation, and/or maintenance of pollution control equipment and/or best management practices to achieve Compliance Standards, as well as any employees, contractors, consultants, and other personnel responsible for sampling or reporting obligations under the terms of this Consent Decree, the SID Permit, or any other Compliance Standard, who is retained by Defendant after the Initial Training has been completed shall receive the full Initial Training within ninety (90) Days of such person's start date for employment.

d. Post-SEP-Implementation Training. Within ninety (90) Days of the United States' notification to the Defendant that Defendant has satisfactorily completed the SEP outlined in Section X, Defendant shall submit to the EPA and ADEM for review and approval any modifications to its Training Program necessary to reflect modifications or changes to its processes; pollution control equipment; best management practices; sampling methodology, frequency, or locations as a result of Defendant's implementation of the SEP. If no such modifications to the Training Program are necessary, Defendant shall provide certification that no modifications are required.

e. Defendant shall submit the names, titles, and responsibilities of each person receiving Initial Training, Annual Refresher Training, or

New Employee Training, along with the dates of each training provided, to the EPA and ADEM in its Quarterly Compliance Reports, as required under Section XI (Sampling and Reporting Requirements).

X. SUPPLEMENTAL ENVIRONMENTAL PROJECT

58. Defendant shall implement a Supplemental Environmental Project (“SEP”), to install an evaporation system to reduce the frequency and total annual volume of process wastewater currently being treated by the Facility’s pretreatment system and discharged to the POTW, in accordance with all provisions of Appendix B. The SEP shall be completed in accordance with the schedule set forth in Appendix B, but no later than seven-hundred and ninety (790) Days from the Effective Date of this Consent Decree.

59. Defendant is responsible for the satisfactory completion of the SEP in accordance with the requirements of this Decree. “Satisfactory completion,” where used in this Section, means that the evaporation system and all appurtenant equipment has been installed, tested, started up, and used in full operation as intended by the manufacturer for a period of at least fourteen (14) Days of Facility production. Defendant may use contractors or consultants, but is fully responsible for planning and implementing the SEP.

60. Regarding the SEP, Defendant certifies the truth and accuracy of each of the following:

- a. that all cost information provided to EPA in connection with EPA’s approval of the SEP is complete and accurate and that

Defendant in good faith estimates that the cost to implement the SEP is approximately \$7,700,000;

- b. that, as of the date of executing this Decree, Defendant is not required to perform or develop the SEP by any federal, State, or local law or regulation and is not required to perform or develop the SEP by agreement, grant, or as injunctive relief awarded in any other action in any forum;
- c. that the SEP is not a project that Defendant was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this Decree;
- d. that Defendant has not received and will not receive credit for the SEP in any other enforcement action;
- e. that Defendant will not receive any reimbursement for any portion of the SEP from any other person; and
- f. that Defendant is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in Paragraph 58. For purpose of this certification, the term “open federal financial assistance transaction” refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not yet expired.

61. SEP Completion Report. Within thirty (30) Days of satisfactory completion of the SEP, Defendant shall submit a SEP Completion Report to the EPA and ADEM, in accordance with Section XVIII (Notices). The SEP Completion Report shall contain the following information:

- a. a detailed description of the SEP as implemented;
- b. a description of any problems encountered in completing the SEP and the solutions thereto;
- c. an itemized list of all eligible SEP costs expended;
- d. certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and
- e. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

62. EPA and ADEM may, in their discretion, require information in addition to that described in the preceding Paragraph, to evaluate Defendant's SEP Completion Report.

63. The United States, after receiving the SEP Completion Report and conferring with ADEM, shall notify Defendant whether it agrees Defendant has satisfactorily completed the SEP. If Defendant has not satisfactorily completed the SEP

in accordance with this Consent Decree, stipulated penalties may be assessed under Section XII.

64. Disputes concerning the satisfactory performance of the SEP and the amount of eligible SEP costs may be resolved under Section XIV (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

65. Each submission required under this Section shall be signed by a Responsible Corporate Officer with knowledge of the SEP and shall bear the certification language set forth in Paragraph 75.

66. Any public statement, oral or written, in print, film, or other media, made by Defendant making reference to the SEP itself or its end product under this Decree shall include the following language: “This project was undertaken in connection with the settlement of an enforcement action, United States et al v. Kronospan, LLC, taken on behalf of the U.S. Environmental Protection Agency and the Alabama Department of Environmental Management under the Clean Water Act and the Alabama Water Pollution Control Act.”

67. For federal income tax purposes, Defendant agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

XI. SAMPLING & REPORTING REQUIREMENTS

68. Defendant shall seek permission from OWSB and all other necessary entities to monitor at the Highway 202 Lift Station or one of two specific OWSB manholes, which are numbers M-21-018 or M-21-016, on a 10-inch sewer segment that only receives flow from the Defendant’s Facility, on one (1) Day of Facility production

each week until three-hundred and sixty-five (365) Days after either: (1) the submission of the Objectionable Solids Report required under Subparagraph 54.b above finds that Objectionable Solids are not present and do not have the potential to appear in the Facility's Discharge to the POTW; or (2) the submission of a Verification Report required under Subparagraph 54.d.vi above that finds Objectionable Solids are no longer present and do not have the potential to appear in the Facility's Discharge to the POTW.

69. Defendant shall begin weekly monitoring of the following parameters at the location or locations identified in the Objectionable Solids Work Plan described in Paragraph 54(a), upon receiving permission from OWSB and all other necessary entities. Samples for TSS, BOD, and COD shall be collected using a flow-proportional 24-hour composite technique and either an out-of-stream area-velocity or in-stream pressure-transducer type of flow measurement device. Samples for pH and temperature shall be collected using a grab technique when retrieving the composite sample and analyzed in the field. Defendant shall use 40 C.F.R. Part 136 methods, and, additionally, composite sample analyses shall employ the Kronospan Sample Preparation Procedure.

70. Quarterly Monitoring Reports. On a quarterly basis, within thirty (30) Days after the end of each calendar year Quarter (i.e., by April 30, July 30, October 30, and January 30), Defendant shall submit electronically to the EPA and ADEM an effluent monitoring report ("Quarterly Monitoring Report") that includes the information collected pursuant to this Paragraph 69. The Quarterly Monitoring Reports shall describe:

- a. Date and timeframe over which the samples were collected;

- b. Location(s) where samples were collected;
- c. Method(s) of sample collection;
- d. Analytical methods used and times of analyses;
- e. Analytical results and units of measurement;
- f. Total discharge flow over the sample period; and
- g. pH and temperature equipment calibration information.

71. Quarterly Compliance Reports.

- a. After the Effective Date of this Consent Decree, within thirty (30) Days after the end of each Quarter, until termination of this Consent Decree pursuant to Section XXII, Defendant shall submit a Quarterly Compliance Report for the preceding Quarter that shall include a list of any violations of the SID Permit or Compliance Standards, and the status of compliance and implementation of the Work. For any reported noncompliance with the SID Permit or Compliance Standards, Defendant shall provide an explanation for the cause(s) of the noncompliance, remedial measures taken, and date for achieving compliance, and a list of stipulated penalties owed and documentation of payment.
- b. The Quarterly Compliance Reports shall also include a description of any noncompliance with the requirements of this Consent Decree and an explanation of the violation's likely cause(s) and the status of the remedial measures taken, or to be taken, to prevent or minimize such violation. If Defendant violates, or has reason to believe that it may violate, any requirement of this Consent Decree, Defendant shall notify

the United States and ADEM of such violation and its likely duration, within ten (10) Days of the Day Defendant first becomes aware of the violation, with an explanation of the violation's likely cause(s) and of the remedial measures taken, or to be taken, to eliminate such violation. If the cause(s) of a violation cannot be fully explained at the time the Report is due, Defendant shall so state in the Report and provide a date by which a full report will be provided. Defendant shall investigate the cause(s) of the violation and shall then submit an amendment to the Report, including a full explanation of the cause(s) of the violation, within thirty (30) Days of the Day Defendant becomes aware of the cause(s) of the violation. Nothing in this Paragraph or the following Paragraph relieves Defendant of its obligation to provide the notice required by Section XIII (Force Majeure) of this Consent Decree.

72. Whenever any violation of this Consent Decree or of any applicable permits or any other event affecting Defendant's performance under this Decree, or the performance of its Facility, may pose an immediate threat to the public health or welfare or the environment, Defendant shall notify the EPA and ADEM either orally or by electronic transmission as soon as possible, but no later than twenty-four (24) hours after

Defendant first knew of the violation or event. This procedure is in addition to the requirements set forth in the preceding Paragraph.

73. All reports shall be submitted to the persons designated in Section XVIII (Notices).

74. The reporting required under this Consent Decree shall supersede any reporting requirements of the EPA AO and/or ADEM CO.

75. Each report submitted by Defendant under this Section shall be signed by a Responsible Corporate Officer of the submitting party and include the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

76. The reporting requirements of this Consent Decree do not relieve Defendant of any reporting obligations required by the CWA or implementing regulations, or by any other federal, State, or local law, regulation, permit, or other requirement.

77. Any information provided pursuant to this Consent Decree may be used by the United States or ADEM in any proceeding to enforce the provisions of this Consent Decree and as otherwise permitted by law.

XII. STIPULATED PENALTIES

78. Defendant shall be liable for stipulated penalties to the United States and ADEM for violations of this Consent Decree as specified below, unless excused under Section XIII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any work plan or schedule approved under this Decree, according to all applicable requirements of this Decree and within the specified time schedules established by or approved under this Decree.

- a. Late Payment of Civil Penalties If Defendant fails to pay the civil penalties required to be paid under Section VI (Civil Penalty) when due, Defendant shall pay a stipulated penalty of \$1,500 per Day for each Day that any payment is late, in addition to interest on the portion of the civil penalties not paid.
- b. Non-Compliance with Consent Decree. The following stipulated penalties shall accrue per violation per Day for each violation of any requirement of this Consent Decree, except for those violations otherwise specifically identified in this Paragraph 78.

Penalty Per Violation Per Day	Period of Noncompliance
\$ 500 per Day or portion thereof	1 st through 14 th Day
\$ 1,500 per Day or portion thereof	15 th through 30 th Day
\$ 3,000 per Day or portion thereof	31 st Day and beyond

c. Reporting Requirements. The following stipulated penalties shall accrue per violation per Day for each violation of the reporting requirements of Section XI:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 250 per Day or portion thereof	1 st through 14 th Day
\$ 500 per Day or portion thereof	15 th through 30 th Day
\$ 750 per Day or portion thereof	31 st Day and beyond

d. Pass-Through or Interference Violations. The following stipulated penalties shall accrue for each initial and subsequent violation that results in Pass-Through or Interference under 40 C.F.R. § 403.5(a)(1) at the POTW caused or contributed to by pollutants or wastewater introduced by the Facility to the POTW resulting in violations of

the POTW's NPDES Permit, either alone or in conjunction with a discharge or discharges from other sources, after the Effective Date of this Consent Decree:

Period of Noncompliance	Per Initial Violation Penalty	Additional Per Day Penalty
From Effective Date of Consent Decree to 150 Days After Effective Date	\$1,000	\$500
From 151 Days After Effective Date of Consent Decree to 300 Days After Effective Date	\$2,000	\$500
From 301 Days After Effective Date of Consent Decree to 600 Days After Effective Date	\$5,000	\$500
From 601 Days After Effective Date of Consent Decree Until Consent Decree Termination	\$10,000	\$500

An upset condition as provided in the SID Permit shall not be considered Interference for the purposes of this Subparagraph.

e. Discharge Limit Violations. The following stipulated penalties shall accrue for: (i) each exceedance of Discharge Limitations set forth in the SID Permit, or any subsequently-modified SID Permit; (ii) each violation of the Specific Prohibitions, other than Pass-Through and Interference; and (iii) each exceedance of any local limits incorporated in a future or modified SID:

Penalty Per Violation Per Day	Period of Noncompliance
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\$ 500 per Day or portion thereof	1 st through 14 th Day
\$ 750 per Day or portion thereof	15 th through 30 th Day
\$ 1,000 per Day or portion thereof	31 st Day and beyond

f. Non-Discharge Limit Violations of SID Permit. The following stipulated penalties shall accrue for each Non-Discharge Limit Violation of the SID Permit or any subsequently-modified SID Permit at the Facility after the Effective Date of this Consent Decree. Non-Discharge Limit Violations of the SID Permit or any subsequent modifications to the SID Permit only include: (i) failure to resample after a Discharge Limit Violation; (ii) failure to submit monitoring reports; (iii) failure to comply with monitoring requirements; and (iv) failure to report, or to timely report, slug discharges or discharge limit violations to the POTW:

Penalty Per Violation Per Day	Period of Noncompliance
\$ 500 per Day or portion thereof	1 st through 14 th Day
\$ 750 per Day or portion thereof	15 th through 30 th Day
\$ 1,000 per Day or portion thereof	31 st Day and beyond

g. SEP Compliance. If Defendant fails to satisfactorily complete the SEP by the deadline set forth in Section X and Appendix B, Defendant shall pay a stipulated penalty in the amount of 80% of the difference between \$7,700,000 (the amount Defendant is obligated to spend on the SEP) and the amount Defendant actually spends on the SEP. Thus, for example, if Defendant only spends \$2,000,000 on the SEP, it shall pay a stipulated penalty of \$4,560,000 ($0.80 \times (\$7,700,000 - \$2,000,000)$). The penalty under this

Subparagraph shall accrue as of the date specified for completing the SEP or the date performance ceases, whichever is earlier. No stipulated penalty shall otherwise be assessed if the Defendant complies with the SEP requirements.

79. Except as provided in Subparagraph g, stipulated penalties under this Section shall begin to accrue on the Day after performance is due or on the Day a violation occurs, whichever is applicable, and shall continue to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated penalties shall accrue simultaneously for separate violations of this Consent Decree.

80. Defendant shall pay stipulated penalties to the United States and ADEM within thirty (30) Days of a written demand by either Plaintiff. Defendant shall pay fifty (50) percent of the total stipulated penalty amount due to the United States and fifty (50) percent to ADEM. The Plaintiff making a demand for payment of a stipulated penalty shall simultaneously send a copy of the demand to the other Plaintiff.

81. Either Plaintiff may, in the unreviewable exercise of its discretion, reduce or waive stipulated penalties otherwise due it under this Consent Decree.

82. Stipulated penalties shall continue to accrue as provided in Paragraph 79, during any Dispute Resolution, but need not be paid until the following:

- a. If the dispute is resolved by agreement of the Parties or by a decision of EPA or ADEM that is not appealed to the Court, Defendant shall pay accrued penalties determined to be owing, together with interest, to the United States and/or ADEM within thirty (30) Days of the effective date of the agreement or the receipt of EPA's or the ADEM's decision or order.

b. If the dispute is appealed to the Court and the United States or ADEM prevails in whole or in part, Defendant shall pay all accrued penalties determined by the Court to be owing, together with interest, within sixty (60) Days of receiving the Court's decision or order, except as provided in Subparagraph 82.c, below.

c. If any Party appeals the District Court's decision, Defendant shall pay all accrued penalties determined to be owing, together with interest, within fifteen (15) Days of receiving the final appellate court decision.

83. Defendant shall pay stipulated penalties owing to the United States in the manner set forth and with the confirmation notices required by Paragraph 37, except that the transmittal letter shall state that the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

84. Defendant shall pay stipulated penalties owing to ADEM in the manner set forth in Paragraph 38 and shall include a cover letter stating the payment is for stipulated penalties and shall state for which violation(s) the penalties are being paid.

85. If Defendant fails to pay stipulated penalties according to the terms of this Consent Decree, Defendant shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit the United States or ADEM from seeking any remedy otherwise provided by law for Defendant's failure to pay any stipulated penalties.

86. The payment of penalties and interest, if any, shall not alter in any way Defendant's obligation to complete the performance of the requirements of this Consent Decree.

87. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XVI (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to seek any other relief it deems appropriate for Defendant's violation of this Decree or applicable law, including but not limited to an action against Defendant for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

XIII. FORCE MAJEURE

88. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of Defendant, of any entity controlled by Defendant, or of Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendant's best efforts to fulfill the obligation. The requirement that Defendant exercise "best efforts to fulfill the obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure, such that the delay and any adverse effects of the delay are minimized. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Consent Decree.

Notwithstanding the foregoing, any failure by any overseas contractor or supplier to design or install the equipment necessary to meet any required timeframe to accomplish a defined task set forth in Section X and Appendix B may constitute “Force Majeure” to the extent that any such failure to meet a timeframe under Section X or Appendix B is caused by the COVID-19 public health crisis, even though COVID-19 is already under way, provided, that Defendants otherwise meet the requirements for force majeure under this Consent Decree.

89. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, Defendant shall provide notice orally or by electronic or facsimile transmission to the EPA and ADEM in accordance with Section XVIII (Notices), within seventy-two (72) hours of when Defendant first knew that the event might cause a delay. Within seven (7) Days thereafter, Defendant shall provide in writing to EPA and ADEM an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendant’s rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendant shall include with any notice all available documentation supporting the claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Defendant from asserting any claim of force majeure for that event for the period of such failure to comply, and

for any additional delay caused by such failure. Defendant shall be deemed to know of any circumstance of which Defendant, any entity controlled by Defendant, or Defendant's contractors knew or should have known.

90. If the EPA, after a reasonable opportunity for review and consultation with ADEM, agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by the EPA, after a reasonable opportunity for review and consultation with ADEM, for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. The EPA will notify Defendant in writing, with a copy to ADEM, of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

91. If the EPA, after a reasonable opportunity for review and consultation with ADEM, does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the EPA will notify Defendant in writing, with a copy to ADEM, of its decision.

92. If Defendant elects to invoke the dispute resolution procedures set forth in Section XIV (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of the EPA's notice. In any such proceeding, Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts

were exercised to avoid and mitigate the effects of the delay, and that Defendant complied with the requirements of Paragraphs 88 and 89. If Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Defendant of the affected obligation of this Consent Decree identified to the EPA and the Court.

XIV. DISPUTE RESOLUTION

93. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States or ADEM to enforce any obligation of Defendant arising under this Decree.

94. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Defendant sends the United States, with a copy to ADEM, a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) Days from the date the dispute arises, unless that period is modified by written agreement. The EPA shall maintain an administrative record of the dispute, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

95. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, reached after consultation with ADEM, shall be considered binding unless, within thirty (30) Days after the conclusion of the informal

negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.

96. Formal Dispute Resolution. Defendant shall invoke formal dispute resolution procedures, within the period provided in the preceding Paragraph, by serving on the United States, with a copy to ADEM, a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting Defendant's position and any supporting documentation relied upon by Defendant.

97. The United States, after consultation with ADEM, shall serve the Plaintiffs' Statement of Position within forty-five (45) Days of receipt of Defendant's Statement of Position. The United States' Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Plaintiff and Defendant, unless Defendant files a motion for judicial review of the dispute in accordance with the following Paragraph.

98. Defendant may seek judicial review of the dispute by filing with the Court and serving on the United States and ADEM, in accordance with Section XVIII (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within ten (10) Days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Defendant's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent

Decree. The motion may not raise any issue not raised in informal dispute resolution pursuant to Paragraph 54, unless the Plaintiffs raise a new issue of law or fact in the Statement of Position.

99. The United States, after consultation with ADEM, shall respond to Defendant's motion within the period allowed by the Local Rules of this Court. Defendant may file a reply memorandum, to the extent permitted by the Local Rules.

100. Standard of Review.

a. Disputes Concerning Matters Accorded Record Review. Except as otherwise provided in this Consent Decree, in any dispute brought under Paragraph 96 pertaining to the adequacy or appropriateness of plans, procedures to implement plans, schedules or any other items requiring approval under this Consent Decree by the EPA, in consultation with ADEM; the adequacy of the performance of work undertaken pursuant to this Consent Decree; and all other disputes that are accorded review on the administrative record under applicable principles of administrative law, Defendant shall have the burden of demonstrating, based on the administrative record, that the position of the United States or ADEM is arbitrary and capricious or otherwise not in accordance with law.

b. Other Disputes. Except as otherwise provided in this Consent Decree, in any other dispute brought under Paragraph 96, Defendant shall bear the burden of demonstrating that its position complies with this Consent Decree and better further the objectives of the Consent Decree.

101. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Defendant under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first Day of noncompliance, but payment shall be stayed pending resolution of the dispute as provided in Paragraph 82. If Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XII (Stipulated Penalties).

XV. INFORMATION COLLECTION AND RETENTION

102. The United States, the State, and their representatives, including attorneys, contractors, and consultants, shall have the right of entry into any facility covered by this Consent Decree, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the State in accordance with the terms of this Consent Decree;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or its representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Decree.

103. Upon request, Defendant shall provide the EPA and ADEM or their authorized representatives splits of any samples taken by Defendant. Upon request, the EPA and ADEM shall provide Defendant splits of any samples taken by the EPA or ADEM.

104. Until five (5) years after the termination of this Consent Decree, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Decree. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by the United States or the State, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

105. At the conclusion of the information-retention period provided in the preceding Paragraph, Defendant shall notify the United States and ADEM at least ninety (90) Days prior to the destruction of any documents, records, or other information subject to the requirements of the preceding Paragraph and, upon request by the United States or the State, Defendant shall deliver any such documents, records, or other information to the EPA or ADEM. Defendant may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendant asserts such a privilege, it shall

provide the following: (a) the title of the document, record, or information; (b) the date of the document, record, or information; (c) the name and title of each author of the document, record, or information; (d) the name and title of each addressee and recipient; (e) a description of the subject of the document, record, or information; and (f) the privilege asserted by Defendant. However, no documents, records, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on grounds of privilege.

106. Defendant may also assert that information required to be provided under this Section is protected as Confidential Business Information (“CBI”) under 40 C.F.R. Part 2 and confidential information pursuant to Ala. Code §§ 22-22-9, 41-22-4, and 41-22-5 and ADEM Admin. Code r. 335-1-1-.06. As to any information that Defendant seeks to protect as CBI and confidential information, Defendant shall follow the procedures set forth in 40 C.F.R. Part 2 and confidential information pursuant to Ala. Code §§ 22-22-9, 41-22-4, and 41-22-5 and ADEM Admin. Code r. 335-1-1-.06, respectively.

107. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the State pursuant to applicable federal or State laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XVI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

108. This Consent Decree resolves the civil claims of the United States and ADEM for the violations alleged in the Complaint filed in this action through the Date of Lodging.

109. The United States and ADEM reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the rights of the United States or ADEM to obtain penalties or injunctive relief under the Act or implementing regulations, or under other federal or state laws, regulations, or permit conditions. The United States and ADEM further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Defendant's Facility, whether related to the violations addressed in this Consent Decree or otherwise.

110. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, civil penalties, other appropriate relief relating to the Facility or Defendant's violations, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims that have been specifically resolved pursuant to Paragraph 108.

111. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Defendant is responsible for

achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Defendant's compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The United States and ADEM do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's compliance with any aspect of this Consent Decree will result in compliance with provisions of the CWA, 33 U.S.C. § 1251, et seq.; the AWPCA, Ala. Code § 22-22-1, et seq.; or with any other provisions of federal, State, or local laws, regulations, or permits.

112. This Consent Decree does not limit or affect the rights of Defendant or of the United States or the State against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Defendant, except as otherwise provided by law.

113. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XVII. COSTS

114. The Parties shall bear their own costs of this action, including attorneys' fees, except that the United States and ADEM shall be entitled to collect the costs (including attorneys' fees) incurred in any action necessary to collect any portion of the civil penalty or any stipulated penalties due but not paid by Defendant.

XVIII. NOTICES

115. Unless otherwise specified in this Decree, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

As to the Department of Justice by email: eescdcopy.enrd@usdoj.gov
Re: DJ # 90-5-1-1-10934

As to the Department of Justice by mail: EES Case Management Unit
Environment and Natural Resources
Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ Case No. 90-5-1-1-10934

Division
Karl Fingerhood
Environmental Enforcement Section
Environment and Natural Resources
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Tel: (202) 514-7519
Karl.Fingerhood@usdoj.gov

As to the EPA:
Coordinator
Region 4
David Phillips, Pretreatment Program
U.S. Environmental Protection Agency,
Sam Nunn Federal Center
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
Tel: (404) 562-9773
Phillips.David@epa.gov

Region 4
Suzanne K. Armor, Attorney-Advisor
Water Law Office
Office of Regional Counsel
U.S. Environmental Protection Agency,
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Tel: (404) 562-9701
Armor.Suzanne@epa.gov

As to ADEM:

Scott Ramsey, Chief
Industrial Section
Water Division
Alabama Department of Environmental
Management
P.O. Box 301463
Montgomery, Alabama 36130-1463
Tel: (334) 271-7838
SRamsey@adem.alabama.gov

Carrie Blanton
Assistant Attorney General
Alabama Department of Environmental
Management
Office of General Counsel
P.O. Box 301463
Montgomery, Alabama 36130-1463
Tel: (334) 394-4357
Carrie.Blanton@adem.alabama.gov

As to Defendant:

Hans-Juergen Obermaier
Chief Executive Officer
1 Kronospan Way
Eastaboga, AL 36260
Tel: (256) 741-8755
h.obermaier@kronospanusa.com

William L. Penny
Burr & Forman, LLP
222 2nd Avenue South, Suite 2000
Nashville, TN 37201
Tel: (615) 724-3213
bpenny@burr.com

116. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.

117. Notices submitted pursuant to this Section shall be deemed submitted upon mailing, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in writing.

XIX. EFFECTIVE DATE

118. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted, whichever occurs first, as recorded on the Court's docket. In the event the United States withdraws or withholds consent to this Consent Decree before entry, or the Court declines to enter the Consent Decree, then the preceding requirement to perform duties scheduled to occur before the Effective Date shall terminate.

XX. RETENTION OF JURISDICTION

119. The Court shall retain jurisdiction over this case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XIV and XXI, respectively, or effectuating or enforcing compliance with the terms of this Decree.

XXI. MODIFICATION

120. The terms of this Consent Decree, including any attached appendices, may be modified only by a subsequent written agreement signed by all the Parties. Where the modification constitutes a material change to this Consent Decree, it shall be effective only upon approval by the Court.

121. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIV (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 100, the Party seeking the modification bears the

burden of demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XXII. TERMINATION

122. After Defendant has completed the requirements of Sections VIII (Compliance Requirements), IX (Work to be Performed), X (Supplemental Environmental Projects), and XI (Sampling and Reporting Requirements), and has paid the civil penalties and any accrued stipulated penalties as required by this Consent Decree, Defendant may serve upon the United States and ADEM a Request for Termination, stating that Defendant has satisfied those requirements, together with all necessary supporting documentation.

123. Following receipt by the United States and ADEM of Defendant's Request for Termination, the Parties shall confer informally concerning the Request and any disagreement that the Parties may have as to whether Defendant has satisfactorily complied with the requirements for termination of this Consent Decree. If the United States, after consultation with ADEM, agrees that the Decree may be terminated, the Parties shall submit, for the Court's approval, a joint stipulation terminating the Decree.

124. If the United States, after consultation with ADEM, does not agree that the Decree may be terminated, Defendant may invoke Dispute Resolution under Section XIV. However, Defendant shall not seek Dispute Resolution of any dispute regarding termination until sixty (60) Days after service of its Request for Termination.

XXIII. PUBLIC PARTICIPATION

125. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) Days for public notice and comment in accordance with 28 C.F.R.

§ 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. Defendant consents to entry of this Consent Decree without further notice and agrees not to withdraw from or oppose entry of this Consent Decree by the Court or to challenge any provision of the Decree, unless the United States has notified Defendant in writing that it no longer supports entry of the Decree.

XXIV. SIGNATORIES/SERVICE

126. Each undersigned representative of Defendant, ADEM, the EPA, and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

127. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

128. Defendant agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

129. Defendant need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXV. INTEGRATION

130. This Consent Decree constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than Deliverables that are subsequently submitted and approved pursuant to this Consent Decree, the Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XXVI. FINAL JUDGMENT

131. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, ADEM, and Defendant.

XXVII. APPENDICES

132. The following Appendices are attached to and part of this Consent Decree:

“Appendix A” is the Sampling Evaluation and Performance Audit Inspection Report (June 7, 2017);

“Appendix B” is a description of the SEP; and

“Appendix C” is a list of Deliverables required under Sections IX (Work to be Performed) and X (Supplemental Environmental Project) of this Consent Decree and their corresponding triggering events. In the event of a discrepancy between the deadlines represented in Appendix C and this Consent Decree, the deadlines for Deliverables in this Consent Decree shall control.

DATED and ENTERED this _____ day of _____, 20_____.

UNITED STATES DISTRICT JUDGE
Northern District of Alabama

THE UNDERSIGNED PARTIES enter into this Joint Stipulation of Settlement in the matter of United States et al. v. Kronospan, LLC:

FOR Plaintiff THE UNITED STATES OF AMERICA:

PRIM F. ESCALONA
UNITED STATES ATTORNEY

Date: 10/30/2020

/S/ Jason R. Cheek by KJF (with Permission)
JASON R. CHEEK
Assistant U.S. Attorney
1801 4th Avenue North
Birmingham, Alabama 35203
Telephone: (205) 244-2104
Jason.Cheek@usdoj.gov

THE UNDERSIGNED PARTIES enter into this Joint Stipulation of Settlement in the matter of United States et al. v. Kronospan, LLC:

FOR Plaintiff THE UNITED STATES OF AMERICA:

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice

Date: 10/30/2020

15/ Karl J. Fingerhood
KARL J. FINGERHOOD
(Pennsylvania Bar #62360)
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
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Karl.Fingerhood@usdoj.gov

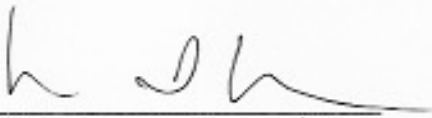
THE UNDERSIGNED PARTIES enter into this Joint Stipulation of Settlement in the matter of United States et al. v. Kronospan, LLC:

:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date:

10/6/20



ROSEMARIE KELLEY
Director
Office of Civil Enforcement
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

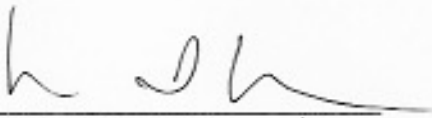
THE UNDERSIGNED PARTIES enter into this Joint Stipulation of Settlement in the matter of United States et al. v. Kronospan, LLC:

:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date:

10/6/20



ROSEMARIE KELLEY
Director
Office of Civil Enforcement
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

THE UNDERSIGNED PARTIES enter into this Joint Stipulation of Settlement in the matter of United States et al. v. Kronospan, LLC:

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY:

Date: 9/11/20



LEIF PALMER
Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

SUZANNE K. ARMOR
Associate Regional Counsel
Office of Water Legal Support
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

THE UNDERSIGNED PARTIES enter into this Joint Stipulation of Settlement in the matter of United States et al. v. Kronospan, LLC:

FOR Plaintiff ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT:

Date: 10-22-2020



LANCE R. LEFLEUR

Director

Alabama Department of Environmental
Management

P.O. Box 301463

Montgomery, Alabama 36130-1463

Date: 10/22/2020



CARRIE BLANTON

Assistant Attorney General

Alabama Department of Environmental
Management

Office of General Counsel

P.O. Box 301463

Montgomery, Alabama 36130-1463

THE UNDERSIGNED PARTIES enter into this Joint Stipulation of Settlement in the matter of United States et al. v. Kronospan, LLC:

FOR Defendant KRONOSPAN, LLC:

Date: 04. AUG 2020



HANS-JUERGEN OBERMAIER
Chief Executive Officer
1 Kronospan Way
Eastaboga, Alabama 36260

Date: 07.31.2020



JOHN CONNELL
Human Resource Director
Kronospan
1 Kronospan Way
Eastaboga, Alabama 36260

