

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA

UNITED STATES OF AMERICA, and)	
the STATE OF ALABAMA DEPARTMENT))	
OF ENVIRONMENTAL MANAGEMENT,)	
)	
Plaintiffs,)	
)	
v.)	CIVIL ACTION NO.
)	
LEE BRASS, INC.,)	
)	
Defendant.)	

CONSENT DECREE

WHEREAS, Plaintiff the United States of America ("United States"), by authority of the Attorney General of the United States, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA") together with the State of Alabama Department of Environmental Management ("ADEM"), alleges that Lee Brass, Inc. ("Lee Brass") has violated, and continues to violate the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq.,

WHEREAS, Lee Brass, a corporation organized and existing under the laws of the State of Delaware, licensed to do business in the State of Alabama, owns and operates a brass foundry located at 1800 Golden Springs Road, Anniston, Calhoun County, Alabama (the "Brass Foundry");

WHEREAS, the United States' Complaint seeks the imposition of civil penalties and compliance with RCRA, and the implementing regulations promulgated thereunder;

WHEREAS, the United States alleges that Lee Brass: 1) treated hazardous waste foundry sand without a permit in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), ADEM Admin. Code R. 335-14-8-.01(1)(c); 2) land disposed of restricted waste in violation of Section 3004(g) of RCRA, 42 U.S.C. § 6924(g), and 40 C.F.R. § 268.40; and 3)

stored hazardous waste without a permit in violation of Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and ADEM Admin. Code R. 335-14-8-.01(1)(c);

WHEREAS, the United States alleges nine additional RCRA violations against Lee Brass, which were identified by EPA and ADEM during a February 1999 compliance inspection;

WHEREAS, the United States, ADEM, and Lee Brass agree that settlement of this action is in the public interest and is made in good faith and that entry of this Consent Decree without litigation is the most appropriate means of resolving this action; and

NOW THEREFORE, before the taking of testimony, without the necessity of trial, without adjudication of any issues of fact or law, without any admission of liability or of any issue of fact or law by Lee Brass, and upon the consent of the Parties hereto,

IT IS ADJUDGED, ORDERED AND DECREED THAT:

I. JURISDICTION

1. The Parties agree and consent that this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1355, and under Sections 3004, 3005, and 3008 of RCRA, 42 U.S.C. §§ 6924, 6925, and 6928.

II. PARTIES BOUND AND NOTICE OF TRANSFER

2. The provisions of this Consent Decree shall apply to and be binding upon the United States, ADEM, and upon Lee Brass and its successors and assigns. Each party certifies that at least one of its undersigned representatives is fully authorized by the party whom he or she represents to enter into the terms and conditions of this Consent Decree, to execute it on behalf of that party, and to legally bind the party on whose behalf he or she executes this Consent Decree.

3. No change in ownership, corporate, or partnership status relating to the Brass Foundry will in any way alter the responsibilities of Lee Brass under this Consent Decree. In the event of any conveyance of easement, or other interest in the Brass Foundry, or any portion of the Brass

Foundry, all of Lee Brass' obligations under this Consent Decree shall continue to be met by Lee Brass.

4. During the pendency of this Consent Decree any deed, title, or other instrument of conveyance (excluding, however, a mortgage or deed of trust) executed by Lee Brass which transfers title to any part of the Brass Foundry shall contain a notice that the Brass Foundry is the subject of this Consent Decree setting forth the type of the case, case caption and index number, and the Court having jurisdiction.

5. Lee Brass shall provide a copy of all portions of this Consent Decree applicable to each contractor retained by Lee Brass after the effective date of this Consent Decree to perform the compliance measures required by this Consent Decree. In any action to enforce this Consent Decree, Lee Brass shall not raise as a defense the failure by any of its agents, servants, contractors, employees, successors or assigns to take action necessary to comply with this Consent Decree except as provided in Section XI (Force Majeure).

III. DEFINITIONS

6. Terms used in the Consent Decree that are defined in RCRA shall have the meaning set forth in RCRA, 42 U.S.C. §§ 6901 et seq.

7. Whenever the following terms are used in this Consent Decree, the definition specified hereinafter shall apply:

A. "ADEM" means the State of Alabama Department of Environmental Management.

B. "Brass Foundry" means the Lee Brass facility at 1800 Golden Springs Road, Anniston, Calhoun County, Alabama.

C. "Date of Lodging of the Consent Decree" means the date the signed Consent Decree is filed with the District Court.

D. "Date of Entry of the Consent Decree" means the date the signed Consent Decree is approved by the District Court.

E. "Day" means one calendar day.

F. "Department" means the State of Alabama Department of Environmental Management.

G. "EPA" means the United States Environmental Protection Agency.

H. "Facility" means the facility owned and operated by Lee Brass at 1800 Golden Springs Road, Anniston, Calhoun County, Alabama (the "Brass Foundry").

I. "Notify" and "submit" and other terms signifying an obligation to transmit or communicate documents and information mean to deliver in person, deposit in the United States mail or dispatch by express courier not later than the day that such transmission or communication is required by this Consent Decree. Should such day be a weekend day or a federally or state recognized holiday, the delivery, deposit, or dispatch shall be due on the next business day.

J. "Parties" means the United States of America, the State of Alabama Department of Environmental Management, and Lee Brass collectively.

K. "Plaintiff" means the United States of America and the State of Alabama Department of Environmental Management.

L. "Sand Loop" means the following components of the sand molding processes located in Lee Brass' respective foundry buildings: shakeout, screen(s), sand silo(s), muller(s), sand belt(s), mold hopper(s), molding machine(s), reserve pile(s) (limited to one reserve pile per foundry with a maximum of 100 tons), the shakeout conveyor(s), punchout unit(s), molds, and sand spillage directly reused in the sand molding process.

M. "State" means the State of Alabama Department of Environmental Management.

IV. COMPLIANCE RESPONSIBILITY

8. Except as expressly provided in this Consent Decree, nothing herein shall be construed to affect or limit the obligation of Lee Brass to comply with all federal, state, and local laws and regulations.

V. RCRA COMPLIANCE MEASURES

9. Lee Brass shall comply with the provisions of the Resource Conservation and Recovery Act (“RCRA”) and the Alabama Hazardous Waste Management and Minimization Act (“AHWMMA”) and their implementing regulations at its Brass Foundry by undertaking the activities in this Section.

10. **Certification:** Within thirty (30) days of the Date of Entry of the Consent Decree, Lee Brass shall certify to EPA and ADEM that, as of the date of the certification, the Brass Foundry is:

- a. not treating hazardous waste foundry sand without a permit, as required by Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), and Ala. Code 22-30-12;
- b. not land disposing of restricted waste, as prohibited by Section 3004(g) of RCRA, 42 U.S.C. § 6924(g), and 40 C.F.R. § 268.40 of the Land Disposal Restrictions;
- c. storing all hazardous waste in compliance with Section 3005(a) of RCRA, 42 U.S.C. § 6925(a) and , and ADEM Admin. Code R. 335-14 and Ala. Code 22-30-12, or, alternatively, is in compliance with the hazardous waste storage requirements under 40 C.F.R. § 262.34(a) (incorporating 40 C.F.R. § 265, Subparts I, AA, BB, and CC). The certification required by this Subparagraph 10.c specifically applies to any foundry sand taken out of the Sand Loop and destined for treatment or disposal and does not include sand directly reused within the Sand Loop. Any sand that is taken out of the Sand Loop is regulated by RCRA and shall have a hazardous waste determination. If hazardous, the waste stream must be handled in accordance with 40 C.F.R. Part 262 and ADEM R. 335-14-3. This certification also applies to any satellite accumulation drums containing characteristically hazardous floor sweepings not destined for reuse in the production process.
- d. storing any foundry by-products such as slag and metal parts awaiting reclamation in a manner that minimizes the possibility of a release of hazardous waste constituents

to the environment in accordance with 40 C.F.R. § 265.31 and ADEM Admin. Code R.335-14-.03(2);

- e. training employees working with hazardous waste as stated at 40 C.F.R. § 265.16(d)(4) and ADEM Admin. Code R.335-14-5-.02(7)(d)(4);
- f. maintaining job titles for employees working with hazardous waste in accordance with 40 C.F.R § 265.16(d)(2) and ADEM Admin. Code R.335-14-5-.02(7)(d)(2);
and
- g. storing used oil in closed, labeled containers as required by 40 C.F.R. § 279.22 and ADEM R.335-14-17-.03.

11. Closure Plan/ Post-Closure Plan. Although Lee Brass does not agree or admit that the sand reclamation unit is subject to Closure and Contingent Post-Closure Plan regulation, within thirty (30) days of the Date of Entry of the Consent Decree, Lee Brass shall submit to EPA and the ADEM for their review a complete Closure and Contingent Post-Closure Plan for the sand reclamation unit (i.e., the facility's Sand Reclamation Unit ("SRU") including storage silo, ancillary equipment, calciner, and baghouse, but excluding the metals recovery unit) in accordance with the requirements of 40 C.F.R. Part 264, Subpart G and ADEM Administrative Code R. 335-14-5-.07(2) through 335-14-5-.07(6), and, if clean closure can not be achieved, the requirements of ADEM Administrative Code R. 335-14-5-.07(7) through 335-14-5-.07(11) and 335-14-5-.14(11). The closure plan and contingent post-closure plan shall address all areas of soil and groundwater contamination resulting from the operation of the SRU. Said plans shall also include an implementation schedule, proposed cleanup standards and justification, and a full description of the methods by which this site will be remediated and by which attainment of cleanup standards will be confirmed. Finally, said plans shall comply with all requirements of ADEM Administrative Code R. 335-14-6-.07, and shall be accompanied by applicable fees. If EPA and ADEM do not approve the plans, they shall provide comments, which shall be incorporated by Lee Brass and Lee Brass shall re-submit the amended plan to EPA and ADEM for approval within sixty (60) days. Lee Brass

shall then implement the plans, as approved. Upon completion of implementation, Lee Brass shall submit a certification of completion to EPA and ADEM. If EPA and ADEM do not concur that the plan has been completed, they shall inform Lee Brass of this determination and shall set forth the work which remains to be done. Unless Lee Brass invokes Dispute Resolution, it shall complete the work identified by EPA and ADEM and re-submit a certification of completion.

12. RCRA Compliance Audit. Lee Brass shall complete a RCRA compliance audit of its Brass Foundry within two hundred and seventy (270) days of the Date of Entry of the Consent Decree. Lee Brass shall correct all violations discovered during the Audit. Such audit shall be carried out in strict compliance with Appendix A of this Consent Decree, which is incorporated herein by reference as if fully set forth herein.

13. Daily Sand Management. All used sands managed outside of the Sand Loop shall be managed as solid wastes and, if applicable, hazardous wastes. This excludes any process sand that must be removed from the Sand Loop, for a period not to exceed 24 hours, for the sole purpose of adjusting the sand molding quality parameters prior to re-introduction into the Sand Loop (e.g., sand cooling).

14. Corrective Action. Lee Brass shall conduct corrective action activities for all Solid Waste Management Units (“SWMUs”) and Areas of Concern (“AOCs”), as those terms are defined by the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 98 Stat. 3221 (1984), (“HSWA”) and AHWMMMA, and identified by ADEM. The implementation of these activities shall be administered by ADEM pursuant to the ADEM Administrative Consent Order No. 01- - CHW attached hereto as Appendix B and incorporated by reference herein as if fully set out below. Any violation of the ADEM Administrative Order attached hereto as Appendix B shall be a violation of this Consent Decree.

VI. REPORTING REQUIREMENTS

15. Beginning with the fifteenth day of the fourth month following the Date of Entry of this Consent Decree, and quarterly thereafter until termination of this Consent Decree, Lee Brass shall

submit to EPA and ADEM a progress report which describes in detail activities undertaken by Lee Brass during the previous quarterly period to comply with the requirements of the RCRA compliance measures under this Consent Decree, identify any anticipated or encountered problems, and the proposed resolution of those problems.

VII. SITE ACCESS

16. EPA and ADEM, their employees and authorized agents (including contractors and subcontractors), shall have access to the Facility, at all reasonable times and in accordance with Lee Brass' internal security and safety procedures for the purposes of inspecting, investigating or verifying compliance with the terms of this Consent Decree, consistent with the authority set forth in RCRA, 42 U.S.C. § 6907, and Ala. Code 22-30-19(d). For the purposes of this Consent Decree, Lee Brass agrees that the foregoing statutory provision authorizes inspecting, investigating and verifying Lee Brass' compliance with this Consent Decree.

17. Lee Brass shall have the right to accompany EPA and/or ADEM representatives and employees throughout their presence at the Facility and to monitor and record the investigative activities conducted by EPA and/or ADEM. If such a recording of EPA and ADEM's investigatory activities is made, Lee Brass shall, upon request, provide a copy of the recording to EPA and/or ADEM. This request shall be confirmed in writing.

18. Section VII of this Consent Decree in no way limits any right of inspection and/or entry available to EPA and/or ADEM pursuant to applicable federal or state laws, regulations, or permits. This Section does not constitute a waiver of any claim of attorney-client privilege or attorney-work product that Lee Brass may assert with regard to documents or recordings at the Facility.

VIII. CIVIL PENALTY

19. Within thirty (30) days after entry of this Consent Decree, Lee Brass shall pay a civil penalty in the total amount of \$350,000 as follows: 1) \$175,000 of that civil penalty shall be paid to the United States by Electronic Funds Transfer ("EFT") to the United States Department of Justice, in accordance with current EFT procedures, referencing the USAO File Number and DOJ Case

Number 90-7-1-06919 the civil action case name and case number of the Northern District of Alabama. The costs of such EFT shall be Lee Brass' responsibility. Payment shall be made in accordance with instructions provided to Lee Brass by the Financial Litigation Unit of the U.S. Attorney's Office for the Northern District of Alabama. Any funds received after 11:00 a.m. (EST) shall be credited on the next business day. Lee Brass shall provide notice of payment, referencing the USAO File Number and DOJ Case Number 90-5-2-1-07109/1 and the civil action case name and case number, to the Department of Justice and to EPA, as provided in Paragraph 51 (Notice); and 2) \$175,000 to the State of Alabama. Such penalty shall be paid by check made out to the "Alabama Department of Environmental Management." The payment shall reference the civil action case name and case number of the Northern District of Alabama and should be mailed to: ADEM., Office of General Counsel, Attention: Rebecca Patty, P.O. Box 30463, Montgomery, AL 36130.

20. In the event that the civil penalty specified in Paragraph 19 is not paid when due, Lee Brass shall pay interest at the rate provided in 28 U.S.C. § 1961(a), that is, a rate equal to the coupon issue yield equivalent (as determined by the Secretary of the Treasury) of the average accepted auction price for the last auction of 52-week U.S. Treasury bills settled prior to the date this Consent Decree is entered from the original due date to the date of payment. Interest shall be computed daily and compounded annually.

21. The civil penalty set forth herein is a penalty within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), and, therefore, Lee Brass shall not treat this penalty payment as tax deductible for purposes of federal, state, or local law.

IX. STIPULATED PENALTIES

22. For failure to meet any requirement of this Consent Decree and its Appendices including submission of work plans, reports, certification logs or any other documents required under this Consent Decree, or for failure to implement any requirements of those documents or to meet any other requirement of this Consent Decree, Lee Brass shall pay the following stipulated penalties

Days Late

Penalty Per Day Per Violation

Days 1-7	\$400
Days 8-14	\$1000
Days 15-28	\$2000
Days over 28	\$3000

23. Stipulated penalties due and owing to the United States or ADEM under this Section shall be paid in the manner specified in Paragraph 19 of the Consent Decree for the payment of the civil penalty.

Address for United States payment:

Chief, Civil Division
 United States Attorney's Office
 Northern District of Alabama
 Room 200
 Robert S. Vance Federal Building
 1800 Fifth Avenue, North
 Birmingham, Alabama 35203

Address for ADEM payment:

Office of General Counsel
 Alabama Department of Environmental Management
 Post Office Box 301463
 Montgomery, AL 36120-1463

A copy of the payment and any correspondence relating to any stipulated penalty from Lee Brass to the United States Attorney shall be sent to the United States, EPA and ADEM as provided in Paragraph 49 of this Consent Decree.

24. All stipulated penalties begin to accrue on the day after performance is due or on the day a violation occurs, and continue to accrue through the final day of correction of the noncompliance. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree. Penalties shall accrue regardless of whether EPA and ADEM have notified Lee Brass of a violation. All stipulated penalties owed to the United States and Alabama under this Section shall be due and payable within thirty (30) days of Lee Brass' receipt from EPA of a written demand for payment of the penalties, unless Lee Brass invokes the Dispute Resolution procedures under Paragraphs 28 through 34 of this Consent Decree.

25. Stipulated penalties shall continue to accrue as provided in Paragraph 21 of this Consent Decree during any dispute resolution period, except during any dispute resolution period in which EPA and/or ADEM is responding to a submission by Lee Brass, but need not be paid unless the Plaintiffs prevail in the dispute or EPA and ADEM agree otherwise. If the Plaintiffs prevail by decision of this Court, Lee Brass shall remit payment of all accrued penalties within thirty (30) days of receipt of the Court's decision. If Lee Brass fails to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties and any interest that has accrued.

26. Nothing in this Section shall be construed as prohibiting, altering or in any way limiting the ability of the United States to seek other remedies or sanctions available by virtue of Lee Brass' violation(s) of this Consent Decree or of the statutes and regulations referenced herein except as provided in Paragraph 40 of this Consent Decree.

27. The payment of stipulated penalties shall not alter in any way Lee Brass' obligation to complete the performance of the actions described in this Consent Decree.

X. DISPUTE RESOLUTION

28. The dispute resolution procedures of this Section X shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree and all Appendices. However, the procedures set forth in this Section X shall not apply to actions by the United States to enforce obligations of Lee Brass that have not been disputed in accordance with this Section.

29. The dispute resolution procedures of this Consent Decree are invoked by one party sending the other party a written notice of dispute. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the Parties. The period for informal negotiations shall not exceed twenty-one (21) days from the date of the notice of dispute, unless it is modified by written agreement of the Parties to the dispute.

30. In the event that the Parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA and ADEM shall be considered binding unless, within 14 days after the conclusion of the informal negotiation period, Lee Brass invokes the

formal dispute resolution procedures of this Section by serving on the United States a written statement of position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by Lee Brass .

31. Within fourteen (14) days after receipt of Lee Brass' statement of position, EPA will serve on Lee Brass its statement of position, including, but not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by EPA and ADEM.

32. Following receipt of both statements of position, the appropriate Division Director in EPA Region 4 will issue a final written decision resolving the dispute, which sets forth the basis for EPA's decision. EPA's decision shall be binding on Lee Brass unless, within 21 days of receipt of the decision, Lee Brass files with the Court and serves on the United States a notice of judicial appeal setting forth the matter in dispute, the efforts made by the Parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Lee Brass' notice of judicial appeal.

33. In any judicial proceeding on a dispute pertaining to any compliance measure pursuant to this Decree, Lee Brass shall have the burden of demonstrating that the decision of EPA is arbitrary and capricious or otherwise not in accordance with law. Such review shall be on the basis of the administrative record of the dispute. For purposes of this Section, the administrative record shall consist of the notice of dispute, the statements of position and all supporting documentation, EPA's written decision and any other written records submitted by the Parties. Judicial review of any other dispute arising under or with respect to the Consent Decree shall be governed by applicable provisions of law.

34. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of Lee Brass under this Consent Decree not directly in dispute, unless such obligation is dependent upon the disputed obligation or unless EPA or

the Court agrees otherwise. However, payment of stipulated penalties with respect to the disputed matter, shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment and except as provided in Paragraph 25, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree unless Lee Brass prevails on a disputed issue. In the event that Lee Brass does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section IX (Stipulated Penalties), unless EPA and ADEM agree otherwise.

XI. FORCE MAJEURE

35. Lee Brass' obligation to comply with one or more of the provisions of this Consent Decree shall be deferred or excused to the extent and for the duration that the delay in compliance or inability to comply is caused by a force majeure. Force majeure is defined as an event or set of circumstances that are beyond Lee Brass' control or of any entity controlled or hired by Lee Brass, including, but not limited to, its contractors and subcontractors, that delays or prevents the performance of any obligation under this Consent Decree despite the due diligence of Lee Brass under the circumstances to fulfill the obligation. The requirement that Lee Brass exercise "due diligence to fulfill the obligation" means exercising due diligence to anticipate any potential force majeure event and to address the effects of any potential force majeure event (1) as it is occurring, and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. This force majeure provision shall not apply to any delay due to increased costs or Lee Brass' financial inability to carry out the provisions of this Consent Decree, or to Lee Brass' failure to make timely and bona fide applications and to exercise diligent effort to obtain permits.

36. Lee Brass shall notify EPA within 72 hours by telephone and shall submit written notification to EPA within seven business days after the date when it first obtained knowledge of a delay or potential delay. Such notice shall include the nature, cause and anticipated length of the delay and the steps which Lee Brass has taken and will take, with a schedule for implementation, to avoid or minimize the delay. Failure to provide this written notice within the required time period

shall constitute a waiver of Lee Brass' right to invoke force majeure as a basis for delay or prevention of performance under this Consent Decree. If the Parties agree that the delay was attributable to a force majeure event, the time for performance of the provision shall be extended for a period of time equal to the delay caused by the event plus any period of time necessary for any demobilization and remobilization.

37. If the Parties do not agree that the delay or inability to perform was caused by a force majeure event, or are unable to agree on the extent of delay, Lee Brass shall have the burden of proving that the delay was attributable to a force majeure event, that Lee Brass has exercised due diligence in minimizing the delay, and that, as a result of the delay, a particular extension period for compliance is required.

XII. PUBLIC ACCESS TO DOCUMENTS

38. Except as noted in this paragraph, Lee Brass may assert a business confidentiality claim covering all or part of any information provided to EPA or its representatives pursuant to this Consent Decree. Except under exigent circumstances, any assertion of confidentiality shall be substantiated in writing by Lee Brass when the assertion is made, or the right to assert the claim shall be waived. Information determined to be confidential shall be disclosed only to the extent permitted by 40 C.F.R. Part 2, and Ala. Code 22-30-12, 22-30-3-(13), and 36-12-40. If no confidentiality claim (including substantiations) accompanies the information when it is provided, it may be made available to the public without further notice to Lee Brass. Physical or analytical data generated and/or submitted pursuant to the performance of work required by this Consent Decree cannot be claimed privileged or confidential.

XIII. RECORD RETENTION

39. Lee Brass shall preserve, during the pendency of this Consent Decree and for a minimum of five (5) years after termination of the Consent Decree at least one legible copy of all submittals and data generated and/or submitted in its possession or in the possession of its officers, directors, employees, agents, contractors, attorneys, successors and assigns which relate to its

performance of its obligations under this Consent Decree. Upon request, Lee Brass shall make such records available to EPA for inspection or copying or shall provide copies of such records to EPA. Not less than sixty (60) days prior to the destruction of any such records, Lee Brass shall notify EPA and give EPA the opportunity to copy the applicable documents.

XIV. COVENANT NOT TO SUE BY PLAINTIFF

40. Effective upon the Date of Entry of the Consent Decree, and in consideration of the civil penalty payments that will be made by Lee Brass under the terms of this Consent Decree, except as expressly set forth in Paragraph 41 (Reservation of Rights), the United States covenants not to bring any administrative or judicial action against Lee Brass for civil penalties or injunctive relief based on the allegations contained in the Complaint up to and including the Date of Entry of the Consent Decree.

41. **Reservations of Rights.** Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, all rights against Lee Brass with respect to all matters other than those expressly excluded in the Complaint including the following:

- a. claims based on a failure by Lee Brass to meet a requirement of this Consent Decree;
- b. liability arising under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. §§ 9601, et seq.
- c. liability for damages for injury to, destruction of, or loss of natural resources;
- d. any criminal liability;
- e. claims that the Facility may pose an imminent and substantial endangerment to health or the environment in accordance with RCRA, 42 U.S.C. § 6973;
- f. the assessment of penalties under RCRA Section 3008(a), 42 U.S.C. § 6928 (a);
and
- g. claims for stipulated penalties, if any, under the terms of this Consent Decree.

42. The rights reserved to the United States include the right to disapprove work performed by Lee Brass pursuant to this Consent Decree. Any such disapproval shall be subject to the Dispute Resolution provisions of this Consent Decree. Except as specifically set forth in this Consent Decree, this Consent Decree shall not be construed as a waiver or limitation of any rights, remedies, powers and/or authorities which the United States, and EPA, has under RCRA or any other statutory, regulatory or common law enforcement authority.

43. The entry of this Consent Decree and Lee Brass' consent to comply herewith, shall not limit or otherwise preclude the United States from taking additional enforcement action pursuant to any federal or state laws, regulations or permitting conditions not covered by this Consent Decree, except that the United States agrees that if Lee Brass complies with its obligations under this Consent Decree, it shall not impose or seek to impose additional civil penalties, injunctive relief or other sanctions or remedies for the claims alleged in the Complaint in this action.

44. This Consent Decree shall not be construed to affect or limit in any way the obligation of Lee Brass to comply with all federal, state and local laws and regulations governing the activities required by this Consent Decree.

45. This Consent Decree shall not be construed as a ruling or determination of any issue related to any federal, state, or local permit, if required in order to implement this Consent Decree or required in order to continue or alter operations of the Facility (including but not limited to construction, operation or closure permits required under RCRA, if any) and Lee Brass shall remain subject to all such permitting requirements. Lee Brass shall be responsible for obtaining any federal, state, or local permit(s) for any activity at the Facility including those necessary for the performance of the work required by this Consent Decree.

XV. COVENANT BY LEE BRASS

46. Lee Brass hereby covenants not to sue and agrees not to assert any claims or causes of action against the United States with respect to the allegations contained in the Complaint. Lee Brass further agrees not to seek indemnification or reimbursement of the amount of \$350,000

referred to in Section VII (Civil Penalty) from any agency or department of the federal government. Lee Brass hereby reserves and retains any defense, cause of action, and right not explicitly and specifically waived in this Consent Decree.

XVI. COSTS

47. Each party shall bear its own costs and attorneys' fees in the action resolved by this Consent Decree.

48. In the event that this Court subsequently determines that Lee Brass has violated the terms and conditions of this Consent Decree, Lee Brass shall be liable to the United States for any reasonable costs or other expenses incurred by the United States in any action or proceeding against Lee Brass for noncompliance with this Consent Decree. Lee Brass will not be required to reimburse the United States for its costs and expenses for disputes arising under the dispute resolution provision of Section X of this Consent Decree, where Lee Brass' invocation of the dispute resolution provision of the Consent Decree was voluntary (i.e., pre-dated oral or written notice from the United States or ADEM that it is in violation of a provision of the Consent Decree) and reasonable. There are no circumstances related to matters concerning this Consent Decree under which the United States will be required to reimburse Lee Brass.

XVII. NOTICES

49. Whenever under the terms of this Consent Decree notice is required to be given or a report or other document is required to be forwarded by one party to another, it shall be directed to the following individuals at the addresses specified below, unless it is otherwise specifically provided in this Consent Decree. Any change in the individuals designated by either Party must be made in writing to the other Party. Any correspondence submitted to the government shall include a reference to the case caption and index number of this court action.

As to the United States and EPA:

Chief
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, D.C. 20044

Chief
South Enforcement and Compliance Section
RCRA Enforcement and Compliance Branch
U.S. Environmental Protection Agency
Region 4
Sam Nunn Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303.

As to ADEM:

Chief
Hazardous Waste Branch
Land Division
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, AL 36130-1463

As to Lee Brass:

Denis G. Daly
General Counsel
Vice President/General Counsel
Amcast/Lee Brass
7887 Washington Village Dr.
Dayton, OH 45459

Timothy D. Hoffman
Coolidge, Wall, Womsley & Lombard
33 W. 1st
Suite 600
Dayton, OH 45402

The Parties designate the same individuals to receive any immediate notice and to communicate informally about problems incurred or anticipated in meeting the requirements of this Consent Decree and its attachments.

50. The informal communication referenced in Paragraph 49 of this Consent Decree is intended to facilitate meeting the objectives of this Consent Decree and shall not relieve the Parties of the notice and reporting requirements set forth elsewhere in this Consent Decree and its attachments.

XVIII. MODIFICATION

51. Except as provided for herein, there shall be no modification of this Consent Decree without the written approval of all Parties to this Consent Decree and the Court.

XIX. CERTIFICATION OF COMPLIANCE

52. Any submittal provided by Lee Brass under the terms of this Consent Decree shall be accompanied by a certification by a "responsible official" of Lee Brass. The term "responsible official" shall mean: the president, secretary, treasurer, vice-president of the corporation in charge of a principal business function, environmental compliance director, plant manager or any other person who performs similar policy or decision-making functions for the corporation or Facility. The certification of the responsible official required in this paragraph shall be in the following form:

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 fines and imprisonment for knowing violations.

XX. RETENTION OF JURISDICTION

53. This Court shall retain jurisdiction of this matter until further order of the Court or until termination of this Consent Decree.

54. The United States retains the right to seek to enforce the terms of this Consent Decree and take any action authorized by federal or state law not inconsistent with the terms of this Consent Decree to achieve or maintain compliance with the terms and conditions of this Consent Decree or otherwise.

XXI. PUBLIC NOTICE REQUIREMENTS

55. The Parties agree and acknowledge that final approval by the United States and entry of this Consent Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides for, inter alia, notice of the lodging of this Consent Decree in the Federal Register, an opportunity for public comment, and consideration of any comments, and Ala. Code 22-22A-5(18)(a)(4).

56. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper or inadequate. Lee Brass consents to the entry of this Consent Decree without further prior notice.

XXII. SERVICE

57. Lee Brass shall identify on its signature page attached to this Consent Decree, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of Lee Brass with respect to all matters arising under or relating to this Consent Decree. Lee Brass hereby agrees to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XXIII. EFFECTIVE AND TERMINATION DATES

58. This Consent Decree shall be effective upon the date of its entry by the Court.

59. When Lee Brass has met all of the following requirements, it shall certify to the United States and ADEM that it has: a.) paid all penalties including stipulated penalties and interest, due under this Consent Decree; and b.) fully implemented the relief required by Section V (RCRA Compliance Measures) including correction of violations identified in the Compliance Audit and maintained compliance with the provisions of this Consent Decree for twelve months.

60. When the United States and ADEM agree that Lee Brass complied with these requirements they shall move the Court to terminate the Decree within a reasonable period of time.

Consent Decree entered in accordance with the foregoing this ____ day of _____, 2001.

UNITED STATES DISTRICT JUDGE

ATTEST:

BY: _____
DEPUTY CLERK
(SEAL)

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. Lee Brass Company, Inc. Civil No. _____, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE UNITED STATES OF AMERICA:

Date: _____

WALKER B. SMITH
Principal Deputy Chief
Environmental Enforcement Section
Environment and Natural Resources
Division

Date: _____

ADAM M. KUSHNER
Senior Counsel
Environmental Enforcement Section
Environment and Natural Resources
Division

HERBERT H. HENRY, III
United States Attorney
Northern District of Alabama

Date: _____

By: _____
HERBERT J. LEWIS
Assistant United States Attorney
Northern District of Alabama
Room 200
Robert S. Vance Federal Building
1800 Fifth Avenue, North
Birmingham, Alabama 35203

Date: _____

SYLVIA LOWRANCE

Assistant Administrator for Enforcement and
Compliance Assurance
United States Environmental
Protection Agency
Washington, D.C. 20460

Date: _____

PHYLLIS P. HARRIS

Director, Environmental Accountability
Division and Regional Counsel
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303

Date: _____

CATHERINE WINOKUR

Associate Regional Counsel
Environmental Accountability Division
U.S. Environmental Protection Agency
Region 4
Atlanta Federal Center
61 Forsyth Street
Atlanta, Georgia 30303

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. Lee Brass Company, Inc., Civil No. _____, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.

FOR PLAINTIFF THE ALABAMA DEPARTMENT OF ENVIRONMENTAL
MANAGEMENT:

WE HEREBY CONSENT to the entry of the Consent Decree in United States, et al. v. Lee Brass, Inc. Civil No. _____, subject to the public notice and comment requirements of 28 C.F.R. § 50.7.
FOR LEE BRASS, INC.

Appendix A – RCRA Compliance Audit

Lee Brass shall complete a RCRA compliance audit of its Brass Foundry as set forth in Appendix B within two hundred and seventy (270) days of the Date of Entry of the Consent Decree. Once the Audit is complete, Lee Brass shall correct all violations found during the Audit within sixty (60) days of discovering the violation, or provide written notice where violations may take longer to correct. In the instance where Lee Brass believes that identified violations may take longer than 60 days to correct, Lee Brass shall submit a request in writing to EPA and ADEM that the 60-day compliance period be extended. The request for an extension shall include the basis for Lee Brass' contention that it can not correct the identified violation within the 60-day compliance period and a proposed schedule for correcting the identified violation. A decision by EPA and ADEM whether or not to extend the 60-day compliance period shall be subject to the dispute resolution of Section X of this Consent Decree. In all cases, Lee Brass is expected to do its utmost to achieve or return to compliance as expeditiously as possible. All corrective actions are subject to review by plaintiffs.

1. Hiring of Consultant. Within sixty (60) days of the Date of Lodging of the Consent Decree, Lee Brass shall present to ADEM and EPA the name and credentials of the consultant it plans to select to conduct the RCRA Compliance Audit. ADEM and EPA shall make best efforts to either approve or disapprove the consultant within thirty (30) days of receipt of the name and credentials. If EPA and ADEM do not approve, they shall, along with a written notice of disapproval, forward to Lee Brass reasons for their disapproval. Unless Lee Brass invokes Dispute Resolution, it shall propose to EPA and ADEM a substitute consultant within 14 days of receipt of the notice of disapproval.

II. Audit Work Plan.

A. Within thirty (30) days of the approval of the consultant as described in Paragraph 1 above, Lee Brass shall submit to EPA and ADEM an Audit Work Plan setting forth the timeline for the Audit; a detailed description of the activities to be undertaken during the Audit; and the staffing requirements for the Audit. The Work Plan shall provide that the Audit will be conducted in accordance with Section II of EPA's "Protocol for Conducting Environmental Compliance Audits of Hazardous Waste Generators Under the Resource Conservation and Recovery Act," EPA 305-B-98-005, October 1998.

B. EPA and ADEM shall make best efforts to approve or disapprove in writing the Work Plan within 30 days of receipt. In the event that ADEM and EPA disapprove any aspect of the Work Plan, they shall state the reasons for the disapproval in writing. If any aspect of the Work Plan is disapproved and if Lee Brass does not invoke dispute resolution, Lee Brass shall address the deficiency and resubmit the Work Plan within 30 days of receipt of the disapproval.

C. Upon approval by EPA and ADEM, Lee Brass shall conduct the Audit in compliance with the Work Plan.

III. RCRA Compliance Audit Report and Corrective Action Plan

A. Within 30 days of the completion of the Audit, Lee Brass shall submit to EPA and ADEM a RCRA Compliance Audit Report and Corrective Action Plan setting forth in detail the findings of the audit. Lee Brass shall also provide any and all final reports exactly as they were provided to Lee Brass by its contractor. The Report shall list all deficiencies found in the Audit and shall set forth detailed plans for correcting all the deficiencies. Such plans shall include descriptions of the corrective action needed to be taken, and the timetable for such action.

B. EPA and ADEM shall make best efforts to approve or disapprove in writing the Report and Plan within thirty (30) days of receipt. In the event that ADEM and EPA disapprove any aspect of the Report and Plan, they shall state the reasons for the disapproval in writing. If any aspect of the Report and Plan is disapproved and if Lee Brass does not invoke Dispute Resolution, Lee Brass shall address the deficiency and resubmit the Report and Plan within thirty (30) days of receipt of the disapproval.

IV. Corrective Action

A. Upon approval by EPA and ADEM, Lee Brass shall implement the Corrective Action Plan as set forth in the Report and Plan.

B. Within thirty (30) days of the date of completion of all corrective actions set forth in the approved Corrective Action Plan, Lee Brass shall submit a Final RCRA Corrective Action Report to EPA and ADEM. This Report shall set forth what actions were taken, the dates of such actions, and the approximate cost of such actions. The Report shall contain a certification by both Lee Brass and its contractor that all deficiencies noted in the RCRA Compliance Audit have been corrected.

C. If EPA or ADEM believe that any actions taken were inadequate to correct the noted deficiencies, it shall so inform Lee Brass and shall provide instructions regarding what actions need to be taken. Unless Lee Brass invokes dispute resolution, it shall undertake the actions requested by EPA or ADEM within sixty (60) days of receipt of the instructions.