

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
AM/NS Calvert, LLC)
Calvert, Mobile County, Alabama) CONSENT ORDER NO. : XX-XXX-CAP
Air Facility ID No. 503-0095)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and AM/NS Calvert, LLC (hereinafter, "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), and the regulations promulgated pursuant thereto.

STIPULATIONS

- 1. The Permittee operates a steel processing plant (ADEM Air Facility ID No. 503-0095) (hereinafter, the "Facility") located at 1 AM/NS Way, Calvert, Mobile County, Alabama.
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).
3. Pursuant to Ala. Code §22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401

to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The Department issued the current Major Source Operating Permit No. 502-0095 (hereinafter, “the Permit”) to the Permittee on February 24, 2015, with an expiration date of February 23, 2020. The Permit includes provisions for the Hydrochloric Acid Regeneration Plant (hereinafter, the “HCl Plant”).

5. Proviso No. 4 of the HCl Acid Regeneration Plant applicability section of the Permit states that “[t]his source is subject to the applicable requirements of 40 CFR Part 63 Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling – HCl Process Facilities and Hydrochloric Acid Regeneration Plants [(hereinafter, the “MACT CCC”)].”

6. Section §63.1158(b)(2) of the MACT CCC states in part that, for hydrochloric acid regeneration plants, “. . .no owner or operator of a new or reconstructed affected plant shall cause or allow to be discharged into the atmosphere from the affected plant any gases that contain Cl₂ in a concentration in excess of 6 ppmv.”

7. Section §63.1162(a)(3) of the MACT CCC states that “[i]f an emission control device other than a wet scrubber is used, install, operate, and maintain systems for the measurement and recording of the appropriate operating parameters.”

8. Section §63.1165(a)(5) of the MACT CCC states in part that, “. . .the owner or operator shall maintain records for 5 years from the date of each record of: (5) All required measurements needed to demonstrate compliance with the standard. . . .”

DEPARTMENT'S CONTENTIONS

9. On April 20, 2015, the Department issued a letter to the Permittee, approving the use of a caustic solution, with pH as a monitoring parameter, in the scrubbing system used to comply with the MACT CCC Cl₂ limits for the HCl Plant. This letter was issued in response to an April 8, 2015 application submitted by the Permittee, which stated that the use of a caustic solution in the scrubbing system controlling the emissions from the HCl Plant would ensure compliance with the MACT CCC Cl₂ standard.

10. On May 8, 2017, PVS Steel Services, Inc. (hereinafter, "PVS") acquired the contract to operate the HCl Plant from Industrial Steel Services, Inc.

11. On July 17, 2017, the Department received an anonymous complaint regarding the HCl Plant, which prompted a joint inspection of the HCl Plant with the United States Environmental Protection Agency (hereinafter, "EPA").

12. On August 9, 2017, the Department and EPA conducted an unannounced inspection of the HCl Plant and the following observations were made during the inspection:

A. The caustic injection line to the scrubbing system was not connected to a tote containing caustic solution. When asked why, a representative of PVS stated that caustic solution had not been used in the scrubbing system since PVS began operating the HCl Plant.

B. The pH monitor was displaying a value of -1.18.

C. The standard operating procedure sheet for the caustic system indicated that the pH of the system should be between 8.5 and 9.5. A pH of 8.5 triggers the activation of the caustic system until the pH reaches 9.5.

D. The pH of the system is recorded hourly by PVS operators on a daily log sheet.

E. During a review of the daily log sheets from January 1, 2017 through August 8, 2017, it was noted that values for pH were not recorded for the months of May, June, July, and August.

13. On September 14, 2017, the Department met with the Permittee and representatives from PVS to discuss the results of the inspection and the Permittee stated that, to the best of its knowledge, AM/NS was not aware that PVS was not using caustic solution in the scrubbing system until the August 9, 2017 inspection.

14. On September 19, 2017, the Department sent separate information requests to the Permittee and PVS. PVS responded to the information request on October 5, 2017 and the Permittee responded to the information request on October 13, 2017.

15. In response to the September 19, 2017 information request to the Permittee, the Permittee provided or stated the following:

- A. The requested engineering test data;
- B. That it was unable to answer questions about plant operations and referred the Department to PVS for those answers; and,
- C. Reiterated that, to the best of its knowledge, it first became aware that PVS was operating the HCl Plant without using caustic solution during the August 9, 2017 inspection by ADEM and EPA.

16. In response to the September 19, 2017 information request to PVS, PVS alleged that the Permittee became aware that PVS was not using caustic in a meeting with the Permittee on July 25, 2017.

17. Pursuant to Ala. Code §22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the

violation(s), including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. **SERIOUSNESS OF THE VIOLATION:** The Department considers the alleged violations to be serious, although it is not aware of any evidence of irreparable harm to human health or the environment due to these violations.

B. **THE STANDARD OF CARE:** By not complying with the MACT CCC emission standard for Cl₂, monitoring requirements, and recordkeeping requirements, the Permittee did not exhibit the requisite standard of care.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** The Permittee likely derived some economic benefit from its non-compliance.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** The Department is not aware of any efforts by the Permittee to minimize or mitigate the effects of the violations on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department issued Consent Order No. 16-012-CAP to the Permittee on November 2, 2015 for emissions violations associated with the Tandem Mill.

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

G. OTHER FACTORS: It should be noted that this Special Order by Consent is a negotiated settlement and, therefore, the Department has compromised the amount of the penalty to resolve this matter amicably, without incurring the unwarranted expense of litigation.

18. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and, based upon the foregoing and attached contentions, has concluded that the civil penalty herein is appropriate (*See* “Attachment A”, which is hereby made a part of Department’s Contentions).

19. The Department neither admits nor denies the Permittee’s contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

PERMITTEE’S CONTENTIONS

20. The Permittee neither admits nor denies the Department’s contentions.

21. The HCl Plant is a part of the carbon steel mill acquired by AM/NS from ThyssenKrupp on February 26, 2014.

22. In the steel manufacturing and processing industry, acid regeneration units are often operated by contractors having special expertise.

23. ThyssenKrupp initially contracted with International Steel Services, Inc. (ISSI) to design and operate the HCl Plant. The ISSI contract was assigned to AM/NS upon its acquisition of the mill.

24. In May of this year, PVS acquired certain ISSI operations, including its obligations under the contract to operate the HCl Plant.

25. Under the terms of that contract, PVS is responsible for operating and maintaining the HCl plant including compliance.

26. AM/NS pays PVS and relies on it to operate and maintain the HCl Plant in accordance with applicable regulatory requirements and permits, and in a manner consistent with PVS' specialized knowledge and expertise.

27. Immediately following the August 9, 2017 inspection, AM/NS undertook several actions including reinforcing instructions to PVS to use caustic when the HCl Plant is operating on acid. AM/NS has installed a video system within the HCl Plant to allow AM/NS personnel to observe the use of the caustic injection system periodically during operation of the Plant. AM/NS has also made improvements to its data acquisitions systems to collect additional compliance related data from PVS' systems. AM/NS has increased automation and control measures which are designed to ensure compliance.

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

ORDER

THEREFORE, the Permittee, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the Permittee agree to enter into this Consent Order with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$200,000.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The Permittee agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

Or, in the alternative, payment of the civil penalties assessed herein shall be made in the form of a wire transfer payable to the Alabama Department of Environmental Management pursuant to the wire transfer instructions to be provided to the Permittee by the Department.

C. The Permittee agrees to comply with all requirements of ADEM Admin. Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing thereafter.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

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

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

G. For purposes of this Consent Order only, the Permittee agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The Permittee also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the Permittee shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the Permittee, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the Permittee) and which delays

or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the Permittee, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and the Permittee agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the Permittee shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

I. The Department and the Permittee agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order

shall not be appealable, and the Permittee does hereby waive any hearing on the terms and conditions of same.

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

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

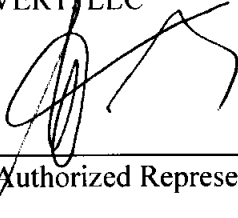
L. The Department and the Permittee agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Permittee of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

AM/NS CALVERT LLC



(Signature of Authorized Representative)

R. HIMPE

(Printed Name)

CEO

(Printed Title)

DEC 20, 2017

Date Signed

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Lance R. LeFleur
Director

Date Executed

Attachment A

**AM/NS Calvert, LLC
Calvert, Mobile County**

Facility ID No. 503-0095

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Failure to meet Cl ₂ MACT Limit	90	\$80,000	\$100,000	\$20,000	\$200,000.00
Failure to Perform Required Monitoring	1	\$10,000	\$10,000		\$20,000.00
Failure to Keep Required Records	1	\$10,000	\$10,000		\$20,000.00
TOTAL PER FACTOR		\$100,000.00	\$120,000.00	\$20,000.00	\$240,000.00

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-\$40,000.00
Total Adjustments (+/-)	-\$40,000.00

Economic Benefit (+)	
Amount of Initial Penalty	\$240,000.00
Total Adjustments (+/-)	-\$40,000.00
FINAL PENALTY	\$200,000.00

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.