

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
BASF Corporation)
McIntosh, Washington County, Alabama) CONSENT ORDER NO.
ADEM Air Facility ID No. 108-0003)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" and/or "ADEM") and BASF Chemical Corporation (hereinafter, the "Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§ 22-22A-1 through 22-22A-17, as amended, the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 as amended, and the regulations promulgated pursuant thereto.

STIPULATIONS

- 1. The Permittee operates a chemical manufacturing facility, ADEM Air Division Facility No. 108-0003 (hereinafter, the "Facility"), located at 1379 Ciba Road, McIntosh, Washington 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-17, as amended.
3. Pursuant to Ala. Code §§ 22-22A-4(n), as amended, 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, *as amended*.

4. The Department issued the current Major Source Operating Permit No. 108-0003 (hereinafter, “the Permit”) to the Permittee on February 9, 2019. The Permit was issued with an effective date of February 9, 2019, and will expire on February 8, 2021.

5. Permit Proviso No. 3 of the Emission Standards Section for Area 1 – Irgafos Manufacturing Unit states that “The caustic scrubber, IG-EP-1A, of this unit shall be properly maintained, controlled, and operated to achieve an outlet concentration of ≤ 20 ppmv HCl, or a destruction efficiency of $\geq 99\%$ for HCl, in accordance with the requirements of 40 CFR Part 63, Subpart NNNNN.”

DEPARTMENT'S CONTENTIONS

6. On December 5, 2018 the Permittee conducted a Method 26 stack test for HCl on IG-EP-1A and the results of this stack test were inconclusive.

7. On January 30, 2019, the Permittee conducted another stack test on IG-EP-1A and the results of the test were submitted to the Department on February 21, 2019.

8. On February 25, 2019, the Department completed its review of the January 30, 2019 Method 26 stack test and the results showed that the average HCl emission rate was 29 ppm.

9. On March 26, 2019, the Department issued the Permittee a Notice of Violation (hereinafter, “NOV”) for failing to comply with the requirements of Permit Proviso No. 3, Emission Standards Section for IG-EP-1A.

10. On April 15, 2019, the Permittee a response to the NOV stating that an additional scrubber in series would be necessary.

11. On March 11, 2019, an application for the additional scrubber was received by the Department from the Permittee.

12. On April 16, 2019, the Department granted temporary authorization to operate the new scrubber to the Permittee.

13. On July 15, 2019, the Permittee conducted a Method 26 stack test for HCl on IG-EP-1A and IG-EP-01B.

14. On August 9, 2019, the Department completed its review of the July 15, 2019 Method 26 stack test and the results showed that the average HCl emission rate was 16.5 ppm.

15. 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, 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 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 Permittee's exceedance of the HCl emission rate as specified in Permit Proviso No. 3 of the Emission Standards Section for IG-EP-1A to be a serious violation.

B. THE STANDARD OF CARE: The Permittee failed to exhibit the required standard of care in maintaining HCl emissions to comply with the Permit.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any economic benefits the Permittee may have gained as a result of the violation referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIROMENT: The Permittee reduced production rates in the interim period between the discovery of the violation and the installation of new control equipment. The Department is not aware of any other efforts by the Permittee to minimize or mitigate the effect of the violation on the environment prior to the addition of the scrubber.

E. HISTORY OF PREVIOUS VIOLATIONS: There have been no ADEM Air Division violations documented at the Permittee's Facility within the last five years.

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.

13. 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 is appropriate (*See "Attachment A"*, which is hereby made a part of Department's Contentions).

16. The Department neither admits nor denies 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 unwarranted expenditure of State resources in 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

17. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order and pay the civil penalty assessed herein.

18. In an email on February 19, 2019, the Permittee proposed a short term measure of reducing production rates or other process parameters in order to reduce HCl emissions.

19. The Permittee conducted a Method 26 stack test for HCl on IG-EP-1A on March 19, 2019 at a reduced production rate, and the results were submitted to the Department on March 21, 2019. The results showed that the average HCl emission rate was 13.95 ppm.

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 \$10,000.00 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

C. The Permittee agrees to comply with all the requirements of the Permit and ADEM Admin. Code div. 335-3 immediately upon the effective date of this Consent 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 provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations 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 increase 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 reference 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 addresses 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 the 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.

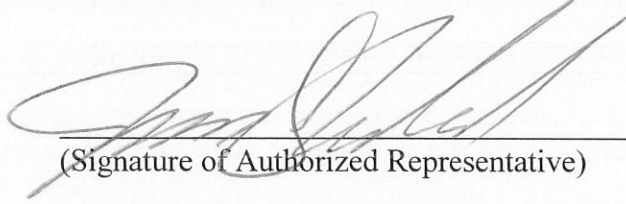
N. The Department and the Permittee agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit

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.

BASF CORPORATION

ALABAMA DEPARTMENT
ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

Jason Slinkard
(Printed Name)

Site Director
(Printed Title)

October 21, 2019
(Date)

(Date Executed)

Attachment A

**BASF Corporation
McIntosh, Washington County**

Air Facility ID No. 108-0003

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations	Total of Three Factors
Failure to Meet Permit Requirements	1	\$10,000			\$10,000
<i>TOTAL PER FACTOR</i>		<i>\$10,000</i>			<i>\$10,000</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-)	

Economic Benefit (+)	
Amount of Initial Penalty	\$10,000
Total Adjustments (+/-)	- \$0
FINAL PENALTY	\$10,000

Footnotes:

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

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provisions of the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23, *as amended*.

4. The Department issued the current Major Source Operating Permit No. 108-0003 (hereinafter, “the Permit”) to the Permittee on February 9, 2019. The Permit was issued with an effective date of February 9, 2019, and will expire on February 8, 2021.

5. Permit Proviso No. 3 of the Emission Standards Section for Area 1 – Irgafos Manufacturing Unit states that “The caustic scrubber, IG-EP-1A, of this unit shall be properly maintained, controlled, and operated to achieve an outlet concentration of ≤ 20 ppmv HCl, or a destruction efficiency of $\geq 99\%$ for HCl, in accordance with the requirements of 40 CFR Part 63, Subpart NNNNN.”

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A. **SERIOUSNESS OF THE VIOLATION:** The Department considers the Permittee's exceedance of the HCl emission rate as specified in Permit Proviso No. 3 of the Emission Standards Section for IG-EP-1A to be a serious violation.

B. THE STANDARD OF CARE: The Permittee failed to exhibit the required standard of care in maintaining HCl emissions to comply with the Permit.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any economic benefits the Permittee may have gained as a result of the violation referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIROMENT: The Permittee reduced production rates in the interim period between the discovery of the violation and the installation of new control equipment. The Department is not aware of any other efforts by the Permittee to minimize or mitigate the effect of the violation on the environment prior to the addition of the scrubber.

E. HISTORY OF PREVIOUS VIOLATIONS: There have been no ADEM Air Division violations documented at the Permittee's Facility within the last five years.

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.

13. 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 is appropriate (*See* "Attachment A", which is hereby made a part of Department's Contentions).

16. The Department neither admits nor denies 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 unwarranted expenditure of State resources in 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

17. The Permittee neither admits nor denies the Department's contentions. The Permittee consents to abide by the terms of this Consent Order and pay the civil penalty assessed herein.

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A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$10,000.00 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

C. The Permittee agrees to comply with all the requirements of the Permit and ADEM Admin. Code div. 335-3 immediately upon the effective date of this Consent 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 provisions and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations 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 increase 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 reference 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 addresses 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 the 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.

BASF CORPORATION

ALABAMA DEPARTMENT
ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

Jason Slinkard

(Printed Name)

Site Director

(Printed Title)

October 21, 2019

(Date)

(Date Executed)

Attachment A

**BASF Corporation
McIntosh, Washington County**

Air Facility ID No. 108-0003

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations	Total of Three Factors
Failure to Meet Permit Requirements	1	\$10,000			\$10,000
<i>TOTAL PER FACTOR</i>		<i>\$10,000</i>			<i>\$10,000</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-)	

Economic Benefit (+)	
Amount of Initial Penalty	\$10,000
Total Adjustments (+/-)	- \$0
FINAL PENALTY	\$10,000

Footnotes:

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