

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
Solutia, Inc.)
Anniston, Calhoun County, Alabama) CONSENT ORDER NO. 23-XXX-CAP
ADEM Air Facility ID No. 301-0007)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("Department" or "ADEM") and Solutia, Inc. ("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 plant, Air Division Facility No. 301-0007 ("Facility"), located at 702 Clydesdale Avenue, Anniston, Calhoun 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 Synthetic Minor Operating Permit No. 301-0007 (“Permit”) to the Permittee on May 19, 2020, for the 40 MMBtu/hr natural gas- and used oil-fired process steam boiler.

5. Permit Proviso No. 50 of the Permit states:

As stated in 40 CFR 60.47c(f)(3), compliance with the opacity limitations shall be indicated by the development of a monitoring plan which would ensure that the unit is operated such that the opacity standard will be met at all times. The initial monitoring plan and any subsequent changes must be approved by the Department prior to implementation.

6. Permit Proviso No. 51 of the Permit states: “Performance testing for visual emissions (opacity) when firing fuels subject to the opacity standard in 40 CFR 60.47c(c) shall be conducted at the intervals specified in §60.47c(a)(1)-(3) as applicable.”

7. Permit Proviso No. 56 of the Permit states: “As indicated in 40 CFR 60.48c(c), an excess emissions report for opacity shall be submitted semiannually for any excess emissions that occur during the reporting period. The report shall be submitted within thirty (30) days of the conclusion of the semiannual period.”

8. Permit Proviso No. 57 of the Permit states: “As indicated in 40 CFR 60.48c(d) and (e), a report detailing the information outlined in 60.48(e)(1)-(11), as applicable, shall be submitted semiannually within 30 days of the end of each semiannual period.”

9. Permit Proviso No. 58 of the Permit states: “As indicated in 40 CFR 63.11225(b), a compliance report containing the information listed in 40 CFR 63.11225(b)(1) through (4) shall be submitted by March 15 of the calendar year.”

DEPARTMENT'S CONTENTIONS

10. On April 14, 2021, the Permittee conducted the initial particulate matter (PM) and opacity performance test required by the Permit.

11. On May 18, 2021, the Department received the performance test report from the Permittee, and the Department completed its evaluation of the report on June 8, 2021. The report showed that the boiler was in compliance with the opacity and PM emission limits, noting that the highest six-minute average opacity was less than five percent (5%). The Permittee was due to conduct subsequent performance testing by October 14, 2021, as per the schedule specified in §60.47c(a)(1)(ii) and required by Permit Proviso No. 51.

12. On March 15, 2023, the Department performed an inspection of the Facility and noted that the Permittee could not produce the site-specific monitoring plan to indicate compliance with the opacity standard, nor any records of subsequent performance testing. Additionally, the Permittee could not produce records of the reports required by Permit Proviso Nos. 56, 57, and 58.

13. On April 12, 2023, the Department issued a Notice of Violation (NOV) to the Permittee for failing to comply with Permit Proviso Nos. 50, 51, 56, 57, and 58.

14. On May 11, 2023, the Department received a response to the NOV from the Permittee stating that the violations were an oversight.

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 failure to develop and submit a site-specific monitoring plan, conduct subsequent performance testing for opacity, and submit the reports required by the Permit to be serious violations. However, the Department is not aware of any irreparable harm to the environment resulting from these violations.

B. THE STANDARD OF CARE: The Permittee did not exhibit the required standard of care by failing to comply with the requirements listed in 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 violations referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIROMENT: The Permittee submitted a site-specific monitoring plan with the NOV response on May 11, 2023, and the Department is evaluating the submission.

E. HISTORY OF PREVIOUS VIOLATIONS: The Department has no other record of air regulation or Permit violations occurring at the 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.

16. 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).

17. 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

18. The Permittee neither admits nor denies the Department’s contentions, including the seriousness of the violations. The Permittee consents to abide by the terms of this Consent Order and pay the civil penalty assessed herein.

19. The Department issued the Permit on May 19, 2020, granted Temporary Authorization to Operate on October 15, 2020, and granted Authorization to Operate on November 18, 2021, all during the heart of the 100-year, COVID-19 pandemic. During this time, the Permittee’s normal operations were disrupted as professional staff worked remotely to minimize the risk of spreading COVID-19.

20. The Permit authorized Permittee to install a new boiler that is subject to Provisos Nos. 50, 51, 56, 57, and 58. This new boiler is far more efficient than its predecessor allowing the Permittee to combust an estimated 40% less fuel, which results in fewer associated air emissions. The predecessor boiler was not subject to these provisos.

21. In March 2022, the Permittee experienced turnover on its environmental compliance team. Those that remained were unaware of the requirement to develop and submit a site-specific monitoring plan to the Department for approval, due to the fact the previous boiler did not have an additional reporting requirement.

22. There is substantial and credible evidence the boiler has operated in compliance with the applicable opacity requirements in the Permit. Specifically, emission testing conducted on April 13, 2021 and previously submitted to the Department, documented compliance with the particulate matter (PM) and opacity standards. Additionally, the Permittee's current HSES Manager, who has been Method 9-certified for over 15 years, has not observed any opacity exceeding ten percent (10%) since starting in August 2022.

23. On June 8, 2023, the Permittee performed Method 9 testing and has reported the results of the same to the Department. During the testing, readings were recorded at 15-second intervals for a period of 60 minutes and a total of 240 readings. 233 readings were recorded with an opacity of zero percent (0%), while eight readings were recorded with an opacity of five percent (5%). This is well below the applicable opacity requirement to which the Permittee's boiler is subject. That requirement provides that the Permittee is not to discharge PM with more than one 6-minute average opacity greater than 20% in any 60-minute period and that at no time shall Permittee discharge a 6-minute average opacity of particulate emissions greater than 40%.

24. To mitigate the non-compliance and prevent future non-compliance, the Permittee submitted a site-specific monitoring plan with the NOV response on May 11, 2023, for the Department's review and approval. Additionally, the Permittee designated a person responsible for managing the opacity monitoring moving forward.

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. Except as provided in Paragraph B. below, the Permittee agrees to pay to the Department a civil penalty in the amount of \$20,000.00 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 Administrative Code div. 335-3 and the Permit immediately upon the effective date of this Order and continuing every day thereafter.

F. 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.

G. 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.

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

I. 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.

J. 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 addresses new matters not raised in this Consent Order.

K. 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.

L. 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.

M. 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.

N. 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.

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

P. 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.

SOLUTIONIA, INC.

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

Edwin Williamson

(Printed Name)

Vice President & Asst. Secretary

(Printed Title)

June 27, 2023

(Date)

(Date Executed)

Attachment A

Solutia, Inc.

Anniston, Calhoun County

ADEM Air Facility ID No. 301-0007

Violation	Number of Violations	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Failure to develop and submit a site-specific monitoring plan to the Department for approval.	1	\$5,000	\$5,000	-	\$10,000
Failure to conduct subsequent performance testing for visible emissions.	2	\$5,000	\$5,000	-	\$10,000
Failure to submit the reports required by Permit Proviso Nos. 56, 57, and 58.	10	\$5,000	\$5,000	-	\$10,000
TOTAL PER FACTOR		\$15,000	\$15,000	-	\$30,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors* (-)	-\$10,000
Ability to Pay* (-)	
Other Factors* (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	-\$10,000

Economic Benefit* (+)	\$0
Amount of Initial Penalty	\$30,000
Total Adjustments (+/-)	-\$10,000
FINAL PENALTY	\$20,000

Footnote:

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