

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
RPS Composites Alabama)	
Mobile, Mobile County, Alabama)	
)	PROPOSED CONSENT ORDER
Air Facility ID Number 503-0107)	NO. 23-XXX-CAP
)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“Department” or “ADEM”) and RPS Composites Alabama (“Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-17, *as amended*, the Alabama Air Pollution Control Act (“AAPCA”), Ala. Code §§ 22-28-1 to 22-28-23, *as amended*, the ADEM Administrative Code of Regulations (“ADEM Admin. Code R.”) promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, *as amended*.

STIPULATIONS

1. The Permittee is a fiberglass pipe manufacturing facility operating Mobile, Alabama (“Facility”).
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. On July 14, 2008, the Department issued Synthetic Minor Source Operating Permit 503-0107 (“Permit”) to the Permittee for fiberglass reinforced plastics fabrication facility with filament winding layup, manual hand layup, gelcoat spray, and vacuum infusion layup.

5. Proviso 19 of the Permit requires the Permittee to limit individual Hazardous Air Pollutant (HAP) emissions to 9.5 tons per any consecutive rolling 12-month period. It also requires, should this limit be exceeded, the Department be notified in writing within 10 days of the exceedance.

DEPARTMENT’S CONTENTIONS

6. The Department received the Permittee’s emissions report for the 4th quarter of 2019 on January 10, 2020; for the 1st quarter of 2020 on April 9, 2020; and for the 2nd quarter of 2020 on July 2, 2020. The reports indicated that the consecutive rolling 12-month emissions of total HAPs were below the limit of 24.5 tons. However, the total emissions of a single HAP were not independently reported in this report. Upon further investigation and after requesting additional information, it was determined that the rolling 12-month emissions total of the single HAP styrene was 9.69 tons for the period ending December 2019, which is above the permitted limit of 9.5 tons. The Department also reviewed subsequent emissions reports and found that the rolling 12-month total emissions

of the single HAP styrene were 9.79 tons for the period ending January 2020, 9.58 tons for the period ending February 2020, 10.2 tons for the period ending March 2020, 9.87 tons for the period ending April 2020, and 9.56 for the period ending May 2020. These values are above the permitted limit of 9.5 tons.

7. On July 10, 2023, the Department received the Permittee's emissions report for the 2nd quarter of 2023. The report stated that the Permittee's consecutive rolling 12-month period emissions of the single HAP styrene were 10.01 tons for the period ending April 2023, 10.41 tons for the period ending May 2023, and 11.67 tons for the period ending June 2023.

8. On August 10, 2023, the Department issued a Notice of Violation to the Permittee for the HAP exceedances and failure to notify the Department.

9. On September 11, 2023, the Department received a response from the Permittee stating that the cause of the exceedance was conducting two large projects concurrently, and that the lack of notification of the exceedance was an oversight. The Permittee also stated the facility expects to return to compliance with the HAP limit by the end of 2023. To prevent future violations, the Permittee stated it plans to run projections for larger projects for better planning and maintain a better understanding of the requirements of the Permit.

10. 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 violations, 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 Permittee failed to operate within agreed upon limits of individual HAP emissions and failed to notify the Department of the exceedance. The Department considers the violations to be serious.

B. THE STANDARD OF CARE: There appeared to be inadequate care taken by the Permittee to comply with the emission limits of the Permit.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee likely received an economic benefit by exceeding permitted HAP limits without applying for a permit modification.

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 Permittee previously violated the individual HAP limit during the period of December 2019 through May 2020.

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 it believes is warranted in this matter in the spirit of cooperation and the desire

to resolve this matter amicably, without incurring the unwarranted expense of litigation.

11. 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 and consistent with the historical penalty range imposed by the Department for similar violations (*See* “Attachment A”, which is made a part of the Department’s Contentions).

12. 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

13. The Permittee neither admits nor denies the Department's Contentions. 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 ORDER with the following terms and conditions:

A. The Permittee agrees to pay to the Department a civil penalty in the amount of \$50,000.00 in settlement of the violations alleged herein. The penalty shall be paid to the Department within 45 days. Failure to pay the civil penalty in a timely manner may result in the Department 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 Environment Management by certified or cashier's check and shall be submitted to:

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

C. The Permittee agrees to submit future quarterly emissions reports for the monitoring periods beginning immediately upon the effective date of this Consent Order that contain the following information for each month of the reporting period, and to use the equations found in Attachment B for calculating the emissions:

- i. the type and quantity of each HAP containing material and each VOC containing material used each month.
- ii. the HAP and/or VOC content of each material used during the month.
- iii. The amount of individual HAPs emitted each month, the amount of total HAPs emitted each month, and the amount of VOCs emitted each month
- iv. the emission factors used for each operation to calculate emissions.
- v. a 12-month rolling total of emissions, calculated for each month of the reporting period, for each individual HAP, total HAPs, and total VOCs with labels clearly indicating which category the emission amount belongs in.
- vi. the permitted limits for individual HAP, total HAPs, and total VOCs.

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 this Consent Order, subject to the terms of these presents and subject to provisions otherwise provided by statute, 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.

RPS COMPOSITES ALABAMA
PERMITTEE

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

(Signature of Authorized Representative)

Lance R. LeFleur
Director

(Printed Name)

Date Executed

(Printed Title)

Date Signed

Attachment A

**RPS Composites Alabama, LLC
Mobile County**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Demonstrated noncompliance with individual HAP limit	1	\$7,000.00	\$7,000.00	\$7,000.00	\$21,000
Failure to notify the Department	1	\$7,000.00	\$7,000.00	\$7,000.00	\$21,000
<i>TOTAL PER FACTOR</i>		<i>\$14,000.00</i>	<i>\$14,000.00</i>	<i>\$14,000.00</i>	<i>\$42,000.00</i>

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

Economic Benefit (+)	\$8,000.00
Amount of Initial Penalty	\$50,000.00
Total Adjustments (+/-)	
FINAL PENALTY	\$50,000.00

Footnotes

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

Attachment B

RPS Composites Alabama, LLC shall use the below methods of calculation for each operation to determine emissions of individual and total HAP and VOC emitted each month.

Equations for Vacuum Infusion

No Suppressant = (3% or .03x%HAP*2000)

Suppressant = (3% or .03x%HAP)*(1-(0.5*Specific VSE))

Equations for Filament Winding Application

Resin Styrene Content >33% - No Suppressant = ((0.2746*%Styrene)-0.0298)*2000

Resin Styrene Content <33% - No Suppressant = 0.184*%Styrene*2000

Resin Styrene Content >33% - With Suppressant = ((0.2746*%Styrene)-0.0298)*2000*0.65

Resin Styrene Content <33% - With Suppressant = 0.120*%Styrene*2000

Equations for Manual Contact Molding

Resin Styrene Content >33% - No Suppressant = ((0.286*%Styrene)-0.0529)*2000

Resin Styrene Content <33% - No Suppressant = 0.126*%Styrene*2000

Resin Styrene Content >33% - With Suppressant = ((0.2746*%Styrene)-0.0298)*2000*(1-(0.5*Specific VSE))

Resin Styrene Content <33% - With Suppressant = 0.126*%Styrene*2000*(1-(0.5*Specific VSE))

Equations for Nonatomized Mechanical Spray

Resin Styrene Content >33% - No Suppressant = ((0.157*%Styrene)-0.0165)*2000

Resin Styrene Content <33% - No Suppressant = 0.107*%Styrene*2000

Resin Styrene Content >33% - With Suppressant = ((0.157*%Styrene)-0.0165)*2000*(1-(0.45*Specific VSE))

Resin Styrene Content <33% - With Suppressant = 0.107*%Styrene*2000*(1-(0.45*Specific VSE))

Equation for Gelcoat Application

Resin Content >33% - No Suppressant = 0.445*% Styrene*2000

*Specific VSE for the resins Derakane Signia 411 = 0.55, Derakane Signia 470= 0.20, and Derakane Signia 441=0.20.