

LANCE R. LEFLEUR
DIRECTOR



KAY IVEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

CERTIFIED MAIL NO.: 7004 2510 0002 3292 0832
RETURN RECEIPT REQUESTED

February 1, 2019

Mr. Bryan Lindsey
Health, Environmental, Safety, Security
Occidental Chemical Corporation
1000 North Wilson Dam Road
Muscle Shoals, AL 35661

Re: Consent Order
Facility No. 701-0002

Dear Mr. Lindsey

Please find enclosed ADEM Consent Order No. 19-032-CAP which requires Occidental Chemical Corporation to take certain actions in regard to alleged violations of the Alabama Air Pollution Control Act. This Order has been issued with the consent of Occidental Chemical Corporation and the Department. Please note that the assessed civil penalty is due within 45 days of the effective date of the Order.

If you have any questions concerning this matter, please contact Stephanie Childress at 334-274-4170 in Montgomery.

Sincerely,

A handwritten signature in dark ink, appearing to be "RWG", is written over the name Ronald W. Gore.

Ronald W. Gore, Chief
Air Division

RWG/SJC:hty

Enclosures

Executed: 02-01-2019

Mailed: 02-01-2019

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
Occidental Chemical Corporation)	
Muscle Shoals, Colbert County, Alabama)	CONSENT ORDER NO. 19-032-CAP
)	
ADEM Air Facility ID No. 701-0002)	

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 Occidental Chemical Corporation (hereinafter, the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 through 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 chemical manufacturing facility, ADEM Air Division Facility No. 701-0002 (hereinafter, the “Facility”), located at 1000 North Wilson Dam Road, Muscle Shoals, Colbert 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. 701-0002 (hereinafter, “the Permit”) to the Permittee on December 28, 2017. The Permit was issued with an effective date of January 1, 2018, and will expire on December 31, 2022.

5. Permit Proviso No. 2 of the Emission Standards Section for No. 1 Potassium Carbonate Plant states that “the particulate matter emission rate from the No. 1 nuisance dust scrubber (EP 309) shall not exceed 1.2 lbs/hr.”

DEPARTMENT'S CONTENTIONS

6. On May 16, 2018 the Department conducted a Method 5 stack test for particulate matter on EP 309.

7. On June 5, 2018, the Department completed its review of the May 16, 2018 Method 5 stack test and the results showed that the average particulate matter emission rate was 2.0 lbs/hr.

8. On June 25, 2018, the Department issued the Permittee a Notice of Violation (hereinafter, “NOV”) for failing to comply with the requirements of Permit Proviso No. 2 in the Emission Standards Section for EP 309.

9. On July 30, 2018, the Permittee submitted to the Department a response to the NOV. In this response, the Permittee listed concerns with the equipment used and procedures performed by the Department during the May 16, 2018 Method 5 stack test. The Department provided a response that addressed each of the Permittee’s concerns.

10. Pursuant to Ala. Code §22-22A-5(18)c. (2006 Rplc. Vol.), 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 particulate matter emission rate specified in Permit Proviso No. 2 of the Emission Standards Section for EP 309 to be a serious violation.

B. THE STANDARD OF CARE: The Permittee failed to exhibit the required standard of care in maintaining particulate matter 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 ENVIRONMENT: The Department is not aware of any efforts by the Permittee to minimize or mitigate the effect of the violation on the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: On May 31, 2016, the Department issued the Permittee a Notice of Violation for failing to comply with the requirements of Permit Proviso No. 2 of the Emission Standards section for the No. 1 Potassium Carbonate Plant. The

Permittee submitted a response to this Notice of Violation on July 1, 2016 and based on this response, the Department issued a letter to the Permittee stating that no further action would be necessary at that time.

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.

12. 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).

13. 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

14. On June 27, 2018 the Permittee conducted an EPA Method 5 PM compliance test on this same emission point, EP309. This test was observed by ADEM. These test results demonstrated an average PM emission rate that complies with the permitted PM limits.

15. Additionally, in 2016 the Permittee conducted a PM compliance test which was conducted pursuant to EPA Method 5 on Scrubber EP309; this 2016 test also demonstrated compliance with the PM permit limit.

16. The Permittee manufactures potassium carbonate products which are known to be hygroscopic (absorb moisture from the air) and may alter a standard Method 5 test result. Due to the hygroscopic characteristics of the potassium carbonate, an aerosol mist or mist of soluble potassium carbonate sampled by a standard Method 5 sampling train results in the formation of precipitates on the glass fiber filter that are subsequently classified as “particulate”. Therefore, stack tests conducted under EPA Method 5 require very careful handling and processing of the filter to minimize an increase in mass due to the absorption of atmospheric moisture.

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.

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 \$12,000.00 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 process changes and engineering evaluations required to submit a complete application that addresses the particulate matter emission rates for the facility shall be performed in a timely manner. The Permittee agrees that the permit modification application shall be submitted to the Department by June 30, 2019.

C. Unless otherwise addressed in this Consent Order, the Permittee agrees to comply with all other terms, limitations, and conditions of the Permit and the Department's regulations immediately upon the effective date of this Consent Order and every day thereafter.

D. 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

E. 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.

F. 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.

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

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. 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.

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

O. 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.

OCCIDENTAL CHEMICAL
CORPORATION

Wade Aleman
(Signature of Authorized Representative)

WADE ALEMAN
(Printed Name)

SR. VICE - PRESIDENT, MANUFACTURING
(Printed Title) ENGINEERING & TECH.

12/6/2018
(Date)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

Marcy Elliott
Lance R. LeFleur
Director

February 1, 2019
(Date Executed)

Attachment A

**Occidental Chemical Corporation
Muscle Shoals, Colbert County**

Air Facility ID No. 701-0002

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	\$5,000		\$15,000
<i>TOTAL PER FACTOR</i>		<i>\$10,000</i>	<i>\$5,000</i>		<i>\$15,000</i>

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

Economic Benefit (+)	
Amount of Initial Penalty	\$15,000
Total Adjustments (+/-)	- \$3,000
FINAL PENALTY	\$12,000

Footnotes:

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