

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
Olin Chemical Corporation)
McIntosh, Washington County, Alabama) CONSENT ORDER NO. 22-XXX-CAP
ADEM Air Facility ID No. 108-0008)

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management ("Department" or "ADEM") and Olin Chemical Corporation ("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, Air Division Facility No. 108-0008 ("Facility"), located at 1638 Industrial 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. ADEM Administrative Code r. 335-3-1-.07(2) states:

In the event that any emission source, air pollution control equipment, or related facility fails or breaks down in such a manner as to cause the emission of air contaminants in violation of these rules and regulations, the person responsible for such source, equipment, or facility shall notify the Director within twenty-four (24) hours of such failure or breakdown and provide a statement giving all pertinent facts, including the estimated duration of the breakdown. The Director shall be notified when the condition causing the failure or breakdown has been corrected and such source, equipment, or facility is again in operation.

5. ADEM Administrative Code r. 335-3-14-.01(1)(a) states:

Any person building, erecting, altering, or replacing any article, machine, equipment, or other contrivance, the use of which may cause the issuance of or an increase in the issuance of air contaminants or the use of which may eliminate or reduce or control the issuance of air contaminants, shall submit an application for an Air Permit at least 10 days prior to construction.

DEPARTMENT'S CONTENTIONS

6. In an e-mail dated October 16, 2021, the Permittee notified the Department of a chlorine release to the atmosphere. In an e-mail dated November 1, 2021, the Permittee notified the Department that the amount of chlorine released to the atmosphere on October 16, 2021 was approximately 94 pounds.

7. On November 22, 2021, the Department issued a notice of violation (NOV) for the release of unauthorized emissions on October 16, 2021.

8. On December 20, 2021, the Department received a response to the NOV in which the Permittee stated that the release began in the membrane cell room of the Facility, and was the result of pressure buildup near Electrolyzers E and F. As a result, approximately 94 pounds of chlorine was release to the atmosphere over a duration of 7 minutes.

9. In an e-mail dated January 27, 2022, the Permittee notified the Department of a chlorine release to the atmosphere that occurred earlier that day. In an e-mail dated February 4, 2022, the Permittee submitted a follow-up letter concerning the January 27, 2022 release indicating that 17 pounds of chlorine was released to the atmosphere over the duration of 4 hours and 35 minutes due to a vent line leak from the chlorine drying area sump.

10. In an e-mail dated January 28, 2022, the Permittee notified the Department of a chlorine release from the Facility on October 28, 2020 that was not previously reported. The amount of chlorine released was approximately 597 pounds.

11. On March 21, 2022, the Department issued a notice of violation (NOV) for the release of unauthorized emissions on October 28, 2020.

12. On April 19, 2022, the Department received a response to the March 21, 2022 NOV stating that the amount of chlorine released was not properly estimated and therefore not reported. In this response, the Permittee stated that a plume calculation utilizing chlorine monitor data was not considered a credible means of estimation because of swirling wind, gusting conditions and heavy rain associated with Hurricane Zeta. The Permittee stated that an orifice calculation was used to estimate the amount of chlorine released, and that this method yielded an unreportable amount. Therefore, the chlorine release was not reported at the time that it occurred. The Permittee stated that new information regarding the release was discovered through an internal compliance management system, and thus prompted further investigation into the release.

13. Based on the correspondence referenced above, the Permittee violated ADEM Admin. Code r. 335-3-14-.01(1)(a) by emitting the following prohibited pollutants into the atmosphere: 597 pounds of chlorine on October 28, 2020, 94 pounds of chlorine on October 17, 2021, and 17 pounds of chlorine on January 27, 2022.

14. The Permittee violated ADEM Admin. Code r. 335-3-1-.07(2) by failing to properly report the 597 pounds of chlorine released on October 28, 2020.

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 unauthorized release of chlorine to the atmosphere and the failure to promptly report it to be serious violations.

B. **THE STANDARD OF CARE:** The Department considers the Permittee to have demonstrated a low standard of care for the failure to notify the Department in a timely manner of the unauthorized release of chlorine to the atmosphere that occurred on October 28, 2020.

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: Efforts made by the Permittee to minimize or mitigate the effects of the violations on the environment are detailed in the Permittee's Contentions below

E. HISTORY OF PREVIOUS VIOLATIONS: On May 25, 2017, the Permittee was issued Consent Order 17-096-CAP for the unauthorized release of 738 pounds of chlorine to the atmosphere on February 15, 2017. On November 22, 2021, the Permittee was issued a Notice of Violation for the unauthorized release of 94 pounds of chlorine to the atmosphere on October 16, 2021. On March 21, 2022, the Permittee was issued a Notice of Violation for unauthorized release of 597 pounds of chlorine to the atmosphere on October 28, 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 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. The Permittee consents to abide by the terms of this Consent Order and pay the civil penalty assessed herein.

19. With regard to the release of chlorine on October 16, 2021, the Permittee reported the release to the Department in a timely manner and provided the final quantity and details of the incident as soon after the initial report as possible, upon completion of Permittee's thorough review of available information used to estimate the quantity released and incident investigation. Further, Permittee exercised all reasonable efforts to minimize the impact of the alleged violation on the environment, including, but not limited to immediate shutdown of the process and closing of manual valves to further mitigate the release. Additionally, Permittee alerted the community to shelter in place using its Code Red system.

20. With regard to the release of chlorine on January 27, 2022, the Permittee reported the release to the Department in a timely manner and provided the final quantity and details of the incident as soon after the initial report as possible, upon completion of Permittee's thorough review of available information used to estimate the quantity released and incident investigation. Further, Permittee exercised all reasonable efforts to minimize the impact of the alleged

violation on the environment, including, but not limited to immediate shutdown of the process and implementing our site Emergency Response Team to locate and stop the release as safely and expeditiously as possible. There was no impact to the community as the release was contained on site. With regard to the release which occurred October 28, 2020, the Permittee reported the release to the Department in a timely manner and provided the final quantity and details of the incident as soon as Permittee was aware of facts which indicated that a release in excess of a reportable quantity had occurred, upon completion of Permittee's thorough investigation and review of information provided through Permittee's compliance management system.

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 the \$80,000.00 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.

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 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.

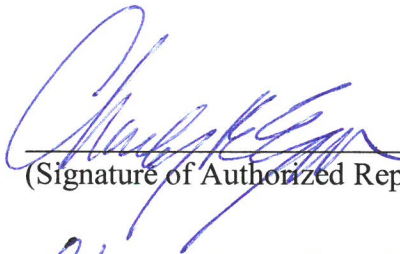
M. The Department and the Permittee agree that any modifications of this Order must be agreed to in writing signed by both parties.

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.

OLIN CHEMICAL CORPORATION

ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

CHARLES E. LYON

(Printed Name)

PLANT MANAGER

(Printed Title)

8/11/2022

(Date)

(Date Executed)

Attachment A

**Olin Chemical Corporation
McIntosh, Washington County
ADEM Air Facility ID No. 108-0008**

Violation	Number of Violations	Seriousness of Violation*	Standard of Care*	History of Previous Violations	Total of Three Factors
Unauthorized Emissions	3	\$25,000	\$25,000	\$25,000	\$75,000
Failure to report a malfunction	1	\$10,000	\$15,000		\$25,000
<i>TOTAL PER FACTOR</i>		<i>\$35,000</i>	<i>\$40,000</i>	<i>\$25,000</i>	<i>\$100,000</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	

Economic Benefit (+)	\$0
Amount of Initial Penalty	\$100,000
Total Adjustments (+/-)	-\$20,000
FINAL PENALTY	\$80,000

Footnote:

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