ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
American Midstream Chatom, LLC	)	
Chatom, Washington County, Alabama	)	CONSENT ORDER NO. : 19-XXX-CAP
	)	
Air Facility ID No. 108-0009	)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" or "ADEM") and American Midstream Chatom, LLC (hereinafter, "the Permittee") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 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 gas production, treating and processing plant (ADEM Air Facility ID No. 108-0009) (hereinafter, the "Facility") located at Highway 56 West, Chatom, 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-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. 108-0009 (hereinafter, the "Permit") to the Permittee on March 23, 2017, with an expiration date of March 22, 2022.

5. Proviso No. 10(b) of the General Permit Provisos section of the Permit states in part that "…the permittee shall allow authorized representatives of the Alabama Department of Environmental Management and EPA to conduct the following: Review and/or copy, at reasonable times, any records that must be kept pursuant to the conditions of this permit."

6. Proviso 4(a) of the Emission Standards subpart of the Process Flare section of the Permit states that "[the process flare shall] be designed for and operated with no visible emissions, except for a 5-minute period during any consecutive 2-hour period."

7. Proviso 1 of the Emissions Monitoring subpart of the Process Flare section of the Permit states that "[p]rovided that visible emissions in excess of the opacity standards are observed from the process flare at any time that the unit is operating, a visible emission observation shall be conducted as specified in *Appendix E* of [the Permit]."

DEPARTMENT'S CONTENTIONS

8. On July 24, 2018, the Department conducted an unannounced inspection of the Facility and noted the following:

A. The process flare was smoking, prompting the Department to conduct a visible emission observation (hereinafter, "VEO").

B. The Department conducted the VEO from 4:45:00 PM to 4:52:00 PM, and smoke was observed from the process flare from 4:46:15 PM to 4:52:00 PM.

C. The Permittee did not conduct its own VEO during the Department's VEO.

D. The Permittee was unable to provide the majority of the records to the Department onsite as required by the Permit.

E. The Permittee later provided the records to the Department following an August 9, 2018 e-mail request.

9. On August 16, 2018, the Department issued the Permittee a Notice of Violation (hereinafter, "NOV") for failure to provide records during an inspection, exceeding the opacity standards for the process flare, and failure to conduct a VEO while the flare was smoking.

10. On September 17, 2018, the Department received a response to the NOV from the Permittee stating the following:

A. During the Department's inspection on July 24, 2018, it was in the process of pigging a pipeline. A higher quantity of liquid was brought in with the pig than what was generally expected and the liquid was sent to a surge tank, and the flashed vapors were vented to the re-compressors. The re-compressors became over-pressurized, which led to vapors being routed to the flare as designed. It was under the impression that the majority of emissions from the flare were attributable to steam rather than smoke.

B. It is aware of the requirement to perform a VEO when smoke is observed from the flare but did not perform one in this case because it believed that the plume was steam rather than smoke.

C. It did not produce the records at the time of the inspection because most of its staff had left the Facility before the records were requested.

D. It has since created a new position at the Facility with the primary responsibility of regulatory recordkeeping compliance.

11. 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(s), 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 Department considers the alleged violations to be serious, although it is not aware of any evidence of irreparable harm to human health or the environment due to these violations.

B. THE STANDARD OF CARE: By not complying with the opacity standard for the flare, VEO requirements, and the requirement to provide records during an inspection, the Permittee did not exhibit the requisite standard of care.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any evidence indicating that the Permittee received any significant economic benefit from these violations.

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 Department issued a Warning Letter to the Permittee on August 7, 2017 for failure to provide records during an inspection.

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

13. 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

14. 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 Consent Order with the following terms and conditions:

A. 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 Admin. Code div. 335-3 and the Permit immediately upon the effective date of this 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 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 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.

AMERICAN MIDSTREAM CHATOM, LLC	ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
R. Cle	
(Signature of Authorized Representative)	Lance R. LeFleur Director
(Printed Name) Rene Casadaban SVP & Chief Operating Officer	
(Printed Title)	
11/20/18	
Date Signed	Date Executed

Attachment A

American Midstream Chatom, LLC
Washington County

Facility ID No. 108-0009

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	Total of Three Factors
Demonstrated noncompliance with opacity limit	1	$3,000.00	$2,000.00		$5,000.00
Failure to conduct required monitoring	1	$3,000.00	$2,000.00		$5,000.00
Failure to provide required records	1	$3,000.00	$2,000.00	$5,000.00	$10,000.00
TOTAL PER FACTOR		***$9,000.00***	***$6,000.00***	***$5,000.00***	***$20,000.00***

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

Economic Benefit (+)	
Amount of Initial Penalty	$20,000.00
Total Adjustments (+/-)	
FINAL PENALTY	$20,000.00

Footnotes

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