

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:	)	
	)	
U.S. Amines (Bucks) LLC	)	
Axis, Mobile County, Alabama	)	CONSENT ORDER NO. 16-____-CAP
	)	
Air Facility ID No. 503-5010	)	

***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 U.S. Amines (Bucks) LLC (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, Air Division Facility No. 503-5010 (hereinafter, the “Facility”), located at 14086 Highway 43, Axis, Mobile 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. 503-5010 (hereinafter, “the Permit”) to the Permittee on October 1, 2012. The Permit was issued with an effective date of February 20, 2012, and will expire on February 19, 2017.

5. Permit Proviso No. 11 of the General Permit Provisos Section requires that the Permittee comply in a timely manner with applicable requirements that become effective during the term of the Permit. On November 24, 2015, 40 CFR Part 63, Subpart VVVVVV was incorporated into the Department’s Regulations as ADEM Administrative Code r. 335-3-11-.06(151).

6. Permit Proviso No. 3 of the Emission Standards Section for Amines #2 Plant with Smokeless Flare states that “This unit is subject to the leak detection and repair requirements of NSPS Subpart VV as found in 40 CFR 60.482.”

7. Permit Proviso No. 1 of the Compliance and Performance Test Methods and Procedures sections for Amines #2 Plant with Smokeless Flare states that “Leak detection shall be performed according to EPA Reference Method 21.”

#### ***DEPARTMENT’S CONTENTIONS***

8. On June 6, 2015, the Department sent a letter to the Permittee requesting that an evaluation of the applicability of 40 CFR Part 63, Subpart VVVVVV be performed. The Permittee responded, via letter dated July 28, 2015, that its Facility is subject to the requirements of 40 CFR Part 63, Subpart VVVVVV, and that it would be in compliance with the regulation by August 31, 2015. The response also stated that a Notification of Compliance Status would be submitted to the Department by August 31, 2015.

9. On February 18, 2016 the Department performed an unannounced inspection of the Facility and noted the following:

a) Permittee failed to maintain records of quarterly process vessel inspection required under 40 CFR Part 63. 11495(a)(3).

b) Permittee failed to submit a Notification of Compliance Status as required under 40 CFR Part 63.11501(b).

c) The leak detection monitoring for the month of July 2015 was performed using a monitor that did not meet the requirements of EPA Reference Method 21.

10. On March 15, 2016, the Department issued the Permittee a Notice of Violation (hereinafter, "NOV") for failing to comply with the requirements of 40 CFR Part 63.11501(b), 63. 11495(a)(3), and 30.485(b)(1).

11. On March 22, 2016, the Permittee submitted a response to the NOV explaining that it had begun keeping the required process vessel inspection records in the first quarter of 2016 and that the VOC monitor was inoperative for the July 2015 monitoring period and had to be sent out for repairs because a replacement was not available.

12. On April 11, 2016, the Department received the Notice of Compliance Status for 40 CFR Part 63, Subpart VVVVVV from the Permittee.

13. 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 following violations to be serious:

(1) The Permittee failed to submit a Notice of Compliance Status for 40 CFR Part 63, Subpart VVVVVV, as required under 40 CFR Part 63.11501(b) in a timely manner.

(2) The Permittee failed to maintain quarterly process vessel inspection records for the third and fourth quarters of 2015, as required under 40 CFR Part 63.11501 (c)(1)(i).

(3) The Permittee failed to adequately perform leak detection monitoring in July 2015, as required under 40 CFR Part 60.482-2(a)(1).

B. THE STANDARD OF CARE: The Permittee failed to exhibit the required standard of care in the submittal of reports and the maintenance of records and monitoring devices.

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 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: There have been no ADEM Air Division violations documented at the Permittee's 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.

14. 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 made a part of Department's Contentions).

15. 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***

16. 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 \$10,000.00 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

C. The Permittee agrees to comply with the 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 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 alleged violations and/or deviations 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 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.

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.

U.S. AMINES (BUCKS) LLC

  
\_\_\_\_\_  
(Signature of Authorized Representative)

Eldon Burr  
\_\_\_\_\_  
(Printed Name)

Plant Manager  
\_\_\_\_\_  
(Printed Title)

30 June 2016  
\_\_\_\_\_  
(Date)

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

\_\_\_\_\_  
Lance R. LeFleur  
Director

\_\_\_\_\_  
(Date Executed)

**Attachment A**

**U.S. Amines (Bucks) LLC  
Axis, Mobile County**

**Air Facility ID No. 712-0010**

<b>Violation*</b>	<b>Number of Violations*</b>	<b>Seriousness of Violation*</b>	<b>Standard of Care*</b>	<b>History of Previous Violations</b>	<b>Total of Three Factors</b>
Failure to Meet Permit Requirements	3	\$7,500	\$2,500	-	\$10,000
<b><i>TOTAL PER FACTOR</i></b>		<b><i>\$7,500</i></b>	<b><i>\$2,500</i></b>	-	<b><i>\$10,000</i></b>

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

<b>Economic Benefit (+)</b>	
<b>Amount of Initial Penalty</b>	\$10,000
<b>Total Adjustments (+/-)</b>	
<b>FINAL PENALTY</b>	\$10,000

Footnotes

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