

**ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:	)	
	)	
<b>Ascend Performance Materials</b>	)	
<b>Operations LLC</b>	)	CONSENT ORDER NO. 16-____-CAP
Decatur, Morgan County, Alabama	)	
	)	
Air Facility ID No. 712-0010	)	

***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 Ascend Performance Materials Operations 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 Nylon Intermediates Chemical Manufacturing Facility, Air Division Facility No. 712-0010 (hereinafter, the “Facility”), located at 1050 Chemstrand Avenue, Decatur, Morgan 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. 712-0010 (hereinafter, “the Permit”) to the Permittee on September 18, 2013, with an expiration date of September 17, 2018.

5. Permit Proviso No. 5 of the emission standards section for Boiler 5 and 6 requires that the particulate matter (hereinafter, “PM”) emission rate from Boiler No. 6 does not exceed 0.12 pounds per million British thermal units (hereinafter, “lb/MMBtu”) and 38.4 pounds per hour (hereinafter, “lb/hr”).

#### ***DEPARTMENT’S CONTENTIONS***

6. On September 29, 2015, the Permittee performed an annual emissions compliance test for PM on Boiler No. 6 and the results of the test indicated that PM emissions from this unit were 49.0 lb/hr and 0.22 lb/MMBtu.

7. On October 20, 2015, the Permittee notified the Department that adjustments had been made to the boiler and that the re-test had been scheduled for October 27, 2015.

8. On October 27, 2015, the Permittee performed an additional compliance test for PM on Boiler No. 6 and the test indicated that PM emissions from this unit were 0.17 lb/MMBtu.

9. On December 3, 2015, the Department issued the Permittee a Notice of Violation (hereinafter, “NOV”) for failure to demonstrate compliance with the PM emissions standard for Boiler No. 6, in violation of Permit Proviso No. 5.

10. The Department received a response to the NOV on January 14, 2016 from the Permittee stating that it initially thought that the issue was associated with the coal or

combustion in Boiler No. 6 and explained that a determination was later made by a contractor hired by the Permittee that the issue was associated with the electrostatic precipitator (hereinafter, "ESP"). Specifically, the contractor informed the Permittee that the ESP had several mechanical issues which were contributing to the to the PM compliance test results.

11. On March 4, 2016, the Permittee performed another compliance test for PM on Boiler No.6 and the results of this test indicated that PM emissions from this unit were 12.8 lb/hr and 0.06 lb/MMBtu, which is within the compliance limits of the Permit.

12. 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 failures to demonstrate compliance with the PM emissions standard for Boiler No. 6 to be serious violations.

B. THE STANDARD OF CARE: The Permittee failed to exhibit the required standard of care in the maintenance and upkeep of the ESP for Boiler No. 6.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department is not aware of any economic benefits the Permittee may have incurred.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: The Permittee shut down Boiler No. 6 immediately following the failure of the first annual emissions compliance testing.

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.

13. 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).

14. 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***

15. The Permittee consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

16. Following the first annual emissions compliance test failure described in paragraph 9 above and the NOV issued by ADEM described in paragraph 10 above, the Permittee in good faith took a number of actions on its own to address the compliance test failure, including i) voluntarily shutting down Boiler No. 6 until the root cause of the issues could be determined and all corrective action could be implemented; ii) hiring a consultant to provide troubleshooting of the boiler; iii) performing maintenance on Boiler No. 6 including reviewing coal moisture and sizing, repairing and aligning feeders and linkages, servicing the FD dampers, increasing the amp trip limit, replacing the grate bars, cleaning the boilers and hydro-blasting the economizer, removing and inspecting the tube scale, washing the ESP box, checking the boiler pressure transmitters calibration, and cleaning and clearing the ash re-injection tubes; and iv) conducting engineering tests to determine the efficacy of the initial corrective action.

17. Following the issuance of the NOV, the Permittee continued to troubleshoot the issues related to Boiler No. 6, including i) hiring a consultant to provide troubleshooting of the ESP and implementing the corrective action recommended by the consultant; and ii) performing maintenance of the mechanical dust collector and re-injection collection hoppers and nozzles at the area of the re-injection box into the boiler.

18. The Permittee contends that it has taken corrective actions necessary to address the annual emissions compliance test failure.

***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 \$27,000.00 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.



**Attachment A**

**Ascend Performance Materials Operations LLC  
Decatur, Morgan 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	2	\$20,000	\$10,000	-	\$30,000
<b><i>TOTAL PER FACTOR</i></b>		<b><i>\$20,000</i></b>	<b><i>\$10,000</i></b>	-	<b><i>\$30,000</i></b>

<b>Adjustments to Amount of Initial Penalty</b>	
<b>Mitigating Factors (-)</b>	\$3,000
<b>Ability to Pay (-)</b>	
<b>Other Factors (+/-)</b>	
<b>Total Adjustments (+/-)</b>	

<b>Economic Benefit (+)</b>	
<b>Amount of Initial Penalty</b>	\$30,000
<b>Total Adjustments (+/-)</b>	(\$3,000)
<b>FINAL PENALTY</b>	\$27,000

Footnote

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