

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
Constellium Muscle Shoals LLC	)	
Muscle Shoals, Colbert County, Alabama	)	CONSENT ORDER NO.
	)	
<u>ADEM Air Facility ID No. 701-0007</u>	)	

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“the Department” and/or “ADEM”) and Constellium Muscle Shoals LLC (the “Permittee”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 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 secondary aluminum processing facility (the “Facility”) located at 4805 Second Street, Muscle Shoals, Colbert County, Alabama (ADEM Air Facility ID No. 701-0007).

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. The Permittee operates the Five Stand Cold Rolling Mill (the “Five Stand”) and the No. 7 South Three Stand Cold Rolling Mill (the “Three Stand”) at the Facility pursuant to the authority of Major Source Operating Permit No. 701-0007 (the “Permit”) issued on April 21, 2016.

5. General Permit Proviso No. 12 of the Permit states in part: “A compliance certification shall be submitted annually...(a) The compliance certification shall include the following: (1) The identification of each term or condition of this permit that is the basis of the certification [and] (2) The compliance status”.

6. General Permit Proviso No. 16 of the Permit states in part: “All air pollution control devices and capture systems for which this permit is issued shall be maintained and operated at all times in a manner so as to minimize the emissions of air contaminants”.

7. General Permit Proviso No. 29 of the Permit and ADEM Admin. Code r. 335-3-4-.01(1)(a) state in part that: “...no person shall discharge into the atmosphere from any source of emission, particulate of an opacity greater than that designated as twenty percent (20%) opacity, as determined by a six (6) minute average”.

#### DEPARTMENT'S CONTENTIONS

8. On April 6, 2021, an inspector with the Department's Air Division observed the first run of a particulate matter stack test conducted on the Five Stand stacks. While observing the process from inside the building, the Department inspector noted significant emissions escaping capture at the final stand. The Permittee was informed of this issue at

the time of the observation, during a closeout meeting that day, and in written correspondence from the Department on May 21, 2021.

9. On June 21, 2021, the Department received the Permittee's Annual Compliance Certification covering the period from April 21, 2020, through April 20, 2021. The Permittee certified that it had been in compliance with General Permit Proviso No. 16 for the entirety of the reporting period in spite of the Department's observations on April 6, 2021.

10. On September 28, 2021, an inspector with the Department's Air Division conducted an observation of the Five Stand stack in accordance with Method 9 of 40 CFR Part 60, Appendix A-4. The Department inspector observed four (4) instances of opacity greater than twenty percent (20%) and four (4) instances of opacity greater than forty percent (40%) opacity. The maximum observed six (6) minute average opacity was 47%.

11. On February 9, 2022, an inspector with the Department's Air Division conducted an observation of the Three Stand stack in accordance with Method 9 of 40 CFR Part 60, Appendix A-4. The Department inspector observed three (3) instances of opacity greater than twenty percent (20%) and two (2) instances of opacity greater than forty percent (40%) opacity. The maximum observed six (6) minute average opacity was 53%.

12. 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 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 Permittee's failure to comply with the opacity standards, failure to adequately capture emissions, and failure to submit an accurate compliance certification to be serious violations. However, the Department is not aware of any irreparable harm to the environment resulting from these alleged violations.

B.     THE STANDARD OF CARE: There appeared to be inadequate care taken by the Permittee to comply with the applicable requirements of the ADEM Admin. Code r. and the Permit.

C.     ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Permittee likely derived some economic benefit by not fully upgrading the control and capture equipment on the Five Stand and the Three Stand. However, the Department is unable to accurately estimate the amount by which the Permittee may have benefited.

D.     EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: Following multiple verbal and written communications transmitted between the Department and the Permittee, the efforts taken

by the Permittee to mitigate possible effects of these violations upon the environment were ineffective.

E. HISTORY OF PREVIOUS VIOLATIONS: The Permittee was issued a Notice of Violation on February 25, 2021, detailing observations of opacity exceedances from both the Five Stand and the Three Stand.

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 in this matter in the spirit of cooperation and the desire 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 herein is appropriate (*See* “Attachment A”, which is hereby made a part of the 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 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

15. During the April 6, 2021 particulate matter stack test on the Five Stand, the Permittee was running an aluminum alloy product that requires application of a water-containing coolant to the sheet. When the coolant is applied to the sheet, the water in the coolant turns into steam based on the temperature of the sheet at the exit end of the mill. Thus, it is the Permittee's contention that the Department's inspector was observing steam, rather than emissions escaping capture, at the final stand. The Permittee was operating the capture system on the Five Stand in a manner so as to minimize the emissions of air contaminants during the performance test. Further, the alleged emissions observed during the stack test were contained within the building and did not result in any harm to the environment or threat to public health or safety. Therefore, it is the Permittee's contention that it properly certified compliance with General Permit Proviso 16 in the June 2021 Annual Compliance Certification.

16. Contrary to the Department's Method 9 observations on September 28, 2021 and February 9, 2022, the Permittee's daily visible emissions checks on those dates did not show visible emissions in excess of 15% opacity.

17. The Permittee disputes the results of the Department's February 9, 2022 Method 9 observation of the Three Stand.

18. The Permittee exercises a high standard of care in the operation and maintenance of the Facility and in ensuring compliance with its Permit. The Permittee regularly maintains and repairs the capture systems on the Five Stand and Three Stand pursuant to a diligently implemented preventative maintenance program. In 2021, the Permittee conducted extensive repairs and deep cleaning of the fugitive emissions capture systems on the Five Stand and the Three Stand with guidance from the original equipment

manufacturer, which have improved capture on the Five Stand and the Three Stand. The Permittee is responsive and attentive to the Department's requests, has consistently cooperated with the Department's inspections of the Facility, and has been in regular communication with the Department regarding visible emissions from the Five Stand and Three Stand, all of which require the dedication of significant staff resources.

19. The Permittee is dedicated to being a good environmental steward, and prior to and independent of this enforcement action, the Permittee had already initiated the process of major capital investment for significant upgrades to the existing fugitive emissions capture systems at the Five Stand and the Three Stand. The Permittee is in the process of commissioning new capture and control systems to be installed on both the Five Stand and the Three Stand that will further improve capture efficiency and reduce the potential for visible stack discharge opacity. This significant investment in the Facility reflects the Permittee's commitment to regulatory compliance and improving environmental quality.

20. 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. The Permittee's entry into this Consent Order and agreement to pay the penalty assessed herein should in no way be deemed an admission of liability or noncompliance.

#### 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 the Department 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 \$225,000.00 in settlement of the violations alleged herein within forty-five (45) days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five (45) 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 following requirements immediately upon the effective date of this Consent Order and continuing every day thereafter:

(1) The Permittee shall operate and maintain the air pollution control devices and capture systems on the Five Stand and the Three Stand at all times in a manner so as to minimize the emissions of air contaminants to the extent reasonable and practicable, as required under General Permit Proviso 16.

(2) No later than December 31, 2022, the Permittee shall finalize a purchase order for the equipment associated with a new capture and control system to be installed

on both the Five Stand and the Three Stand. The system must be designed to achieve a capture efficiency and a control efficiency necessary to demonstrate compliance with all applicable emission limitations. A copy of the purchase order shall be submitted to the Department no later than January 31, 2023.

(3) No later than December 31, 2025, the new capture and control system for at least one Cold Rolling Mill (i.e., either the Five Stand or the Three Stand) shall be operational. Constellium shall return to compliance with the applicable capture and control and visible emissions standards once this system is operational.

(4) No later than June 30, 2026, the new capture and control system for both the Five Stand and the Three Stand shall be operational. Constellium shall return to compliance with the applicable capture and control and visible emissions standards once this system is operational.

(5) Prior to commencement of construction of the new capture and control systems, an Air Permit application shall be submitted to the Department.

(6) The Permittee shall submit a semiannual report detailing the progress that has been made regarding the construction of the new capture and control systems. The report should be submitted by July 31<sup>st</sup> and January 31<sup>st</sup> of each year, with the first report being submitted no later than January 31, 2023, and the final report being submitted during the semiannual reporting period following completion of the Permittee's obligations under (C)(4).

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and employees implementing this Consent Order. 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 the violations associated with the Five Stand and the Three Stand cited in the above-referenced Notice of Violation dated February 25, 2021.

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 shall 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 Consent Order shall not affect the Permittee's obligation to comply with any Federal, State, or local laws or regulations, except as otherwise provided herein.

K. The Department and the Permittee agree that final approval and entry into this Consent 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 (30) days within which to comment on the Order.

L. The Department and the Permittee agree that, should any provision of this Consent 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 Consent 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 Consent 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.

CONSTELLIUM MUSCLE SHOALS  
LLC

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

C. Smith

(Signature of Authorized Representative)

Lance R. LeFleur  
Director

Christopher Smith

President

Date Signed: 4/20/22

Date Executed: \_\_\_\_\_

**Attachment A**

**Constellium Muscle Shoals LLC  
Muscle Shoals, Colbert County**

**ADEM Air Facility ID No. 701-0007**

<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 comply with 20% / 40% opacity standard	7	\$50,000.00	\$15,000.00	\$5,000.00	\$70,000.00
Failure to maintain capture and control equipment	Continuous	\$100,000.00	\$75,000.00	-	\$175,000.00
Failure to accurately certify compliance	1	\$3,000.00	\$2,000.00	-	\$5,000.00
<b><i>TOTAL PER FACTOR</i></b>		<b><i>\$153,000.00</i></b>	<b><i>\$92,000.00</i></b>	<b><i>\$5,000.00</i></b>	<b><i>\$250,000.00</i></b>

<b>Adjustments to Amount of Initial Penalty</b>	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	-\$25,000.00
<b>Total Adjustments (+/-)</b>	<b>-\$25,000.00</b>

<b>Economic Benefit (+)</b>	
<b>Amount of Initial Penalty</b>	<b>\$250,000.00</b>
<b>Total Adjustments (+/-)</b>	<b>-\$25,000.00</b>
<b>FINAL PENALTY</b>	<b>\$225,000.00</b>

Footnotes

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