

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)
)
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Ciba Specialty Chemicals Corporation)
Air Facility ID No. 108-0003)
McIntosh, Washington County, Alabama)
_____)

CONSENT ORDER NO. 05-005-CAP

FINDINGS

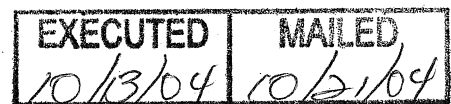
Pursuant to the provisions of the Alabama Environmental Management Act, §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended, the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended, and the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties hereto, the Alabama Department of Environmental Management (hereinafter, "the Department") makes the following FINDINGS:

1. Ciba Specialty Chemicals Corporation (hereinafter "Ciba") operates a Specialty Chemical Manufacturing Facility, Air Facility ID No. 108-0003, located at Ciba Road in McIntosh, Washington County, Alabama.

2. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended.

3. Pursuant to §22-22A-4(n), Code of Alabama (1975), 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 through 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended.

4. On December 22, 2003, the Department issued permit # 108-0003-X161 (hereinafter "Permit X161") to Ciba, subject to certain conditions and requirements. On December 30, 2003, the Department issued a Major Source Operating Permit (hereinafter "Permit") to Ciba, subject to certain conditions and requirements.



5. General Proviso #20 of the Permit states:

- (a) Records of required monitoring information of the source shall include the following:
 - (1) The date, place, and time of all sampling or measurements;
 - (2) The date analyses were performed;
 - (3) The company or entity that performed the analyses;
 - (4) The analytical techniques or methods used;
 - (5) The results of all analyses; and
 - (6) The operating conditions that existed at the time of sampling or measurement.
- (b) Retention of records of all required monitoring data and support information of the source for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit

6. General Proviso #21-(b) of the Permit states:

Deviations from permit requirements shall be reported within 48 hours or 2 working days of such deviations, including those attributable to upset conditions as defined in the permit. The report will include the probable cause of said deviations, and any corrective actions or preventive measures that were taken.

7. Proviso # 1 of the Emission Monitoring Section for Emission Unit 3 of the Permit states:

Emission points GR-EP-01, GR-EP-02, GR-EP-03, GR-EP-04, GR-EP-05, GR-EP-06, GR-EP-07, GR-EP-08, GR-EP-09, GR-EP-10, GR-EP-11, GR-EP-12, GR-EP-13, and GR-EP-14 shall be checked for the presence or absence of visible emissions at least once per calendar week while the equipment associated with these points is in operation. If visible emissions are observed during the visible emissions check, a Visual Determination of Opacity shall be performed using EPA Reference Method 9 or corrective action shall be taken within twelve (12) hours. If the Visual Determination of Opacity confirms that the source is discharging particulate emissions above limits specified in Emission Standard 3 of this permit, corrective action will be initiated within twelve (12) hours of discovery to reduce particulate emissions below limits specified.

8. Proviso # 1 of the Recordkeeping and Reporting Requirements Section for Emission Unit 3 of the Permit states:

The facility shall maintain records of its weekly visual inspections of emission points GR-EP-01, GR-EP-02, GR-EP-03, GR-EP-04, GR-EP-05, GR-EP-06, GR-EP-07, GR-EP-08, GR-EP-09, GR-EP-10, GR-EP-11, GR-EP-12, GR-EP-13, and GR-EP-14. The records, which may be in the form of a log or checklist, shall be kept in a form suitable for inspection for five years. The presence of any visible emissions from any of these points shall be recorded and reported in the semi-annual report. The facility shall keep records of the corrective action taken in the event visible emissions are observed.

9. Proviso # 1 of the Emission Monitoring Section for Emission Unit 13 of the Permit states:

Emission point SB-EP-1, SB-EP-2, SB-EP-3, and SB-EP-4 shall be checked for the presence or absence of visible emissions at least once per calendar week while the equipment associated with these points is in operation. If visible emissions are observed during the visible emissions check, a Visual Determination of Opacity shall be performed using EPA Reference Method 9 or corrective action shall be taken within twelve (12) hours. If the Visual Determination of Opacity confirms that the source is discharging particulate emissions above limits specified Emission Standard 2 of this permit, corrective action will be initiated within twelve (12) hours of discovery to reduce particulate emissions below limits specified.

10. Proviso # 1 of the Recordkeeping and Reporting Requirements Section for Emission Unit 13 of the Permit states:

The facility shall maintain records of its weekly visual inspections of emission point SB-EP-1, SB-EP-2, SB-EP-3, and SB-EP-4. The records, which may be in the form of a log or checklist, shall be kept in a form suitable for inspection for five years. The presence of any visible emissions from any of these points shall be recorded and reported during the semi-annual report. The facility shall keep records of the corrective action taken in the event visible emissions are observed.

11. Proviso # 19 of Permit X161 states:

Emission point SB-EP-5 shall be checked for the presence or absence of visible emissions at least once per calendar week while the equipment associated with these points is in operation. If visible emissions are observed during the visible emissions check, a Visual Determination of Opacity shall be performed using EPA Reference Method 9 or corrective action shall be taken within twelve (12) hours. If the Visual Determination of Opacity confirms that the source is discharging particulate emissions above limits specified Proviso 17 of this permit, corrective action will be initiated within twelve (12) hours of discovery to reduce particulate emissions below limits specified.

12. Proviso # 20 of Permit X161 states:

The facility shall maintain records of its weekly visual inspections of emission point SB-EP-5. The records, which may be in the form of a log or checklist, shall be kept in a form suitable for inspection for five years. The presence of any visible emissions from any of these points shall be recorded and reported during the semi-annual report. The facility

shall keep records of the corrective action taken in the event visible emissions are observed.

13. On April 13, 2004, during an inspection of Ciba's McIntosh Facility, the Department noticed that Ciba had not performed and was missing records for a number of weekly visual inspections of the baghouses located in Area 21 Granulations Manufacturing Unit.

14. On May 5, 2004, the Department issued a Notice of Violation (NOV) to CIBA for violating Proviso # 1 of the Emission Monitoring Section for Emission Unit 3 of the Permit for emission points GR-EP-01, GR-EP-02, GR-EP-03, GR-EP-04, GR-EP-05, GR-EP-06, GR-EP-07, GR-EP-08, GR-EP-09, GR-EP-10, GR-EP-11, GR-EP-12, GR-EP-13, and GR-EP-14 for failing to perform weekly visual inspections. The NOV also addressed violating Proviso # 1 of the Recordkeeping and Reporting Requirements Section for Emission Unit 3 of the Permit for emission points GR-EP-01, GR-EP-02, GR-EP-03, GR-EP-04, GR-EP-05, GR-EP-06, GR-EP-07, GR-EP-08, GR-EP-09, GR-EP-10, GR-EP-11, GR-EP-12, GR-EP-13, and GR-EP-14 for failing to properly maintain records of the weekly visual inspections.

15. On May 27, 2004, the Department received a response to the May 5, 2004, NOV from Ciba. In this response Ciba stated they had discovered an additional oversight in the CSB Unit. Ciba stated that records for 1 weekly visible inspection was missing for emission points SB-EP-1, SB-EP-2, SB-EP-3, and SB-EP-4, and that no records of weekly visible inspections were found for SB-EP-5. In addition, the Department notes that violations of General Proviso #21-(b) of the Permit occurred as a result of the findings made above.

16. Ciba neither agrees nor disagrees with the Findings presented in this Consent Order, but, in an effort to cooperate with the Department and to comply with the provisions of the Alabama Air Pollution Control Act, Ciba has consented to the terms of this Consent Order.

17. The Department has agreed to the terms of this Consent Order in order to resolve the violations cited in the Consent Order, and the Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

ORDER

Based upon the foregoing FINDINGS and pursuant to §§22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-28-10(2) and 22-28-18, Code of Alabama (1975), as amended, and with the consent of CIBA it is hereby ORDERED:

A. That, not later than forty-five (45) days after the effective date of this Consent Order, Ciba shall pay to the Department a civil penalty in the amount of Twenty Thousand Dollars (\$20,000.00) for the violations cited herein.

B. That, immediately upon the effective date of this Consent Order and continuing thereafter, CIBA shall comply with all requirements of the Permit issued to it by the Department.

C. 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.

D. 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.

E. That CIBA is not relieved from any liability if it fails to comply with any provision of the Consent Order.

F. That, for purposes of this Consent Order only, CIBA agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. CIBA also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, CIBA 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 CIBA, 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 be beyond the reasonable control of CIBA) and which delays or prevents performances 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.

G. 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 shall 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 CIBA 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.

That, by agreement of the parties, this Consent Order shall be considered final and effective immediately upon execution signature by all parties. This Consent Order shall not be appealable, and CIBA does hereby waive any hearing on the terms and conditions of same.

Executed in duplicate with each part being an original.

Ciba Specialty Chemicals Corporation



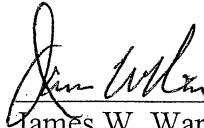
(Signature of Authorized Representative)

Ken DeVun
Vice President Technical Operations

(Printed Name and Title)

Date Signed: 8/17/04

**Alabama Department of
Environmental Management**



James W. Warr
Director

Date Signed: 12 Oct 2004