

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In The Matter Of:)

Ciba Specialty Chemicals Corporation)
McIntosh, Washington County, Alabama)

CONSENT ORDER NO. 00-031-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 chemical manufacturing plant, Air Division Facility No. 108-0003, located in South Washington County on Ciba Road in McIntosh, Alabama. Ciba is the successor in interest to the Ciba-Giegy Corporation. The Department issued permits to Ciba on September 6, 1996.

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.

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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. Ciba's Basic Liquid Resins unit, Permit No. 108-003-Z002, is subject to the requirements of the National Emission Standards for Hazardous Air Pollutants as listed in 40 CFR Part 63, Subpart W. Ciba became subject to these regulations at the time of promulgation which occurred on March 8, 1995.

5. The Department incorporated by reference the provisions of 40 CFR Part 63, Subpart W into its regulations at ADEM Administrative Code R. 335-3-11-.06(22).

6. As part of the April 29, 1999 excess emissions report, required by 40 CFR Part 63.528(a), Ciba reported twenty six (26) days in which the average scrubber flow rate fell below the minimum flow rate established in the required Notification of Compliance Status, 3.5 gallons per minute.

7. After undergoing subsequent stack testing, Ciba reported in the same excess emissions report that there were six (6) days in which the average scrubber flow rate fell below a rate at which excess emissions were likely to occur, 3.0 gallons per minute.

8. As a result of the April 29, 1999 excess emissions report, the Department has found Ciba in violation of 40 CFR Part 63.526 (a)(2), as incorporated by ADEM Admin Code R. 335-3-11-.05(22).

9. On July 8, 1999, the Department issued a Notice of Violation to Ciba citing the violation documented in the April 29, 1999 excess emissions report.

10. Ciba's Lodyne Surfactants unit was issued Air Permit No. 108-0003-X051 on September 19, 1997.

11. Proviso number 7 of that permit states:

"All air pollution control devices and capture systems for which this permit issued shall be maintained and operated at all times in a manner so as to minimize the emissions of air contaminants. Procedures for ensuring that the above equipment is properly operated and maintained so as to minimize the emission of air contaminants shall be established."

12. Proviso Number 14 of that permit states: "This unit shall not emit more than 0.5 lbs/hr of particulate matter."

13. On May 25, 1999 the Ciba reported to the Department that the scrubber which controls the particulate emissions had been operating below the proper pressure drop for an indefinite period of time. Subsequent stack testing indicated particulate emissions of ~ 1.08 lbs/hr.

14. As a result of that May 25, 1999 report, the Department has found Ciba in violation of Proviso's #7 and #14 of Permit No. 108-0003-Z051.

15. On July 8, 1999 the Department issued a Notice of Violation to Ciba citing the violation documented in the May 25, 1999 report.

16. As a result of the July 8, 1999 Notice of Violation, Ciba performed an internal audit of the air emission control devices at the facility, and discovered that an additional scrubber in the Lodyne Sufactancts Unit, air permit no. 108-0003-Z051, had

been operating for an indefinite period of time without the proper packing in the device. Ciba reported this to the Department in a July 28, 1999 letter to the Department.

17. Ciba's was issued Air Permit No. 108-0003-X065 for its Additive Production Unit on September 6, 1996.

18. Proviso number 7 of that permit states:

"All air pollution control devices and capture systems for which this permit issued shall be maintained and operated at all times in a manner so as to minimize the emissions of air contaminants. Procedures for ensuring that the above equipment is properly operated and maintained so as to minimize the emission of air contaminants shall be established."

19. On March 19, 1998 Ciba reported to the Department that the flare associated with the unit (20EP-26) had operated under its optimum natural gas feed rate from 10-27-97 through 2-12-98. This resulted in potential excess emissions.

20. Ciba neither admits nor denies the Findings contained in this Consent Order. However, in an effort to cooperate with the Department and to resolve the allegations cited above, Ciba consents to the terms of this Order.

21. The Department agrees to this Consent Order upon a determination that the terms are in the best interests of the citizens of Alabama in resolving the alleged violations cited hereinabove.

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 there is assessed a civil penalty against Ciba in the amount of \$30,000 to be paid to the Alabama Department of Environmental Management not later than thirty (30) days after execution of this Order.

B. That Ciba shall henceforth comply all the requirements of its permits, and the applicable state and federal regulations.

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 Order.

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

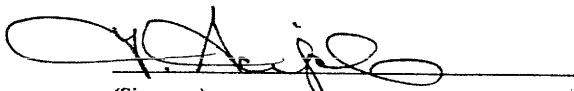
F. That for purposes of this Order only, Ciba agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. Ciba also agrees that in any action brought by the Department to

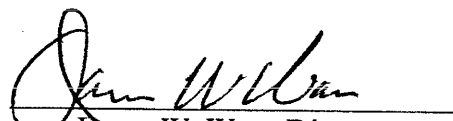
compel compliance with the terms of this Order, Ciba shall be limited to the defenses of Force Majeure, compliance with this Order and physical impossibility.

G. That this Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning Ciba, which would constitute possible violations not addressed in this Order, or if the violations noted herein continue, then such future violations shall be addressed in Orders or 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.

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

ORDERED and ISSUED this 24th day of November, 1999.


(Signature)
T. Sciple - Manager Regulatory Affairs
(Please Print Name and Title of Authorized Officer)
Ciba Specialties Chemicals Corporation


James W. Warr, Director
Alabama Department of
Environmental Management