

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
CORPUS CHRISTI ALUMINA LLC
RN102318847

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BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

AGREED ORDER
DOCKET NO. 2019-0215-IWD-E

On JUN 09 2021, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Corpus Christi Alumina LLC (the "Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent presented this Order to the Commission.

The Respondent understands that it has certain procedural rights at certain points in the enforcement process, including the right to formal notice of violations, notice of an evidentiary hearing, the right to an evidentiary hearing, and a right to appeal. By entering into this Order, the Respondent agrees to waive all notice and procedural rights.

It is further understood and agreed that this Order represents the complete and fully-integrated agreement of the parties. The provisions of this Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Order unenforceable, the remaining provisions shall be valid and enforceable. The duties and responsibilities imposed by this Order are binding upon the Respondent.

The Commission makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. The Respondent owns and operates a wastewater treatment facility located at 4633 State Highway 361, approximately two miles southeast of the intersection of State Highway 361 and State Highway 35 in Gregory, San Patricio County, Texas (the "Facility"). The Facility is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
2. During an investigation conducted September 12, 2018 through October 8, 2018, an investigator documented that:
 - a. The Respondent maintained less than two feet of freeboard, and then bypassed treatment in the Decant Pond to Outfall No. 601 resulting in the discharge of approximately 162 million gallons of untreated industrial wastewater and stormwater with a pH of approximately 10.5 standard units from Outfall No. 001 into Corpus Christi Bay between September 14, 2018 and October 5, 2018;

- b. Between September 15, 2018 and September 18, 2018, the Decant Pond overflowed and flooded the adjacent property; and
 - c. Visible foam exceeding trace amounts was observed discharging from Internal Outfall No. 601 on September 13 and 14, 2018.
3. The Executive Director recognizes that the Respondent:
 - a. Ceased the diversion to bypass the Decant Pond by October 5, 2018;
 - b. Ceased the discharge of industrial wastewater at the Facility on October 5, 2018; and
 - c. Completed pumping unauthorized discharged water from the adjacent property and back into the Decant Pond by October 8, 2018.

II. CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact No. 1, the Respondent is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE ch. 26 and the rules of the TCEQ.
2. As evidenced by Finding of Fact No. 2.a, the Respondent failed to take all reasonable steps to minimize or prevent any discharge, or other permit violation, which has a reasonable likelihood of adversely affecting human health or the environment, in violation of 30 TEX. ADMIN. CODE § 305.125(1), (4), and (5), TEX. WATER CODE § 26.121(a)(1), and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0004646000, Permit Conditions No. 2.d and Other Requirements No. 7.
3. As evidenced by Finding of Fact No. 2.b, the Respondent failed to prevent an unauthorized discharge of industrial wastewater into or adjacent to any water in the state, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5), TEX. WATER CODE § 26.121(a)(1), and TPDES Permit No. WQ0004646000, Permit Conditions No. 2.g.
4. As evidenced by Finding of Fact No. 2.c, the Respondent failed to comply with permitted effluent limitations, in violation of 30 TEX. ADMIN. CODE § 305.125(1) and (5), TEX. WATER CODE § 26.121(a)(1), and TPDES Permit No. WQ0004646000, Effluent Limitations and Monitoring Requirements, Internal Outfall No. 601, No. 3.
5. Pursuant to TEX. WATER CODE § 7.051, the TCEQ has the authority to assess an administrative penalty against the Respondent for violations of state statutes within the TCEQ's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.
6. An administrative penalty in the amount of \$32,400 is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053. The Respondent paid the \$32,400 penalty.

III. ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. The Respondent is assessed a penalty as set forth in Conclusion of Law No. 6 for violations of state statutes and rules of the TCEQ. The payment of this penalty and the Respondent's compliance with all the requirements set forth in this Order resolve only the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for violations that are not raised here. Penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Corpus Christi Alumina LLC, Docket No. 2019-0215-IWD-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The Respondent shall undertake the following technical requirements:
 - a. Within 30 days after the effective date of this Order, implement procedures and conduct employee training to:
 - i. Maintain freeboard in the Decant Pond;
 - ii. Prevent discharges that have a reasonable likelihood of adversely affecting human health or the environment during large storm events; and
 - iii. Prevent unauthorized discharges.
 - b. Within 45 days after the effective date of this Order, submit written certification, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a.i through 2.a.iii. The certification shall be signed by the Respondent and shall include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:



Water Section Manager
Corpus Christi Regional Office
Texas Commission on Environmental Quality
6300 Ocean Drive, Suite 1200
Corpus Christi, Texas 78412-5839

3. All relief not expressly granted in this Order is denied.
4. The duties and provisions imposed by this Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of this Order to personnel who maintain day-to-day control over the Facility operations referenced in this Order.
5. If the Respondent fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director. Extension requests shall be sent to the Order Compliance Team at the address listed above.
7. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.

9. This Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
10. This Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms: electronic transmission, owner, person, writing, and written, shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
11. The effective date of this Order is the date it is signed by the Commission. A copy of this fully executed Order shall be provided to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

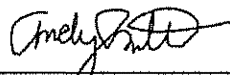
 _____ For the Commission	<u>6/14/2021</u> _____ Date
 _____ For the Executive Director	<u>04/29/2021</u> _____ Date

I, the undersigned, have read and understand the attached Order. I am authorized to agree to the attached Order, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this Order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

 _____ Signature	<u>March 4, 2021</u> _____ Date
Andrew Smith _____ Name (Printed or typed) Authorized Representative of Corpus Christi Alumina LLC	<u>Corporate Secretary</u> _____ Title

If mailing address has changed, please check this box and provide the new address below:

Instructions: Send the original, signed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Ordering Provision 1 of this Order.

Jon Niermann, *Chairman*
Emily Lindley, *Commissioner*
Bobby Janecka, *Commissioner*
Toby Baker, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

June 18, 2021

FIRST CLASS MAIL

Andrew Smith, Corporate Secretary
Corpus Christi Alumina LLC
301 Tresser Boulevard
Stamford, Connecticut 06901

RE: Corpus Christi Alumina LLC
TCEQ Docket No. 2019-0215-IWD-E; Permit No. WQ0004646000
Agreed Order Assessing Administrative Penalties and Requiring Certain Actions

Enclosed is a copy of an order issued by the Commission.

Questions regarding the order should be directed to the Texas Commission on Environmental Quality's Enforcement Division at (512) 239-2545 or the Litigation Division at (512) 239-3400. If there are questions pertaining to the mailing of the order, then please contact Michael O'Malley of the Office of the Chief Clerk at (512) 239-3300.

Sincerely,

A handwritten signature in cursive script that reads "Laurie Gharis".

Laurie Gharis
Chief Clerk

LG/mo

Enclosure

cc: Steven Van Landingham, Enforcement Coordinator, TCEQ Enforcement Division