



FLORIDA DEPARTMENT OF Environmental Protection

Southwest District Office
13051 North Telecom Parkway #101
Temple Terrace, Florida 33637-0926

Ron DeSantis
Governor

Jeanette Nuñez
Lt. Governor

Shawn Hamilton
Secretary

December 27, 2021

Kenneth E. Curtiss
Lhoist North America of Alabama, LLC
5900 County Road 676
Nichols, FL 33863
ken.curtiss@lhoist.com

Re: Executed Final Consent Order, OGC File No. 21-1021
Nichols Terminal
Facility ID No. 1050125
Polk County

Dear Mr. Curtiss:

Enclosed is the Executed Consent Order, OGC File No. 21-1021, regarding the above-referenced facility. The effective date of the Consent Order is the filing date entered by the designated Florida Department of Environmental Protection Clerk on the signature page. Please be aware of all conditions of this Order.

Should you have any questions, please contact Shannon Lenhart at 813-470-5939, or via e-mail: Shannon.Lenhart@FloridaDEP.gov. Thank you for your cooperation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kelley M. Boatwright", with a long horizontal flourish extending to the right.

For Kelley M. Boatwright
Southwest District Director
Florida Department of Environmental Protection

Enclosures: Executed Consent Order

ec: Jim Ruddell, Lhoist North America of Alabama, LLC, Jim.Ruddell@lhoist.com
Lea Crandall, Agency Clerk, lea.crandall@dep.state.fl.us
Pamala Vazquez, DEP-SWD, Pamala.Vazquez@FloridaDEP.gov
Steve Morgan, DEP-SWD, Steve.Morgan@FloridaDEP.gov
Max Grondahl, DEP-SWD, Max.Grondahl@FloridaDEP.gov
Shannon Lenhart, DEP-SWD, Shannon.Lenhart@FloridaDEP.gov
Andres Santini Laabes, DEP-SWD, Andres.SantiniLaabes@FloridaDEP.gov

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

STATE OF FLORIDA DEPARTMENT)	IN THE OFFICE OF THE
OF ENVIRONMENTAL PROTECTION)	SOUTHWEST DISTRICT
)	
v.)	OGC FILE NO. 21-1021
)	
LHOIST NORTH AMERICA)	
OF ALABAMA, LLC)	
_____)	

CONSENT ORDER

This Consent Order ("Order") is entered into between the State of Florida Department of Environmental Protection ("Department") and Lhoist North America of Alabama, LLC ("Respondent") to reach settlement of certain matters at issue between the Department and Respondent.

The Department finds and Respondent admits the following:

1. The Department is the administrative agency of the State of Florida having the power and duty to protect Florida's air and water resources and to administer and enforce the provisions of Chapter 403, Florida Statutes ("Fla. Stat."), and the rules promulgated and authorized in Title 62, Florida Administrative Code ("Fla. Admin. Code"). The Department has jurisdiction over the matters addressed in this Order.
2. Respondent is a person within the meaning of Section 403.031(5), Fla. Stat.
3. Respondent is the owner and is responsible for the operation of Nichols Terminal, a storage and lime transfer facility that has two storage silos and a truck loading area that are vented to the common central baghouse ("Facility"). Respondent operates the Facility under Department Air Permit No. 1050125-010-AO ("Permit") which was issued on January 15, 2021 and will expire on January 15, 2026. The Facility is located at 5900 County Road 676, Nichols, in Polk County, Florida ("Property"). Respondent owns the Property on which the Facility is located.
4. The Department finds that the following violations occurred:

a) The Respondent operated without a functioning control device (the common central baghouse). Following discussion with the Respondent and a file review, it was determined that the facility operated without a control device for 107 days. This is a violation of Facility-Wide Specific Condition 14 of Permit No. 1050125-010-AO and Rules 62-210.650 and 62-296.700(5), Fla. Admin. Code.

b) The Respondent failed to maintain baghouse daily inspection logs and maintenance records as per their "Operation and Maintenance Plan for Particulate Matter Control." This is a violation of Emission Unit Specific Condition A.9 of Permit No. 1050125-010-AO and Rule 62-296.700(6)(a), Fla. Admin. Code.

c) The Respondent failed to notify the Department of malfunction or noncompliance events associated with the Facility's control device. This is a violation of Appendix B, General Condition 8 and Rule 62-4.160(8), Fla. Admin. Code.

Having reached a resolution of the matter Respondent and the Department mutually agree and it is

ORDERED:

5. Respondent shall comply with the following corrective actions within the stated time periods:

a) The Respondent will submit to the Department documentation of the Facility's revised reporting protocols for malfunction and/or noncompliance events **within 30 days of the effective date of this Order.**

b) **For two years following the effective date of this Order,** the Respondent will submit documentation of the recordkeeping requirements of Emissions Unit Specific Conditions A.8 and A.9 of Air Permit No. 1050125-010-AO every quarter. **Respondent shall submit the reports to the Department within 30 days of the end of each quarter.**

6. Notwithstanding the time periods described in the paragraph above, Respondent shall complete all corrective actions required by paragraph 5 within 2 years of the effective date of this Order and be in full compliance with the applicable Florida Statutes, Rules of the Florida Administrative Code and its Permit, regardless of any intervening events or alternative time

frames imposed in this Order, other than those excused delays agreed to by the Department, as described in paragraph 13.

7. **Within 30 days of the effective date of this Order**, Respondent shall pay the Department \$46,270.00 in settlement of the regulatory matters addressed in this Order. This amount includes \$45,270.00 for civil penalties and \$1,000.00 for costs and expenses incurred by the Department during the investigation of this matter and the preparation and tracking of this Order. The civil penalty in this case includes 3 violations that each warrant a penalty of \$2,000.00 or more.

8. Respondent agrees to pay the Department stipulated penalties in the amount of \$1,000.00 per day for each and every day Respondent fails to timely comply with any of the requirements of paragraphs 5 and 6 of this Order. The Department may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the Department's issuance of written demand for payment and shall do so as further described in paragraphs 9 and 10, below. Nothing in this paragraph shall prevent the Department from filing suit to specifically enforce any terms of this Order. Any stipulated penalties assessed under this paragraph shall be in addition to the civil penalties agreed to in paragraph 7 of this Order.

9. Respondent shall make all payments required by this Order by cashier's check, money order or online payment. Cashier's check or money order shall be made payable to the "Department of Environmental Protection" and shall include both the OGC number assigned to this Order and the notation "Water Quality Assurance Trust Fund." Online payments by e-check can be made by going to the DEP Business Portal at: <http://www.fldepportal.com/go/pay/>. It will take a number of days after this order becomes final, effective and filed with the Clerk of the Department before ability to make online payment is available.

10. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Shannon Lenhart, Environmental Manager, Department of Environmental

Protection, Southwest District Office, 10351 N. Telecom Parkway, Suite 101, Temple Terrace, FL 33637. Electronic submittals can be sent to SWD_Air@dep.state.fl.us.

11. Respondent shall allow all authorized representatives of the Department access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Order and the rules and statutes administered by the Department.

12. In the event of a sale or conveyance of the Facility or of the Property upon which the Facility is located, if all of the requirements of this Order have not been fully satisfied, Respondent shall, at least 30 days prior to the sale or conveyance of the Facility or Property, (a) notify the Department of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility, and (c) provide a copy of this Order with all attachments to the purchaser, operator, or person(s) in control of the Facility. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

13. If any event, including administrative or judicial challenges by third parties unrelated to Respondent, occurs which causes delay or the reasonable likelihood of delay in complying with the requirements of this Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of Respondent and could not have been or cannot be overcome by Respondent's due diligence. Neither economic circumstances nor the failure of a contractor, subcontractor, materialman, or other agent (collectively referred to as "contractor") to whom responsibility for performance is delegated to meet contractually imposed deadlines shall be considered circumstances beyond the control of Respondent (unless the cause of the contractor's late performance was also beyond the contractor's control). Upon occurrence of an event causing delay, or upon becoming aware of a potential for delay, Respondent shall notify the Department by the next working day and shall, within seven calendar days notify the Department in writing of (a) the anticipated length and cause of the delay, (b) the measures taken or to be taken to prevent or minimize the delay, and (c) the timetable by which Respondent intends to implement these measures. If the parties can agree that the delay or anticipated delay has been or will be caused by circumstances beyond

the reasonable control of Respondent, the time for performance hereunder shall be extended. The agreement to extend compliance must identify the provision or provisions extended, the new compliance date or dates, and the additional measures Respondent must take to avoid or minimize the delay, if any. Failure of Respondent to comply with the notice requirements of this paragraph in a timely manner constitutes a waiver of Respondent's right to request an extension of time for compliance for those circumstances.

14. The Department, for and in consideration of the complete and timely performance by Respondent of all the obligations agreed to in this Order, hereby conditionally waives its right to seek judicial imposition of damages or civil penalties for the violations described above up to the date of the filing of this Order. This waiver is conditioned upon Respondent's complete compliance with all of the terms of this Order.

15. This Order is a settlement of the Department's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Order is not a settlement of any criminal liabilities which may arise under Florida law, nor is it a settlement of any violation which may be prosecuted criminally or civilly under federal law. Entry of this Order does not relieve Respondent of the need to comply with applicable federal, state, or local laws, rules, or ordinances.

16. The Department hereby expressly reserves the right to initiate appropriate legal action to address any violations of statutes or rules administered by the Department that are not specifically resolved by this Order.

17. Respondent is fully aware that a violation of the terms of this Order may subject Respondent to judicial imposition of damages, civil penalties up to \$15,000.00 per day per violation, and criminal penalties.

18. Respondent acknowledges and waives its right to an administrative hearing pursuant to sections 120.569 and 120.57, Fla. Stat., on the terms of this Order. Respondent also acknowledges and waives its right to appeal the terms of this Order pursuant to section 120.68, Fla. Stat.

19. Electronic signatures or other versions of the parties' signatures, such as .pdf or facsimile, shall be valid and have the same force and effect as originals. No modifications of the terms of this Order will be effective until reduced to writing, executed by both Respondent and the Department, and filed with the clerk of the Department.

20. The terms and conditions set forth in this Order may be enforced in a court of competent jurisdiction pursuant to sections 120.69 and 403.121, Fla. Stat. Failure to comply with the terms of this Order constitutes a violation of section 403.161(1)(b), Fla. Stat.

21. This Order is a final order of the Department pursuant to section 120.52(7), Fla. Stat., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, Fla. Stat. Upon the timely filing of a petition, this Order will not be effective until further order of the Department.

22. Respondent shall publish the following notice in a newspaper of daily circulation in Polk County, Florida. The notice shall be published one time only within 14 days of the effective date of this Order. Respondent shall provide a certified copy of the published notice to the Department within 10 days of publication.

STATE OF FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION

NOTICE OF CONSENT ORDER

The Department of Environmental Protection ("Department") gives notice of agency action of entering into a Consent Order with LHOIST NORTH AMERICA OF ALABAMA, LLC pursuant to section 120.57(4), Florida Statutes. The Consent Order addresses the failure to operate with a control device, failure to maintain required inspection and maintenance records, and failure to notify the Department of a malfunction or noncompliance event at 5900 County Road 676, Nichols, Florida. The Consent Order is available for public inspection during normal business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays, at the Department of Environmental Protection, 13051 N. Telecom Parkway, Suite 101, Temple Terrace, Florida, 33637.

Persons who are not parties to this Consent Order, but whose substantial interests are affected by it, have a right to petition for an administrative hearing under sections 120.569 and

120.57, Florida Statutes. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the Department's final action may be different from the position it has taken in the Consent Order.

The petition for administrative hearing must contain all of the following information:

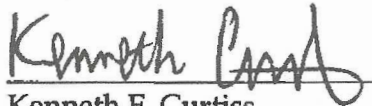
- a) The name and address of each agency affected and each agency's file or identification number, if known;
- b) The name, address, any e-mail address, any facsimile number, and telephone number of the petitioner, if the petitioner is not represented by an attorney or a qualified representative; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;
- c) A statement of when and how the petitioner received notice of the agency decision;
- d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
- e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;
- f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes; and
- g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

The petition must be filed (received) at the Department's Office of General Counsel, 3900 Commonwealth Boulevard, MS# 35, Tallahassee, Florida 32399-3000 or received via electronic correspondence at Agency_Clerk@floridadep.gov, within 21 days of receipt of this notice. A copy of the petition must also be mailed at the time of filing to the District Office at Southwest District 13051 N. Telecom Parkway, Suite # 101, Temple Terrace, Florida 33637. Failure to file a petition within the 21-day period constitutes a person's waiver of the right to request an

administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, Florida Statutes. Before the deadline for filing a petition, a person whose substantial interests are affected by this Consent Order may choose to pursue mediation as an alternative remedy under section 120.573, Florida Statutes. Choosing mediation will not adversely affect such person's right to request an administrative hearing if mediation does not result in a settlement. Additional information about mediation is provided in section 120.573, Florida Statutes and Rule 62-110.106(12), Florida Administrative Code.

23. Rules referenced in this Order are available at
<http://www.dep.state.fl.us/legal/Rules/rulelist.htm>.

FOR THE RESPONDENT:

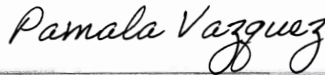


Kenneth E. Curtiss
Vice President

12/14/2021
Date

DONE AND ORDERED this 27 day of December, 2021, in Orange County, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



Kelley M. Boatwright
District Director
Southwest District

Filed, on this date, pursuant to section 120.52, Fla. Stat., with the designated Department Clerk, receipt of which is hereby acknowledged.



Clerk

December 27, 2021

Date

Copies furnished to:

Lea Crandall, Agency Clerk
Mail Station 35