

**BEFORE THE ENVIRONMENTAL PROTECTION  
COMMISSION OF HILLSBOROUGH COUNTY**

**ENVIRONMENTAL PROTECTION** )  
**COMMISSION OF** )  
**HILLSBOROUGH COUNTY,** )  
 )  
Complainant, )  
 )  
v. )  
**CLARIOS, LLC** )  
 )  
Respondent. )  
\_\_\_\_\_ )

EPC FILE NO. 22-1114FA0001

**CONSENT ORDER**

This Consent Order (“Order”) is entered into between the Environmental Protection Commission of Hillsborough County (“EPC”) and Clarios, LLC (“Respondent”) to reach settlement of certain matters at issue between the EPC and Respondent.

The EPC finds and the Respondent neither admits nor denies the following:

1. The EPC is a local regulatory agency vested by the Florida Legislature with the power and duty to protect Hillsborough County's air, soil, and water resources and to administer and enforce the Chapter 84-446, as amended, Laws of Florida (“Hillsborough County Environmental Protection Act” or “EPC Act”), and the EPC rules promulgated thereunder including but not limited to Chapter 1-3, Rules of the EPC, and also Chapter 403, Florida Statutes (F.S.), and the delegated rules promulgated thereunder, specifically Title 62, Florida Administrative Code (“F.A.C.”), in Hillsborough County, Florida. The EPC entered into an interagency agreement with the Florida Department of Environmental Protection (“DEP”) authorizing the EPC to act on behalf of the State, which includes the authority to enforce State rules and statutes concerning air facilities, including the subject fertilizer manufacturing facility. The EPC has jurisdiction over the matters addressed in this Consent Order.

2. Respondent is a foreign Limited Liability Company registered to do business in the State of Florida and a “person” within the meaning of Section 403.031(5), F.S.

3. Respondent is the owner and is responsible for the operation of the Clarios, LLC battery manufacturing facility located at 10215 N 30th Street, Tampa, FL 33612, in Hillsborough County (“Facility” or “Property”). The Facility is a synthetic minor pollution source as defined in

section 62-210.200, F.A.C. and is operated under Air Permit No. 0570001-036-AF (“Permit”) which expires on June 29, 2027. Respondent owns the real property on which the Facility is located. Portions of the Facility's battery manufacturing operations are subject to the prohibitions and conditions of the EPC Act and rules promulgated thereunder, Florida Statutes and the rules promulgated thereunder, and any EPC and/or DEP orders or permits (if applicable).

4. On November 15, 2022, the Respondent readily notified EPC staff, in accordance with permit requirements, regarding the discovery of a potential lead oxide release from the Two PbO Pre-hoppers otherwise known as Emissions Unit (“EU”) 059 during the morning on November 14, 2022. Upon learning of the potential release, Respondent immediately shut down the associated processes at the Facility. An investigation inspection was conducted by EPC staff in which an initial request for maintenance records was made to the Respondent. EPC staff requested additional records during the investigation which were submitted to EPC on February 3, 2023. The records indicated that the facility failed to conduct the semi-annual dye test for EU 059 for calendar year 2021 and the first half of 2022. Respondent conducted dye testing in the second half of 2022 and the first half of 2023, and leaks were not detected during these dye testing events. Respondent has noted that dye testing on EU 059 required a complete process shutdown. Additionally, it was found the differential pressure in the baghouse for EU 059 exceeded the manufacturer recommended range on October 29, 2022, and November 14-15, 2022. Warning Notice 2012-0212A was issued to the Respondent on November 18, 2022.

5. On January 6, 2023, the Respondent readily notified EPC, in accordance with permit requirements, of an additional incident on the Cast-On-Strap (COS) Line No. 2 otherwise known as EU 018 involving a potential lead oxide release. Upon learning of a potential release, Respondent immediately shut down the associated processes at the Facility. In its follow up investigation, Respondent discovered partially damaged filter bags on January 9, 2023, and conducted a complete filter bag change out. The baghouse was restarted and leak checked on January 10, 2023. EPC conducted an investigation inspection and requested maintenance records which were submitted by the Respondent on February 3, 2023. EPC staff noted from records that the facility had failed to annually calibrate the differential pressure transducer on EU 018 from June 2020 to February 2023, and the Respondent had been operating the baghouse with leaking bags and bags that its maintenance inspections indicated should be replaced from May 2022 until January 2023. Respondent noted that they made repeated good faith efforts to obtain the necessary bags to conduct the bag changeout but was unable to complete the work for several months due to supply chain issues and

contractor implementation problems. The differential pressure readings for EU 018 were generally within range during this period. EPC staff determined that the Respondent failed to maintain a minimum bag inventory as required by Consent Order #20- 1217AR0001 pursuant to Appendix 1, *Maintenance Activities & Continual Compliance Plan*, incorporated therein.

6. EPC determined from both investigation inspections that the periodic baghouse inspection reports indicated issues for both EU 059 and EU 018 with no corrective actions noted in the maintenance records provided to EPC. EPC found both incidents were caused by poor operation and maintenance by the Respondent. Respondent disputes this conclusion.

7. Based on the findings from Paragraphs 4 through 6, EPC cited in a Notice of Intent to Initiate Enforcement, dated April 12, 2023, and alleges here, and Respondent disputes, that the following violations occurred:

1. On November 14, 2022, Respondent allowed a lead oxide release on EU 059. During the investigation inspection conducted by EPC, it was found that the differential pressure in the baghouse for EU 059 had exceeded the manufacturer recommended range on October 29, 2022, and November 14-15, 2022, resulting in excess emissions of lead oxide, constituting poor operation and maintenance. This is in violation of Facility Wide Condition 21.F of Permit No. 0570001-036-AF; Common Condition No. 4 of Appendix C of Permit No. 0570001-036-AF; Section 62- 210.700(1), F.A.C.; 40 CFR 60.11(d); 40 CFR 63.6(e); and Section 1-3.25(2), Rules of the EPC.
2. During the investigation inspection of the lead oxide release for EU 059, EPC noted from records that the Respondent failed to conduct the semiannual dye tests for 2021 and the first half of 2022. Respondent has noted that dye testing on EU 059 required a complete process shutdown. EPC determined that this is in violation of the Operation and Maintenance Plan of Appendix O&M of Permit No. 0570001-036-AF.
3. On January 6, 2023, Respondent identified a lead oxide release from EU 018. During the investigation it was found that baghouse inspections had indicated there were leaking bags and noted that the bags in the EU 018 baghouse needed to be replaced from May 2022 through January 2023. This is in violation of Facility Wide Condition 21.F of Permit No. 0570001-036-AF; Common Condition No. 4 of Appendix C of Permit No. 0570001- 036-AF; Section 62-210.700(1), F.A.C.; 40 CFR 60.11(d); 40 CFR 63.6(e); and Section

1-3.25(2), Rules of the EPC.

4. During the investigation of the lead oxide release on EU 018, EPC staff found that the Respondent failed to annually calibrate the differential pressure transducer from June 2020 to January 2023. EPC staff received documentation that Respondent calibrated the transducer in February 2023 and that the instrument was found to be in range at that time. The delay in calibration is in violation of the Operation and Maintenance Plan of Appendix O&M of Permit No. 0570001-036-AF.

**THEREFORE**, having reached a resolution of the matters addressed above, and taking into consideration the information provided by the Respondent, Respondent and the EPC mutually agree and it is **ORDERED**:

8. The Respondent shall complete the following items within the timelines stated:

- a) Within 30 days of the effective date of this Consent Order, the Respondent shall prepare and submit a written plan, for EPC staff approval, documenting the procedure being developed to ensure all leaking, broken, or cracked bags/filters for any baghouses located at the facility are repaired/replaced in a timely manner and to ensure that all maintenance logs accurately reflect the status of bags and their associated corrective actions (collectively referred to as “Plan”), and should at minimum address the following:

- i. Details on the criteria to be utilized to determine what the appropriate corrective actions for leaking/broken/cracked bags/filters are and how the corrective actions will be enforced timely.
- ii. Develop a procedure to ensure issues with any bags or other maintenance concerns are properly addressed and reflected in required maintenance logs.
- iii. Details on the procedure being developed to ensure staff overseeing the operation and maintenance reports ensure all issues documented are reviewed by the appropriate staff and are addressed in a timely manner.
- iv. Review and enhance the current procedure utilized to ensure an adequate number of replacement bags are readily available in Facility inventory to promptly replace broken/cracked/leaking bags/filters based on reasonably foreseeable projections of need. (Refer to Appendix 1, *Maintenance*

*Activities & Continual Compliance Plan*, attached hereto and incorporated herein.)

9. This Consent Order shall constitute the schedule under which the Respondent shall achieve compliance with the requirements of the Permit and all applicable EPC and DEP rules and regulations. Respondent shall ensure operation of the Facility in compliance with applicable environmental regulations, including but not limited to complying with all applicable rules relating to the operation of the units referenced above and their associated control equipment.

10. Within 15 days of the effective date of this Consent Order, Respondent shall pay the EPC a total of **\$41,252.50** in settlement of the matters addressed in this Consent Order. This amount includes \$40,202.50 for civil penalties and \$1,050.00 for costs and expenses incurred by the EPC during the investigation of this matter and the preparation and tracking of this Consent Order.

11. Respondent agrees to pay the EPC stipulated penalties in the amount of \$250 per day for each and every day Respondent fails to timely comply with any of the requirements of Paragraph 8 of this Consent Order. The EPC may demand stipulated penalties at any time after violations occur. Respondent shall pay stipulated penalties owed within 30 days of the EPC's issuance of written demand for payment and shall do so as further described in Paragraphs 12 and 13, below, unless Respondent disputes EPC's demand for stipulated penalties. Stipulated penalties that are disputed by Respondent within thirty (30) days of a written demand by EPC will not be due until the dispute is resolved by negotiation or any administrative or civil proceeding. Nothing in this paragraph shall prevent the EPC 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 10 of this Consent Order.

12. Respondent shall make all payments required by this Order by cashier's check or money order. Cashier's check or money order shall be made payable to the "**Environmental Protection Commission**" and shall include thereon the notation "Civil Penalty" and EPC Consent Order No. 22-1114AR0001.

13. Except as otherwise provided, all submittals and payments required by this Order shall be sent to Cody Winter, Air Division, Environmental Protection Commission, 3629 Queen Palm Drive, Tampa, Florida 33619.

14. Respondent shall allow all authorized representatives of the EPC access to the Facility and the Property at reasonable times for the purpose of determining compliance with the terms of this Consent Order and the rules and statutes of the DEP and EPC.

15. 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 Consent 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 EPC of such sale or conveyance, (b) provide the name and address of the purchaser, operator, or person(s) in control of the Facility (collectively referred to as “new controlling party”), and (c) provide a copy of this Consent Order with all attachments to the new controlling party. The sale or conveyance of the Facility or the Property does not relieve Respondent of the obligations imposed in this Order.

16. If any event, including administrative or judicial challenges by third parties unrelated to the Respondent, occurs which causes delay or the reasonable likelihood of delay, in complying with the requirements of this Consent Order, Respondent shall have the burden of proving the delay was or will be caused by circumstances beyond the reasonable control of the 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 learning of the occurrence of an event causing delay, or upon becoming aware of a reasonable potential for delay, Respondent shall notify the EPC via phone or e-mail by the next working day or as soon thereafter as is reasonable under the circumstances. Additionally, within fifteen (15) business days of occurrence of an event causing delay or upon becoming aware of a potential for delay, Respondent shall notify the EPC 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. Notwithstanding the foregoing, if Respondent can establish that it has proceeded diligently to complete scheduled items, if circumstances require actions that cannot be completed within the specified times, the EPC will consider granting an extension of time to meet the deadlines set forth in this Order through an amendment to this Order.

17. Respondent denies that it has violated or continues to violate any of the statutory or regulatory requirements set forth herein and denies any liability to EPC arising out of the occurrences alleged herein. Nonetheless, Respondent voluntarily is entering into this Consent Order to resolve the matters addressed herein without resort to litigation. Nothing herein shall be deemed or considered an admission by Respondent in this matter or any pending or subsequent litigation as to any of the findings or facts alleged, referenced, stated, or incorporated into this Consent Order.

18. The EPC, 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, and for any other matters addressed in its Notice of Intent to Initiate Enforcement dated April 12, 2023 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.

19. This Consent Order is a settlement of the EPC's civil and administrative authority arising under Florida law to resolve the matters addressed herein. This Consent 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 Consent Order does not relieve Respondent of the need to comply with applicable federal, state or local laws, regulations or ordinances, and all applicable permits and orders issued under those laws, regulations or ordinances.

20. The EPC does not, by execution of this Consent Order, warrant or assert in any manner that the Respondent's compliance with this Consent Order will result in compliance with Respondent's permit(s). Notwithstanding the EPC's review or approval of any plans, reports, schedules, policies, or procedures prepared pursuant to this Consent Order, the Respondent and its successors and assigns shall remain solely responsible for any noncompliance with the terms of this Consent Order, all applicable federal, state or local laws, regulations or ordinances.

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

22. The provisions of the Consent Order shall apply to, inure, and be binding upon the parties and their successors and assigns. Each of the parties hereby agrees that in the event one of the parties attempts to enforce the terms of this Consent Order, no defense will be raised as to the validity or enforceability of this Consent Order. This Consent Order shall be construed and enforced under Florida Law.

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

24. All parties agree to pay their own fees and costs, including attorney's fees and costs, related to the violations addressed in this Consent Order and incurred up to the date of execution of this Consent Order, except that Respondent shall pay for any penalties, cost, and fees agreed to in this Consent Order.

25. Respondent acknowledges and waives its right to an administrative hearing pursuant to Sections 120.569 and 120.57, F.S., on the terms of this Consent Order. Respondent also acknowledges and waives its right to appeal the terms of this Consent Order pursuant to Section 120.68, F.S. Respondent hereby foregoes, surrenders, waives, and disclaims any and all other hearing and appeal rights under Chapter 120, F.S. or Section 9 of the EPC Act and any and all other suits, appeals, claims, or causes of action in any court of competent jurisdiction, including but not limited to County Court, Circuit Court, the Division of Administrative Hearings, appellate courts, or any other EPC hearing processes against the EPC and DEP arising out of or relating to the violations specifically addressed in this Consent Order. However, Respondent does not waive its right to defend any litigation, appeal or administrative challenge brought by any third parties. If EPC alleges that Respondent has violated this Consent Order, Respondent does not waive its right to prove compliance with the terms of this Consent Order in any court of competent jurisdiction.

26. 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 Consent Order shall be effective until reduced to writing, executed by both



Respondent and the EPC, and filed with the Clerk of the EPC.

27. The terms and conditions set forth in this Consent Order may be enforced in a court of competent jurisdiction pursuant to Sections 120.69 and 403.121, F.S. Failure to comply with the terms of this Consent Order shall constitute a violation of Section 403.161(1)(b), F.S., and the EPC Act.

28. This Consent Order is a final order of the EPC pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the EPC unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition, this Consent Order will not be effective until further order of the EPC.

29. Notice of Rights.

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, F.S. Because the administrative hearing process is designed to formulate final agency action, the filing of a petition concerning this Consent Order means that the EPC's final action may be different from the position taken by it in this 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 (the number assigned on the first page of this Consent Order), if known;
- (b) The name, address, and telephone number of the petitioner; 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;
- (c) An explanation of how the petitioner's substantial interests will be affected by the Consent Order;
- (d) A statement of when and how the petitioner received notice of the Consent Order;
- (e) Either a statement of all material facts disputed by the petitioner or a statement that the petitioner does not dispute any material facts;
- (f) A statement of the specific facts the petitioner contends warrant reversal or modification of the Consent Order;
- (g) A statement of the rules or statutes the petitioner contends require reversal or modification of the Consent Order; and
- (h) A statement of the relief sought by the petitioner, stating precisely the action petitioner

wishes the agency to take with respect to the Consent Order.

The petition must be filed (received) at the EPC's Legal Department, 3629 Queen Palm Drive, Tampa, Florida 33619 or via electronic mail at [legalclerk@epchc.org](mailto:legalclerk@epchc.org) or via facsimile at (813) 627-2602 within 21 days of receipt of this notice. Failure to file a petition within the 21-day period constitutes a person's waiver of any right to request an administrative hearing and to participate as a party to this proceeding under sections 120.569 and 120.57, F.S. 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.

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

**FOR THE RESPONDENT:**

CLARIOS, LLC

8/4/2023  
DATE

By: *Michael Hudson*  
SIGNATURE

Name: MICHAEL Y HUDSON  
PRINT NAME

Title: PLANT MANAGER TAMPA FIP

**For EPC staff only**

DONE AND ORDERED this 7<sup>th</sup> day of August, 2023,

in Hillsborough County, Florida.

ENVIRONMENTAL PROTECTION  
COMMISSION OF  
HILLSBOROUGH COUNTY

*Janet D. Lorton*

Janet D. Lorton  
Executive Director

Filed, on this date, pursuant to Section 120.52, F.S., with the designated EPC Clerk,  
receipt of which is hereby acknowledged.

*Patricia Pons*

Clerk

08/07/2023

Date

