

LM AUG 14 2013

At 9:09A M.
Amalia Rodriguez-Mendoza, Clerk

CAUSE NO. D-1-GV-09000228

THE STATE OF TEXAS,

Plaintiff,

v.

GULF CHEMICAL &
METALLURGICAL
CORPORATION

Defendants.

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

261ST JUDICIAL DISTRICT

AGREED FINAL JUDGMENT AND PERMANENT INJUNCTION

On this day the State of Texas and Gulf Chemical & Metallurgical Corporation presented to the Court this Agreed Final Judgment and Permanent Injunction ("Judgment"). The State appeared through Texas Attorney General Greg Abbott on behalf of the Texas Commission on Environmental Quality. Gulf Chemical & Metallurgical Corporation appeared through Baker Botts L. L. P.

Upon review of this Judgment, the Court determines that it is a proper resolution of the matters raised in the Plaintiff's First Amended Petition and Application for Temporary and Permanent Injunctive Relief. The Court, therefore, approves this Judgment.

DEFINITIONS AND GENERAL PROVISIONS

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the following Definitions and General Provisions shall apply to this Judgment:

Definitions

1.1. The following definitions shall apply to this Judgment:

A. The SO₂ Scrubber Stack means the emissions point that has replaced EPN 001 and EPN 002 as the single source of stack emissions from Roasters 3 and 4 as described in Permit 9803, attached hereto as Exhibit 5. The SO₂ Scrubber Stack

vents emissions generated from Roasters 3 and 4 following emission control in the existing parallel ESPs, the circulating dry SO₂ scrubber and the baghouse. The baghouse removes particulate matter generated by the roasting process and by the circulating dry SO₂ scrubber treatment process.

B. "GCMC" means Gulf Chemical & Metallurgical Corporation.

C. "Facility" means the non-ferrous secondary metal recovery plant at 302 Midway Road, Freeport, Brazoria County, Texas owned and/or operated by GCMC and includes all real and personal property associated therewith.

D. "TCEQ" shall mean the Texas Commission on Environmental Quality and any predecessor or successor agencies. To the extent this Judgment requires action or approval by the TCEQ, "TCEQ" shall mean the Executive Director or his designee(s), except for permit authorizations.

E. "Effective Date" means the date the Court signs this Judgment.

F. "First Deadline" shall mean the later of (1) 11:59 p.m. seven days after the Effective Date or (2) 11:59 p.m. seven days after the date on which Defendant GCMC receives notice of this Judgment.

G. "Second Deadline" shall mean the later of (1) 11:59 p.m. sixty days after the Effective Date or (2) 11:59 p.m. sixty days after the date on which Defendant GCMC receives notice of this Judgment.

H. "Air Contaminant" means particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor, including any combination of those items, produced by processes other than natural. This definition is quoted from

Tex. Health & Safety Code § 382.003(2) and it is intended to have the same meaning as the statutory provision.

- I. "Al₂O₃" means aluminum oxide.
- J. "CO" means carbon monoxide.
- K. "CoO" means cobalt oxide.
- L. "HCl" means hydrochloric acid.
- M. "H₂SO₄" means sulfuric acid.
- N. "MoO₃" means molybdenum trioxide.
- O. "NH₃" means ammonia.
- P. "(NH₄)₂SO₄" means ammonium sulfate.
- Q. "NiO" means nickel oxide.
- R. "NO_x" means total oxides of nitrogen.
- S. "PbO" means lead oxide.
- T. "PM" means total particulate matter, including PM₁₀ and PM_{2.5}.
- U. "PM₁₀" means particulate matter less than or equal to ten microns.
- V. "PM_{2.5}" means particulate matter less than or equal to 2.5 microns.
- W. "SO₂" means sulfur dioxide.
- X. "V₂O₅" means vanadium pentoxide.
- Y. "VOC" or "VOCs" means volatile organic compounds.

General Provisions

2.1 Except as expressly required otherwise by the terms of this Judgment, all written notices, plans, reports, or other documents required or authorized to be submitted to the TCEQ in accordance with this Judgment by GCMC, or any agent thereof, shall be submitted to the TCEQ Office of Legal Services, MC 175, P.O. Box 13087, Austin, Texas 78711-3087 (for regular and

certified mail) or Building A, 12100 Park 35 Circle, Austin, Texas 78753 (physical address). Copies of the notices, plans, reports, or other documents shall be sent to the TCEQ Office of Compliance and Enforcement, MC 172, P.O. Box 13087, Austin, Texas 78711-3087 (for regular and certified mail) or Building A, 12100 Park 35 Circle, Austin, Texas 78753 (physical address), and to the TCEQ Houston Region Office, Region 12, 5425 Polk St., Ste. H, Houston Texas 77023-1452.

2.2 The State and GCMC and their counsel represent and warrant that they have participated fully in the negotiation, drafting, review, and revision of this Judgment. The State and GCMC and their counsel represent and warrant that they understand the conduct prohibited by, and required by, this Judgment. The State and GCMC and their counsel represent and warrant that they understand the meaning, definition, use, and intent of all terms in this Judgment.

2.3 Any notices, plans, reports, or other documents required to be submitted to the State or the TCEQ pursuant to this Judgment and approved by the State or the TCEQ shall be considered integral parts of this Judgment and shall be enforceable as if set forth herein.

2.4 The parties stipulate that any notices, plans, reports, or other documents required to be submitted to the State or the TCEQ pursuant to this Judgment are authentic and do not constitute hearsay in any further proceedings in this cause.

2.5 GCMC acknowledges receipt of a copy of this Judgment, is aware of the duties placed upon it by the injunctive provisions contained in this Judgment, and is willing to and capable of carrying out those duties in full. GCMC waives the necessity of the issuance and service of a writ of injunction pursuant to Rule 692 of the Texas Rules of Civil Procedure.

2.6 Each of the undersigned representatives of a party to this Judgment certifies that they are fully authorized to enter into the terms and conditions of the Judgment and to legally execute and bind that party to this Judgment.

2.7 The State and GCMC hereby waive the right of appeal from this Judgment.

2.8 The State and GCMC stipulate that prior drafts of this Judgment, or any language proposed by any party in the negotiations that resulted in this Judgment, shall not be admissible in evidence for any purpose.

2.9 The occurrence of any violation by GCMC is in dispute and the entry of this Judgment shall not constitute an admission by GCMC of any violation alleged by the State in the captioned litigation.

2.10 This Judgment complies with all statutory, jurisdictional, and procedural requisites necessary for entry and enforcement.

2.11 This Judgment may be executed in multiple parts, which together shall constitute a single original instrument. Any executed signature page to this Judgment may be transmitted by facsimile transmission or email to the other party, which shall constitute an original signature for all purposes.

2.12 This Judgment shall not be construed in any way to relieve GCMC, or its agents or contractors, from the obligation to comply with any federal, state, or local law.

2.13 The State shall be allowed such writs and processes as may be needed for the enforcement of this Judgment.

2.14 All relief not specifically granted herein is denied.

2.15 This Judgment disposes of all parties and all claims and is a final judgment.

CIVIL PENALTIES, ATTORNEY'S FEES, AND COSTS

3.1 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the State of Texas shall have judgment for civil penalties from and against GCMC in the amount of \$7,500,000.00.

3.2 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that \$6,000,000.00 shall be paid in five installments as follows:

- A. \$3,000,000.00 shall be paid on or before 5:00 p.m. on the First Deadline;
- B. \$750,000.00 shall be paid on or before 5:00 p.m. on the 183rd calendar day after the Effective Date;
- C. \$750,000.00 shall be paid on or before 5:00 p.m. on the 365th calendar day after the Effective Date;
- D. \$750,000.00 shall be paid on or before 5:00 p.m. on the 547th calendar day after the Effective Date;
- E. \$750,000.00 shall be paid on or before 5:00 p.m. on the 730th calendar day after the Effective Date,

3.3 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that GCMC shall deliver the first payment referenced in Paragraph 3.2(A) above to a mutually agreeable escrow agent. This escrow agent shall immediately negotiate the payment instrument and distribute the proceeds according to the terms of the escrow agreement. All subsequent payments shall be rendered directly to the State of Texas in accordance with Paragraph 3.7 below.

3.4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that GCMC shall deliver to the State an irrevocable standby Letter of Credit ("LC") securing the remaining payments described in Paragraph 3.2(B) through (E) above at the same time that GCMC delivers the first payment referenced in Paragraph 3.2(A) above. The LC must: (1) be in the amount of

\$3,000,000.00; (2) conform to the language set forth in Exhibit 8; and (3) be issued by a financial institution acceptable to the TCEQ Executive Director with a rating of at least three stars by Bankrate if domiciled in the United States of America. If at any time the financial institution plans to cancel the LC, GCMC shall provide an alternate LC acceptable to the TCEQ Executive Director that meets and is subject to the requirements set forth above no later than sixty calendar days after a cancellation notice is received by the TCEQ in accordance with the terms and conditions of the LC. The TCEQ Executive Director may draw on the LC if: (1) a voluntary or involuntary petition for relief has been filed against GCMC in any bankruptcy court; (2) GCMC fails to make a payment required by Paragraph 3.2(B) through (E) above; or (3) GCMC fails to provide an alternate LC acceptable to the TCEQ Executive Director within the required timeframe. GCMC shall maintain the LC until such time as the TCEQ provides written consent for termination of the LC. The TCEQ Executive Director shall provide such written consent within 30 calendar days of receipt of the final payment by GCMC.

3.5 IT IS FURTHER ORDERED, ADJUDGED, and DECREED that the remaining \$1,500,000.00 of civil penalties assessed in this section shall be deferred as follows:

A. If GCMC has not successfully completed the audit described in Paragraphs 5.1-5.3 below within fifteen calendar days of the deadline set forth therein, GCMC shall pay to the State deferred civil penalties of \$300,000.00. If GCMC has successfully completed the audit described in Paragraphs 5.1-5.3 below within fifteen calendar days of the deadline set forth therein, then \$300,000.00 of the penalty provided for in Paragraph 3.1 above is permanently deferred and need not be paid.

B. If GCMC has not successfully completed all work necessary to restore the concrete containment unit for waste management units as referenced in Paragraphs 5.16-5.17 below within fifteen calendar days of the deadline set forth therein, GCMC shall pay to the State deferred civil penalties of \$300,000.00. If GCMC has successfully completed all work necessary to restore the concrete containment unit for waste management units as referenced in Paragraphs 5.16-5.17 below within fifteen calendar days of the deadline set forth therein, then \$300,000.00 of the penalty provided for in Paragraph 3.1 above is permanently deferred and need not be paid.

C. If GCMC has not completed all work called for in Paragraphs 5.18-5.19 below related to high volume air sampling within fifteen calendar days of the deadline set forth therein, GCMC shall pay to the State deferred civil penalties of \$300,000.00. If GCMC has completed all work called for in Paragraphs 5.18-5.19 below within fifteen calendar days of the deadline set forth therein, then \$300,000.00 of the penalty provided for in Paragraph 3.1 above is permanently deferred and need not be paid.

D. If GCMC does not purchase the air monitoring equipment provided for in the Monitoring Plan pursuant to Paragraph 5.20(F) or 5.21 (A) below within fifteen calendar days of the deadlines set forth therein, GCMC shall pay to the State deferred civil penalties of \$300,000.00. If GCMC does purchase the air monitoring equipment provided for in the Monitoring Plan, then \$300,000.00 of the penalty provided for in Paragraph 3.1 above is permanently deferred and need not be paid.

E. If GCMC has not designated all responsible parties as described in Paragraphs 5.24-5.25 below within fifteen calendar days of the deadline set forth therein, GCMC shall pay to the State deferred civil penalties of \$250,000.00. If GCMC has designated all responsible parties as described in Paragraphs 5.24-5.25 below within fifteen calendar days of the deadline set forth therein, then \$250,000.00 of the penalty provided for in Paragraph 3.1 above is permanently deferred and need not be paid.

F. If GCMC has not paid all amounts in this section within fifteen calendar days of the deadlines set forth herein, GCMC shall pay to the State deferred civil penalties of \$50,000.00. If GCMC has paid all amounts in Section 3 within fifteen calendar days of the deadlines set forth herein, then \$50,000.00 of the penalty provided for in Paragraph 3.1 above is permanently deferred and need not be paid.

If they become due, these deferred payments shall be made immediately and in accordance with Paragraphs 3.7 and 3.8 below. These items remain subject to enforcement through the terms of the injunction set forth below.

3.6 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the State of Texas shall have judgment for attorney's fees, investigative costs, and costs for court from and against GCMC in the amount of \$300,000.00. This award is included in the total judgment of \$7,500,000.00 listed in Paragraph 3.1 above.

3.7 Delivery of any payment required or permitted by this Judgment to be delivered to the State requires the actual receipt by the Office of the Attorney General, Environmental

Protection Division, 300 West 15th Street, Clements State Office Building 10th Floor, Austin, Texas 78701, referenced to AG Case No. 103187001.

3.8 GCMC shall pay post-judgment interest on all unpaid amounts awarded in this Judgment at the legal rate of 5.0% per year, commencing if and when a payment is not made on time according to the schedule set forth in paragraph 3.2 above.

RESOLUTION OF LIABILITY

4.1 All resolution of liability discussed herein shall be effective on the State's receipt of both the initial settlement payment from the escrow agent discussed in Paragraph 3.3 above and the Letter of Credit discussed in Paragraph 3.4 above.

4.2 This Judgment resolves all liability for civil penalties through the Effective Date of this Judgment for all violations of law specifically alleged in the Plaintiff's Original and First Amended Petitions and Applications for Temporary and Permanent Injunctive Relief on file in the captioned case, unless otherwise explicitly noted herein.

4.3 This Judgment also resolves all liability for civil penalties through the Effective Date of this Judgment, unless otherwise explicitly noted herein, for the following violations of the Texas Clean Air Act, Chapter 382 of the Texas Health and Safety Code; the Texas Solid Waste Disposal Act, Chapter 361 of the Texas Health and Safety Code; and the Texas Water Quality Control Act, Chapter 26 of the Texas Water Code, as well as corresponding provisions of the Texas Administrative Code, specifically listed below:

A. All violations identified in Table 2, Gulf Chemical Metallurgical Corporation RCRA Compliance Audit Findings Table, pages 1 through and including 4, attached as Exhibit 1 to this Judgment which is incorporated herein for all purposes by reference;

B. All violations identified in Table 3, Gulf Chemical and Metallurgical Corporation Stormwater Audit Findings Table, consisting of one page, attached as Exhibit 2 to this Judgment which is incorporated herein for all purposes by reference;

C. All violations identified in Table 4, Gulf Chemical and Metallurgical Corporation Air Compliance Audit Findings Table, consisting of pages 1 through and including 5, attached as Exhibit 3 to this Judgment which is incorporated herein for all purposes by reference; and

D. All violations identified in Table 5, Gulf Chemical and Metallurgical Corporation Mechanical Integrity Assessment Findings Table, consisting of pages 1 through and including 6, attached as Exhibit 4 to this Judgment which is incorporated herein for all purposes by reference.

4.4 The resolution of liability contained herein does not resolve liability for any violations addressed in the currently pending administrative action styled IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING GULF CHEMICAL & METALLURGICAL CORPORATION; Docket No. 2011-0987-IHW-E; before the Texas Commission on Environmental Quality

4.5 The resolution of liability for civil penalties in Paragraphs 4.1-4.3 above does not preclude the State of Texas from using evidence of such violations (1) to enforce the injunctive provisions in this Judgment, including by contempt, (2) in any future proceeding to obtain injunctive relief, or (3) to urge that the past violations should be considered in assessing the amount of civil penalties for violations that occur after the Effective Date of this Judgment.

4.6 This Judgment resolves all liability for attorney's fees incurred prior to the Effective Date of this Judgment for the investigation and prosecution of this action for the violations resolved in Paragraphs 4.1-4.3 above. This Judgment does not resolve liability for attorney's fees for any other violations or proceedings.

INJUNCTIVE PROVISIONS

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Gulf Chemical & Metallurgical Corporation and its officers, agents, servants, and employees, and those in active concert or participation with them, are hereby immediately, mandatorily, and permanently enjoined as follows:

Audit

5.1 No later than 11:59 p.m. on the First Deadline, GCMC shall have commenced an independent third-party compliance audit of operations at the Facility to determine whether GCMC's operations are in compliance with TCEQ rules, the Texas Water Code Chapter 26, the Texas Health & Safety Code Chapters 361 and 382, and all TCEQ and United States Environmental Protection Agency permits issued to GCMC. The purpose of this audit will be to confirm that any corrective actions deemed necessary as a result of the audits provided for in Paragraph 4.5 of the Agreed Temporary Injunction on file in this case have been performed and completed and that the Facility operates in compliance with applicable statutory and regulatory requirements. The audit shall review the compliance status of each of the items listed on Exhibits 1, 2, 3, and 4 attached hereto.

5.2 The audit shall be performed by one or more consulting firms acceptable to TCEQ.

5.3 The audit shall be completed no later than thirty days after the First Deadline, and a final report of the findings of such audit shall be provided to the TCEQ no later than thirty days

after the audit is completed. GCMC shall not review or comment on any draft of the audit report nor shall GCMC have direct input into or editorial privileges of any draft of the report or the final report.

Emissions from the SO₂ Scrubber Stack

5.4 Except as provided for in Paragraph 5.5 below, no later than 11:59 p.m. on August 30, 2013, GCMC shall cease all emissions of any Air Contaminant from the SO₂ Scrubber Stack as described in Special Condition 3A of Permit 9803, dated December 5, 2011 (or any subsequent amendment or renewal thereof) issued by the TCEQ to GCMC. A copy of Permit 9803 is attached as Exhibit 5, which is incorporated herein for all purposes by reference.

5.5 GCMC shall not be required to cease all emissions of any Air Contaminant from the SO₂ Scrubber Stack as specified in Paragraph 5.4 above if GCMC satisfies all of the following requirements:

A. Prior to 11:59 p.m. on the First Deadline, but after construction of an emissions control system as required by Special Condition 3(A) of Permit 9803 attached as Exhibit 5, GCMC conducts a stack test on the emissions from the SO₂ Scrubber Stack. The combined emissions from the above stack test must demonstrate compliance with the limitations on emission rates in lb/hr (pounds per hour) and in TPY (tons per year) for VOC, SO₂, CO, NiO, MoO₃, V₂O₅, and Al₂O₃ set in the Emission Sources — Maximum Allowable Emission Rates Table in Permit 9803 attached as Exhibit 5, which applied to the emissions points formerly known as EPN 001 and EPN 002. Compliance with the requirement to achieve 95% reduction of SO₂ emissions shall be demonstrated by simultaneous

testing of the mass of SO₂ at the inlet and outlet of the SO₂ emission control system.

B. GCMC may conduct multiple stack tests on or before the First Deadline as provided for in Paragraph 5.5(A) above, but may not combine the results of such multiple tests. In order to satisfy the requirements of this Paragraph 5.5, the demonstration of emissions for all Air Contaminants required by Paragraph 5.5(A) above shall be based on a single test. Compliance testing must be conducted during periods of normal, representative operation of the process and emission control equipment in accordance with the requirements of 40 C.F.R. 60.8(c). A copy of 40 C.F.R. 60.8(c) is attached as Exhibit 9, which is incorporated herein for all purposes by reference.

C. Any stack test conducted in accordance with this Paragraph 5.5 shall be conducted with Roasters 3 and 4 operating at a maximum production rates based on the permitted maximum for spent catalyst feed rate of 17,700 pounds per hour as provided for in Special Conditions 4 and 12(D) of Permit 9803 attached as Exhibit 5.

D. Prior to 11:59 p.m. on the First Deadline, GCMC commences operation of, and thereafter continuously operates, the emission control system as required in Paragraphs 5.5(A) and 5.5(B) above and thereafter operates said system at all times when the roasters are being fed with catalyst or any other material.

5.6 No later than the First Deadline and continuing through the earlier of August 30, 2013 or until compliance with Paragraph 5.5 has been achieved, except during the performance of a stack test as provided for in Paragraph 5.5(A). above (including associated ramp up and

ramp down periods commencing twenty four hours prior to, and extending eight hours after conclusion of the stack test), GCMC shall limit the maximum catalyst feed rate to Roasters 3 and 4 to a combined 12,400 pounds per hour and a total of 3,500 tons per month. For the same period of time, the maximum combined catalyst feed rate shall be limited to 6,200 pounds per hour in the event that only Roaster 3 or Roaster 4 (but not both) are in good working order and operating during Roaster operations. If, prior to August 30, 2013, GCMC demonstrates that the stack test satisfied the requirements of Paragraph 5.5 above, the maximum catalyst feed rate limitations in this Paragraph 5.6 shall no longer be in effect and GCMC may return to operating with the maximum catalyst feed rate provisions of Special Conditions 4 and 7 of Permit 9803 attached as Exhibit 5.

5.7 If GCMC is required to cease emissions pursuant to Paragraph 5.4, it shall not resume such emissions except with approval of this Court on conditions that the Court deems comply with all applicable laws, regulations, and permit conditions. The Court retains jurisdiction to effectuate this remedy.

Emissions from EPN 006 (Ammonia Scrubber)

5.8 Except as provided for in Paragraph 5.9 below, no later than 11:59 p.m. on August 30, 2013, GCMC shall cease all emissions of any Air Contaminant from EPN 006 and the Ammonia Scrubber as described in Permit 1157C dated February 24, 2012 (or any subsequent amendment or renewal thereof) issued by the TCEQ to GCMC. A copy of Permit 1157C is attached as Exhibit 6, which is incorporated herein for all purposes by reference.

5.9 GCMC shall not be required to cease all emissions of any Air Contaminant from EPN 006 and the Ammonia Scrubber, as specified in Paragraph 5.8 above if GCMC satisfies all of the following requirements:

A. Prior to 11:59 p.m. on August 30, 2013, GCMC shall submit to the TCEQ for approval a written plan for bringing EPN 006 into compliance with all applicable laws, regulations, and permit conditions. The written compliance plan shall include a schedule for completion of the plan with appropriate interim and final dates. TCEQ has discretion to approve the plan and to determine what constitutes "appropriate" dates.

B. Prior to the date that the compliance plan is approved by the TCEQ, GCMC shall respond to any TCEQ requests for clarification, additional information, edits, changes, amendments, supplements, or alterations to the compliance plan no later than seven calendar days after TCEQ makes such a request (unless a longer response period is specified by the TCEQ in its request or otherwise agreed in writing).

C. GCMC shall complete the compliance plan provided for in Paragraph 5.9(A) above as approved by the TCEQ in accordance with the deadlines set forth therein, including timely submission of technically and administratively complete applications for any additional or modified permits contemplated by the plan.

D. No later than 30 calendar days after completion of the compliance plan provided for in Paragraph 5.9(A) above GCMC shall conduct a stack test in accordance with Special Condition 7 of Permit 1157C attached as Exhibit 6 (or any subsequent amendment or renewal thereof).

E. No later than sixty calendar days after completion of the stack test provided for in Paragraph 5.9(D) above, GCMC must show that the stack test demonstrates that emissions for Air Contaminants from EPN 006 and the

Ammonia Scrubber collectively do not exceed the emission rates in lb/hr (pounds per hour) and in TPY (tons per year) for NH₃, CO, H₂SO₄, (NH₄)₂SO₄, NO_x, HCl, PM₁₀, and VOC set in the Emission Sources — Maximum Allowable Emission Rates Table in Permit 1157C attached as Exhibit 6 or such other emissions rates as may become applicable by permit .

F. GCMC may conduct multiple stack tests as provided for in Paragraph 5.9(D) above, but may not combine the results of such multiple tests. In order to satisfy the requirements of this Paragraph 5.9, the demonstration of emissions for all Air Contaminants required by Paragraph 5.9(E) above shall be based on a single test.

G. If GCMC is required to cease emissions pursuant to Paragraph 5.9, it shall not resume such emissions except with approval of this Court on conditions that the Court deems comply with all applicable laws, regulations, and permit conditions. The Court retains jurisdiction to effectuate this remedy.

5.10 All resolution of liability in Paragraphs 4.1-4.6 above relating to EPN 006 (the Ammonia Scrubber) are contingent on (1) TCEQ's approval of the plan referenced in Paragraphs 5.8 and 5.9 above, and on (2) GCMC's timely and successful completion of all requirements of the plan referenced in Paragraphs 5.8 and 5.9 above.

Emissions from EPN 65.18 (Flash Dryer Baghouse Stack)

5.11 Except as provided for in Paragraph 5.12 below, no later than the First Deadline, GCMC shall cease all emissions of any Air Contaminant from EPN 65.18 and the Flash Dryer Baghouse Stack as described in Permit 19793 attached as Exhibit 7, which is incorporated herein for all purposes by reference.

5.12 GCMC shall not be required to cease all emissions of any Air Contaminant from EPN 65.18 and the Flash Dryer Baghouse Stack as specified in Paragraph 5.11 above if GCMC satisfies all of the following requirements:

A. Before the First Deadline, GCMC conducts a stack test in accordance with Special Condition 10 of Permit 19793 attached as Exhibit 7.

B. The stack test conducted in accordance with Paragraph 5.12(A) above demonstrates that emissions for Air Contaminants from EPN 65.18 and the Flash Dryer Baghouse Stack collectively do not exceed the emission rates in lb/hr (pounds per hour) and in TPY (tons per year) for PM₁₀ (using EPA test method 201A/202, attached as Exhibit 10, which is incorporated herein for all purposes by reference.), SO₂, NO_x, CO, VOC, NiO, V₂O₅, and Al₂O₃ set in the Emission Sources — Maximum Allowable Emission Rates Table in Permit 19793 attached as Exhibit 7.

C. GCMC may conduct multiple stack tests as provided for in Paragraph 5.12(A) above, but may not combine the results of such multiple tests. In order to satisfy the requirements of this Paragraph 5.12, the demonstration of emissions for Air Contaminants required by Paragraph 5.12(B) above shall be based on a single test.

D. If GCMC is required to cease emissions pursuant to paragraph 5.11, it shall not resume such emissions except with approval of this Court on conditions that the Court deems comply with all applicable laws, regulations, and permit conditions. The Court retains jurisdiction to effectuate this remedy.

Unauthorized air emissions

5.13 No later than the First Deadline, GCMC shall cease the emission of all Air Contaminants from each emission point or emission source listed in line items 5, 6, 7, 8, 16, 17, 18, 19, and 20 in Table 4, Gulf Chemical and Metallurgical Corporation Air Compliance Audit Findings Table, attached as Exhibit 3 unless, prior to the First Deadline, (1) GCMC obtains permit authorization from the TCEQ to emit the Air Contaminant from the emission source or emission point; or (2) GCMC submits an administratively and technically complete application for a permit, or an administratively and technically complete application for an amendment to an existing permit, to authorize the emission of Air Contaminants at such emission source or point.

5.14 Except as expressly authorized for a defined Air Contaminant and emission point in the Emission Sources — Maximum Allowable Emission Rates table in Permit 1157C attached hereto as Exhibit 6, no later than 11:59 p.m. on the First Deadline, GCMC shall keep the Molybdenum Kiln Building enclosed except during maintenance, loading and unloading of material. There shall be no visible emissions from the Moly Kiln Building as determined by EPA Reference Method 22 or equivalent, as found in 40 C.F.R. Part 60, Appendix A. EPA Reference Method 22 is attached hereto as Exhibit 12 and is fully incorporated by reference.

5.15 Except as expressly authorized for a defined Air Contaminant and emission point in the Emission Sources — Maximum Allowable Emission Rates table in Permit 19793 attached hereto as Exhibit 7, no later than 11:59 p.m. on the First Deadline, GCMC shall keep the CB1 Building enclosed except during maintenance, loading and unloading of material. There shall be no visible emissions from the CB1 Building as determined by EPA Reference Method 22 or equivalent, as attached hereto as Exhibit 12.

Inadequate concrete containment

5.16 No later than the Second Deadline, GCMC shall complete all work necessary to restore the structural integrity of the concrete containment for waste management units as

identified in line items 13 and 14 Table 2, Gulf Chemical Metallurgical Corporation RCRA Compliance Audit Findings Table, attached as Exhibit 1.

5.17 Specifically, the concrete containment for NOR 005, 010, and 025 shall be repaired and maintained to comply with 30 Texas Administrative Code §§ 335.152(a)(1) and (7) (attached hereto as Exhibit 15 and fully incorporated by reference); 40 C.F.R. 264.175(b)(1) and (5) (attached hereto as Exhibit 16 and fully incorporated by reference); and 40 C.F.R. 264.15(a) (attached hereto as Exhibit 17 and fully incorporated by reference).

High volume ground level air sampling

5.18 No later than the First Deadline, GCMC shall have completed all work, including providing notice to the TCEQ if required by statute, regulation or permit, necessary to commence high volume air sampling for net ground level concentrations of total PM as required by Special Condition 13 of Permit 9803 attached as Exhibit 5.

5.19 No later than 11:59 p.m. on the Second Deadline, GCMC shall complete high volume air sampling for net ground level concentrations of total PM, including the preparation and submission of any reports of the results of such sampling, as required by Special Condition 13 of Permit 9803 attached as Exhibit 5.

Fence Line Monitoring

5.20 No later than the Second Deadline, GCMC shall submit to the TCEQ for approval a written plan for the evaluation of a fence line air quality monitoring program to assess and, if relevant, minimize potential impacts of Air Contaminant releases from the Facility (“the Evaluation Plan”). At a minimum, the Evaluation Plan shall include the following terms, protocols and standards:

- A. Within fifteen days of TCEQ approval of the Evaluation Plan, GCMC shall issue a purchase order for a Cooper Environmental Xact 625 continuous air

monitoring unit for the purpose of providing near real-time data of speciated metals to include arsenic, cobalt, molybdenum, lead, nickel, and vanadium on an hourly basis.

B. The Xact 625 unit shall be set up, calibrated, and operating at a predominantly downwind location near the facility's fenceline within sixty days after the date of delivery to GCMC. If GCMC is unable, despite diligent efforts, to have the Xact 625 unit operational within the 60 day deadline in this paragraph, the deadline shall be extended so long as GCMC continues to make diligent efforts to have the unit installed, and made operational; provided that if, despite using diligent efforts, GCMC is unable to have the Xact 625 unit operational within 180 calendar days after the date of delivery to GCMC, then (i) it may cease such efforts, (ii) Paragraphs 5.20 (C) and (D) shall not apply, and (iii) GCMC shall proceed pursuant to Paragraph 5.20 (F) as if the Test Period were deemed a "failure."

C. GCMC will then operate the Xact 625 unit for a Test Period of six months. This Test Period shall start after instrument installation, set up, calibration, and verification by the vendor that the instrument is producing valid data throughout the entire data collection, processing, and communication system. During this Test Period, GCMC shall maintain and operate the unit per the manufacturer's specifications and instructions. All measurements will be recorded, and the results for each month will be reported to TCEQ no later than fifteen days after the end of that month.

D. The purpose of the Test Period is to ascertain whether the Xact 625 is capable of providing accurate, reliable, continuous measurements for arsenic, cobalt, molybdenum, lead, nickel, and vanadium. GCMC shall monitor the Xact 625 in accordance with a TCEQ-approved Quality Assurance Project Plan (“QAPP”) that is modeled after the EPA Environmental Technology Verification (“ETV”) Program’s QAPP for verification of the Exact 625 Ambient Particulate Metals Monitor, attached hereto as Exhibit 11 and fully incorporated by reference. The TCEQ-approved QAPP must use the same sampling (i.e. EPA IO 2.3) and analytical (i.e. EPA IO 3.5) approach as the ETV QAPP. The testing validation shall consist of an initial screening that will include collection of at least three comparative samples collocated at the Xact 625 unit in operation. If the results agree within a $0.9r^2$ Coefficient of Determination for each individual metal at or above the Xact 625 minimum quantitation limits, no further samples will be required. For each metal with a Coefficient of Determination less than 0.9 based on the screening, adjustments will be made to the Xact 625 as directed by Cooper Environmental, and fifteen additional comparative samples will be collected for those specific metals at or above the Xact 625 minimum quantitation limits. The final Coefficient of Determination will be calculated from this sample set of all eighteen samples. The Test Period shall be deemed a “success” if the Xact 625 unit meets all of the following criteria: (1) provides data that has a Coefficient of Determination of at least 0.9 for each metal tested; (2) achieves data completeness as determined by Equation DC1 in the QAAP of at least 75%; and (3) the total reasonable cost to GCMC of acquiring and operating the Xact

625 up to the end of the test period does not exceed \$500,000 for instrument purchase and operation excluding site improvements, initial set up, and initial calibration. If any of these criteria is not achieved during the Test Period, the test will be defined as a “failure.” Within sixty days of completion of the Test Period, GCMC shall submit a report to TCEQ that summarizes the performance of the Xact 625 with respect to the measurement criteria specified in this subsection, in which GCMC shall clearly indicate whether the test was a “success” or “failure” based on these criteria.

E. TCEQ retains the right to review GCMC’s report and declaration of either “success” or “failure” as described in Paragraph 5.20(D) above. TCEQ is authorized to make minor changes to the Plan to declare the Xact 625 a “success” if the Test Period yields a Coefficient of Determination equal to or above 0.8 but other data indicated the Xact 625 was reliable and repeatable. This authority includes the right to add up to eighteen additional data points for evaluation purposes. Additionally, TCEQ retains the right to exclude metals from the Test Period that do not meet the acceptance criteria; however, any metals so excluded would also be excluded from the monitoring requirements.

F. If the Test Period is deemed a failure pursuant to the Evaluation Plan, then GCMC shall submit to TCEQ for approval, within sixty days of declaring the test a failure, an Alternate Monitoring Plan to conduct continuous fence line monitoring by both continuous based PM₁₀ monitoring that provides near real-time PM₁₀ concentrations and filter-based methodology with expedited laboratory analysis for arsenic, cobalt, molybdenum, lead, nickel, and vanadium. This

Monitoring Plan shall include the use of two continuous particulate matter monitors called TEOMs made by Thermo Corp, which would be located with two filter-based PM₁₀ samplers. The TEOMs units will provide a real-time measurement of particulate levels. The PM₁₀ filters would be sent to a lab for metals analysis. GCMC shall direct the lab to report the results of these analyses to TCEQ at the same time that it reports the results to GCMC. The Alternate Monitoring Plan must include the following terms, protocols, and standards:

1. The Alternate Monitoring Plan shall include all terms contained in Paragraph 5.21 below.
2. The Alternate Monitoring Plan for the first thirty days of operation shall require three filter-based samples per day at each of the two sites. These filters shall be analyzed on an expedited basis. Results shall be reported to TCEQ within five business days of collection.
3. After the first thirty days of operation, the Alternate Monitoring Plan shall provide for reduced sampling frequency of one 24-hour sample taken every 6 days for the remaining 23 months. Expedited analysis of these samples is not necessary. Results shall be reported to TCEQ within thirty days of collection.

5.21 If the Test Period is deemed a success pursuant to the Evaluation Plan, then within 120 days of the completion of the test period, GCMC shall submit a Monitoring Plan for TCEQ approval, which shall include at least the following terms, protocols and standards:

- A. Within fifteen days of TCEQ approval of the Monitoring Plan, GCMC shall purchase a second Xact 625 air monitoring unit, which shall be set up, calibrated, and operating within sixty days after the date of delivery to GCMC. If GCMC is unable, despite diligent efforts, to have the second Xact 625 unit operational within the sixty day deadline in this paragraph,

the deadline shall be extended so long as GCMC continues to make diligent efforts to have the unit installed, and made operational;

- B. The Monitoring Plan shall specify the locations of the units.
- C. The Monitoring Plan shall specify the metals to be monitored, specifically arsenic, cobalt, molybdenum, lead, nickel, and vanadium, unless excluded pursuant to paragraph 5.20(E).
- D. All monitoring system data must be provided to TCEQ using a digital format capable of being loaded into TCEQ's Leading Environmental Analysis and Display System no later than 30 days after the end of each month.
- E. Both Xact 625 units shall be operated in accordance with the Monitoring Plan for a period of 24 consecutive months ("the Monitoring Period") from the date that the second unit becomes operational.
- F. The Monitoring Plan must include a Quality Assurance Project Plan in accordance with EPA QA/R-5, attached as Exhibit 14, which is incorporated herein for all purposes by reference, which shall establish data quality objectives, site locations, monitoring hardware, configuration, calibration, operation, maintenance, acceptance criteria, corrective action measures, data processing, reporting, and validation protocols as well as all audit activities.
- G. The Monitoring Plan must provide for quarterly inspection of all measurement systems by an independent third-party agreed to by TCEQ. GCMC shall submit an electronic monthly report to the TCEQ within

thirty calendar days after the end of each calendar month documenting the performance, including audit results, findings, and corrective actions taken associated with the Xact 625 units.

5.22 Prior to the date that the Evaluation Plan, Monitoring Plan, and Quality Assurance Project Plan are approved by the TCEQ, GCMC shall respond to any TCEQ requests for clarification, additional information, edits, changes, amendments, supplements, or alterations to the Evaluation Plan, Monitoring Plan, or the Quality Assurance Project Plan no later than seven calendar days after TCEQ makes any such request (unless a longer response period is specified in the request or otherwise agreed).

5.23 The TCEQ may compare the data collected pursuant to the Monitoring Plan against air quality values the TCEQ deems appropriate for each metal. The TCEQ has authority to require GCMC to perform an investigation. If such a request is made, GCMC shall complete the investigation and report the results thereof, including a statement of corrective actions taken, within thirty calendar days after the date of the request (unless a longer response period is specified in the request or otherwise agreed). This provision in no way supersedes, supplants, or otherwise interferes with TCEQ's enforcement authority or applicable laws and regulations.

Designation of responsible persons

5.24 No later than the First Deadline, GCMC file with the Court a report stating the names of each of its officers, agents, servants, and employees, and those in active concert or participation with them, who GCMC assigns responsibility for complying with the injunctive provisions of this Judgment. GCMC shall designate at least one person with responsibility for each of the provisions of the permanent injunction in this Judgment. The report shall list the name of the person, the portions of the injunctive provisions of this Judgment for which the person has responsibility, the nature and limits of that responsibility, and the date on which the

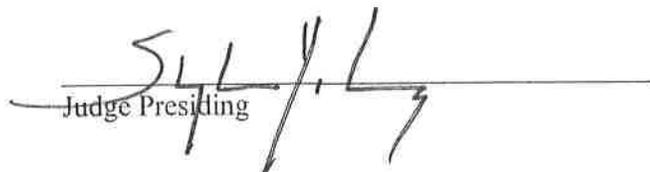
person was furnished a copy of this Judgment as required in Paragraph 5.26 below. GCMC shall submit a revised report to the Court within three calendar days of any change to the names or responsibilities of any person on the list, including the addition of any additional persons.

5.25 GCMC shall provide each person listed or described in any report submitted to the Court in accordance with Paragraph 5.24 with a copy of this Judgment and all attachments thereto no later than the date on which GCMC lists that person as a person with responsibilities for the injunctive provisions in this Judgment in any report filed in connection with Paragraph 5.24 above.

5.26 No later than the First Deadline, and in addition to any other requirements for responsible persons, GCMC shall deliver a copy of this Judgment and all attachments to this Judgment to the following persons:

- A. GCMC's current Chief Executive Officer;
- B. GCMC's current Chief Operating Officer;
- C. The plant manager and the environmental manager (or functional equivalent) at the Facility.
- D. If any of the above personnel change, GCMC shall deliver to any replacement personnel no later than seven days after such replacement, a complete copy of this Judgment and all attachments to this Judgment.

Signed this 17 day of August, 2013.


Judge Presiding

AGREED:

Respectfully submitted,

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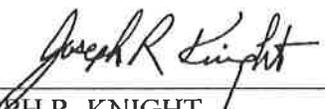
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