

**STATE OF GEORGIA
DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

RE: Sterilization Services of Georgia
6005 Boat Rock Boulevard
Atlanta, Georgia 30336
Fulton County

Order No. EPD-AQC- 7007

CONSENT ORDER

WHEREAS, Sterilization Services of Georgia (hereinafter "Respondent") presently owns and operates an ethylene oxide sterilization facility (hereinafter the "Facility") in Atlanta, Fulton County, Georgia; and

AUTHORITY

WHEREAS, under the "Georgia Air Quality Act" as amended O.C.G.A. § 12-9-1 et seq. (hereinafter the "Air Quality Act"), the General Assembly of Georgia designated the Director of the Georgia Department of Natural Resources, Environmental Protection Division, (hereinafter the "Director" and "Division") to administer the provisions of the Air Quality Act; and

WHEREAS, the Rules for Air Quality Control, Chapter 391-3-1, as amended, (hereinafter the "Rules") are authorized under O.C.G.A. § 12-9-5 of the Air Quality Act, were promulgated in accordance with the Administrative Procedure Act and are effective; and

WHEREAS, O.C.G.A. § 12-9-6 of the Air Quality Act assigns the Director the power to issue permits stipulating in each permit the conditions or limitations under which such permit was issued and the power to issue orders as may be necessary to enforce compliance with the provisions of the Air Quality Act and all rules and regulations promulgated there under; and

HISTORY

WHEREAS, the Director issued Air Quality Permit No. 3841-121-0010-S-03-0 (hereinafter the "Permit") to the Respondent on November 7, 2019, for the operation of the Facility; and

WHEREAS, the Permit was issued in part for the construction and operation of dry bed reactors (Source Codes DB1 through DB4) to control the sterilization chamber back vents; and

WHEREAS, Permit Condition 5.5 requires the Respondent to maintain and operate the dry bed reactors (source Codes DB1 through DB4) to ensure an ethylene oxide reduction of 99.0% from the sterilization chamber back vents (Source Codes BV1, BV2, and BV3), effective on and after December 31, 2019; and

WHEREAS, in a letter dated December 12, 2019, the Respondent indicated that construction of the system to route sterilization chamber back vents for control in the dry bed reactors has been delayed and will not meet the December 31, 2019, compliance deadline; and

WHEREAS, in a letter dated December 30, 2019, the Respondent presented the reason for not completing the emissions control project by the compliance deadline was due to circumstances not anticipated; and

VIOLATIONS

WHEREAS, the Division has determined that the Respondent, as of January 1, 2020, has violated Permit Condition 5.5 by failing to ensure ethylene oxide emissions reduction of at least 99.0% from the sterilization chamber back vents; and

CIVIL PENALTIES

WHEREAS, the Air Quality Act provides that any person violating any provision of the Air Quality Act or any permit condition or limitation established pursuant to this Air Quality Act

or failing or refusing to comply with any final order of the Director shall be liable for a civil penalty of not more than \$25,000.00 per day for each separate violation; and

CONDITIONS

WHEREAS, an amicable disposition of these allegations concerning the circumstances reflected in this Consent Order is considered to be in the best interest of the citizens of the State of Georgia; and

WHEREAS, both the Respondent and the Division wish to cooperate fully to resolve the issues in this Order.

NOW THEREFORE, before taking any testimony and without adjudicating the merits of the parties' position in this matter, and without admission or assignment of liability by or to the Respondent, the parties hereby resolve the issues in this case by agreement and upon the order of the Director and the consent of the Respondent as follows:

1. In settlement for the violations alleged by this Order and set forth herein, Respondent shall pay to the State of Georgia, the sum of \$3,000 a day for every day that it is in violation of Permit Condition 5.5, to be calculated starting January 1, 2020 and continuing until January 31, 2020, or the completion of the installation and operation of the dry bed reactors, whichever is earliest. Respondent will provide a letter to the Division notifying the Division that the dry bed reactors are installed and operational. The notification will include a date for the performance test required in Permit Condition 6.4. Within 60 days of the notification letter to the Division, Respondent will provide test data to the Division that verifies that the back vent controls are reducing back vent ethylene oxide emissions by at least 99% and are in compliance with the Permit. No later than February 3, 2020, the

Division will issue an invoice to Respondent for the calculated amount of civil penalties owed. Respondent shall pay the amount in full within 15 days of the date of the invoice. This payment shall be made payable to the Georgia Department of Natural Resources and submitted to the following address:

Georgia Department of Natural Resources
Environmental Protection Division, Air Protection Branch
4244 International Parkway, Suite 120
Atlanta, Georgia 30354

2. If the Respondent has not installed and operated the dry bed reactors by February 1, 2020, starting February 1, 2020, and continuing until February 28, 2020, or until installation and operation of the dry bed reactors, whichever is sooner, the Respondent shall reduce the usage of ethylene oxide at the Facility by 25%, based on a 7-day average. The baseline ethylene oxide usage shall be calculated as the average daily usage determined from records of Facility operations conducted between September 1, 2019 through December 31, 2019.
3. If the Respondent has not installed and operated the dry bed reactors by February 1, 2020, beginning February 7, 2020, for each calendar day, a 7-day average usage of ethylene oxide shall be calculated. These averages shall be based upon that calendar day's usage and the preceding 6 calendar days' usage. The Respondent shall submit weekly reports of the prior week's daily 7-day averages to demonstrate the 25% reduction, to be submitted the following Monday of each week of operation or partial calendar week of operation (i.e. February 13, 2020 and weekly thereafter) until completion of the emissions control project. The initial report shall include the average daily usage for the baseline period identified in Condition 2.

4. Should the operation of the dry bed reactors be delayed beyond February 28, 2020, the Respondent shall cease all use of ethylene oxide at the Facility starting March 1, 2020, and continuing until the completion of the installation and operation of the dry bed reactors.

Addresses. Correspondence and other submissions to be made to the Division shall be addressed to: Sean Taylor, Program Manager, Stationary Source Compliance Program, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Correspondence to Respondent shall be addressed to: Eric Welch, Plant Manager, Sterilization Services of Georgia, 6005 Boat Rock Boulevard, Atlanta, Georgia 30336.

Permit Compliance. This Order does not relieve Respondent of any obligations or requirements of the Permit except as specifically authorized herein; which authorization shall be strictly construed.

Time of Essence. Time is of the essence of this Order. Upon it becoming effective, Respondent shall promptly commence its undertakings required herein and shall diligently pursue the accomplishment thereof.

Required Submissions. Upon the submission of any plan, report, or schedule, or any modified plan, report or schedule, required by this Order, the Division shall review the submission to determine its sufficiency. The Division shall notify the Respondent in writing whether the submission is approved or disapproved.

If the Division determines that the submission is disapproved, it shall provide Respondent with a written notice of the deficiencies of the submission. The Respondent shall have seven days from the issuance of the Division's notice of deficiency to modify the submission to correct the deficiencies and resubmit it to the Division.

The failure of Respondent to provide the Division with an ultimately approved submission on or before the specified due date, may, in the sole discretion of the Director, be deemed a violation of this Order. Upon approval by the Division, all submissions required by the terms of this Order are incorporated by reference into, and made a part of, this Order. Except as may be provided by this Order, noncompliance with the contents of such approved submissions shall be deemed noncompliance with this Order.

Division approval of any submission required by this Order is not intended as, nor shall such approval be construed as, certification by the Division that compliance with relevant state and federal laws, regulations, and permits will thereby be achieved, and such approval by the Division shall not provide Respondent with a defense to an enforcement action taken by the Director pursuant to violations of the same. Division approval of any submission is strictly limited to the technical aspects of the submission and is not intended as, nor shall it be construed as, approval or acceptance of any statements, assertions, or representations of fact, of opinion, or of a legal nature that are contained in the document.

Force Majeure. Failure to complete a condition mandated by this Consent Order within the time period specified may be excused and not subject Respondent to further enforcement action if the failure is the result of a force majeure event as identified below and Respondent complies the requirements set forth below. Respondent shall have the burden of proving to the Division that it was rendered unable, wholly or in part, by Force Majeure to carry out its obligations.

The term "Force Majeure" as used herein shall be limited to the following: Act of God; strike, lockout, or other labor or industrial disturbance not caused by an unfair labor practice by the Respondent; act of the public enemy; war; blockade; public riot; fire; storm; flood; explosion; failure to secure timely and necessary federal, state, or local approvals or permits, provided such approvals or permits have been timely and diligently sought; or other delay caused by unforeseeable circumstances beyond the reasonable control of Respondent, its employees, agents, consultants, or contractors, as determined by the Division in its sole discretion. Force Majeure does not include financial inability to perform an obligation required by this Consent Order or a failure to achieve compliance applicable regulatory permits.

Respondent shall notify the Division verbally within 48 hours (or no later than the beginning of the next business day if the expiration of the 48 hours occurs on a weekend or holiday) from the time Respondent learns, or in the exercise of reasonable diligence should have learned, of any Force Majeure circumstances that may reasonably be expected to cause a schedule or performance delay. Within 10 days of such time, Respondent shall submit to the Division a written notice of as to the anticipated length (if known) and cause of any delay due to Force Majeure. Failure to so notify the Division shall constitute a waiver of any claim to Force Majeure.

The Respondent and the Division agree to negotiate informally and in good faith to identify delays resulting from Forces Majeure. Respondent shall comply with the Division's determination

as to the appropriate time period to be excused by Force Majeure, which shall be communicated to Respondent in writing. In the event that any circumstance or series of circumstances cause the schedule to extend over thirty (30) calendar days, Respondent and the Division shall meet formally to assess the overall schedule impact and attempt to mitigate same. Any Force Majeure or Forces Majeure that cause the schedule to extend over sixty (60) consecutive days shall be noticed to the citizens of Fulton County in a form to be determined by the Division.

If the Division determines that Force Majeure has occurred, the affected time for performance specified in this Consent Order shall be extended for a period of time equal to the delay resulting from such Force Majeure. Respondent shall exercise due diligence and adopt all reasonable measures to avoid or minimize any delay.


This Order does not waive the Director's right to take further enforcement action against Respondent, or imply that the Director will not take such action, either for (1) the violations alleged herein if Respondent fails to fully comply with the conditions of this Order, or (2) violations not alleged herein based on any other relevant requirements of this Order, the law, rules, and permit(s). Issuance of this Order does not waive the Director's right to use the violations alleged herein, upon sufficient evidence, to show past violations in any subsequent enforcement proceeding.

This Order is executed and entered solely for the purpose of resolving and disposing of the alleged violations set forth herein and does not constitute a finding, adjudication, or evidence of a violation of any law, rule, or regulation by Respondent, and, by consenting to this Order, Respondent does not admit to any factual allegation contained herein or to any violations of State laws. In addition, this Order is not intended to create and it shall not be construed or otherwise deemed to recognize or create any claim, right, liability, estoppel, or waiver of rights in favor of any third-party or parties.

By agreement of the parties, this Order shall have the same force and binding effect as a Final Order of the Director, and shall become final and effective immediately upon its execution by the Director. The parties further agree that this Order shall not be appealable by Respondent, and Respondent hereby waives its right to initiate any administrative or judicial hearing on the terms and conditions of this Order.

Unless modified or terminated by a subsequent order, or otherwise specified in writing by the Director, this Order shall be deemed satisfied and terminated upon full, complete, and timely performance of each and every condition set forth herein.

It is so ORDERED, CONSENTED, and AGREED to this 7th day of January,
2020


Richard E. Dunn
Director, Environmental Protection Division

FOR RESPONDENT: Sterilization Services of Georgia

BY: EW
NAME: Eric Welch (printed)
TITLE: PLANT MANAGER
DATE: 1-6-2020