

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

In The Matter Of:

CREANOVA Inc

Theodore, Mobile County, Alabama

Air Facility ID# 503-5016

CONSENT ORDER NO. 02-130-CAP

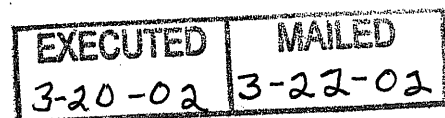
FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended, the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended, and the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, and without the adjudication of any issues of fact or law and upon the consent of the parties hereto, the Alabama Department of Environmental Management (hereinafter, "the Department") makes the following FINDINGS:

1. CREANOVA Inc. (hereinafter "CREANOVA") operates a chemical manufacturing plant, Air Division Facility No. 503-5016, located in South Mobile County on Degussa Road in Theodore, Alabama. CREANOVA is the successor in interest to Huls America, Inc. The Department issued permits to CREANOVA on September 9, 1998.

2. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Code of Alabama 1975, as amended.

3. Pursuant to § 22-22A-4(n), Code of Alabama 1975, as amended, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 through 7671q, as amended. In addition, the Department is authorized to administer and



enforce the provisions of the Alabama Air Pollution Control Act, §§ 22-28-1 through 22-28-23, Code of Alabama 1975, as amended.

4. CREANOVA currently operates an Orthoester production unit regulated under Permit #503-5016-Z001 and a Cyanoacetic Acid, Ethyl Cyanoacetate, and Methyl Cyanoacetate production unit (hereinafter "CYAD unit") regulated under Permit #503-5016-X015.

5. On April 29, 1997, Huls America, Inc. was re-issued Air Permit #503-5016-Z001 for the Orthoester Production Unit. The permit was re-issued based on the installation of a new reactor in the production unit. The re-issued permit included proviso #18 which required the facility to install a leak detection and repair program (LDRP) to ensure that the emissions from the modification would not be considered a major modification as defined in ADEM Admin.Code 335-3-14-.04(2)(b). The LDRP was to meet all requirements of 40 CFR Part 60, Subpart VV.

6. The Department incorporated by reference the provisions of 40 CFR Part 60, Subpart VV into its regulations at ADEM Admin. Code R. 335-3-10-.02(48).

7. On April 18, 2001, the Orthoester unit permit was modified changing the proviso requiring the LDRP program from #18 to #23.

8. On May 8, 2001, CREANOVA reported that the entire orthoester unit was not included in the LDRP program as required under Proviso #23. Only the portion of the unit that was associated with the modification implemented a LDRP.

9. On August 9, 2001, CREANOVA was issued a Notice of Violation (NOV) for the failure to comply with Proviso #23 of Permit #503-5016-Z001.

10. The CYAD unit is subject to the requirements of the National Emission Standards for Hazardous Air Pollutants as listed in 40 CFR Part 63, Subparts F, G, and H. The

CYAD unit became subject to these regulations at the time of promulgation which occurred on April 22, 1994.

11. The Department incorporated by reference the provisions of 40 CFR Part 63, Subparts F, G, H into its regulations at ADEM Admin. Code R. 335-3-11-.06(5), (6), and (7), respectively.

12. On May 22, 1999, CREANOVA was issued a Consent Order that assessed a \$75,000 civil penalty and required the facility to submit a report detailing how the facility would come into compliance with the Hazardous Organic NESHAP (HON).

13. On June 25, 1999, CREANOVA submitted the report required by the May 22, 1999 Order. Concerning the CYAD unit, CREANOVA stated that "the CYAD unit is being re-tagged to clearly identify all equipment subject to the provisions of 40 CFR 63 – Subpart H".

14. On August 31, 1999, CREANOVA submitted additional information to the required report that identified several additional emission points that are subject to the requirements of Subparts F, G, and H of the HON.

15. As a result of the additional information, on February 10, 2000, CREANOVA was issued a Consent Order that assessed a \$102,900 civil penalty for air violations and required the facility to come into complete compliance with the HON within 120 days of its signing.

16. On October 2, 2001, CREANOVA submitted information concerning potential areas of non-compliance concerning the CYAD production unit. A request for additional information revealed that CREANOVA had failed to identify and monitor approximately 2062 connectors, 2 pumps, 20 pressure relief devices, 8 agitators, 403 open ended lines, 251 valves, and 2606 components in heavy liquid service. CREANOVA also failed to establish adequate monitoring parameters and maintain required monitoring records concerning wastewater tank S-444 and the CYAD wastewater treatment process.

17. A NOV was issued to CREANOVA concerning these issues on October 25, 2001. The NOV cited CREANOVA for violations of ADEM Administrative Code 335-3-11-.06(6) referencing 40 CFR 63.143(e)(3), 63.146(a), 63.147(d), 63.147(e), 63.160 – 63.182 (Subpart H), and the Consent Orders listed in findings of fact 11 and 14.

18. CREANOVA neither admits nor denies the Findings contained in this Consent Order. However, in an effort to cooperate with the Department and to resolve the allegations cited above, CREANOVA consents to the terms of this Consent Order.

19. The Department agrees to this Consent Order upon a determination that the terms are in the best interests of the citizens of Alabama in resolving the alleged violations cited herein.

ORDER

Based upon the foregoing FINDINGS and pursuant to §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-28-10(2) and 22-28-18, Code of Alabama 1975, as amended, and with the consent of CREANOVA, it is hereby ORDERED:

A. That, not later than 30 days after the effective date of this Consent Order, CREANOVA shall pay to the Department a civil penalty in the amount of \$225,000 for the violations cited herein. This penalty shall be made payable to ADEM and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
Post Office Box 301463
Montgomery, Alabama 36130-1463

B. Within 60 days, CREANOVA shall provide a statement of the compliance status of the CYAD production unit with respect to the requirements of the HON and/or Subpart VV.

The compliance status statement shall include a summary of any deficiencies found within the program and a list of actions taken to bring the unit(s) into compliance.

C. Within 120 days, CREANOVA shall provide a statement of the compliance status of the Polyester production units with respect to the requirements of the HON and/or Subpart VV. The compliance status statement shall include a summary of any deficiencies found within the program and a list of actions taken to bring the unit(s) into compliance.

D. Within 180 days, CREANOVA shall provide a statement of the compliance status of the Semiworks, PIC, IP, IPN, IPDI, and Silanes 2 production units with respect to the requirements of the HON and/or Subpart VV. The compliance status statement shall include a summary of any deficiencies found within the program and a list of actions taken to bring the unit(s) into compliance.

E. CREANOVA has currently suspended operation of the Orthoester and Orthoester Batch operations at the facility. Therefore, CREANOVA shall provide a statement of the compliance status of these two units prior to resumption of these units operation. The compliance status statement shall include a summary of any deficiencies found within the program and a list of actions taken to bring the unit(s) into compliance.

F. That this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented and to legally bind such party.

G. That, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations which are cited in this Order.

H. That CREANOVA is not relieved from any liability if it fails to comply with any provision of the Consent Order.

I. That for purposes of this Order only, CREANOVA agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in a court of competent jurisdiction, including, but not limited to, Montgomery County Circuit Court. CREANOVA also agrees that in any action brought by the Department to compel compliance with the terms of this Order, CREANOVA shall be limited to the defenses of Force Majeure, compliance with this Order and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of CREANOVA, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to be beyond the reasonable control of CREANOVA and which delays or prevents performances by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state or local permits shall not constitute *Force Majeure*.

J. That this Order does not preclude the Department from taking other enforcement actions based on these facts regarding violations of other regulatory programs. Should additional facts and circumstances be discovered in the future concerning CREANOVA, which would constitute possible violations not addressed in this Order, or if the violations noted herein continue, then such future violations shall be addressed in Orders or litigation initiated by the Department, or such other enforcement action as may be appropriate, and CREANOVA shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order.

K. That by agreement of the parties, this Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and CREANOVA does hereby waive any hearing on the terms and conditions of same.

William Butler
(Signature)

VP and Site Manager
(Please Print Name and Title of Authorized Officer)

CREANOVA Inc.

James W. Warr

James W. Warr, Director
Alabama Department of
Environmental Management

DATE SIGNED 3-20-2002