

ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM

In the Matter of: TMS International, LLC
1155 Business Center Drive, Suite 200
Horsham, PA 19044

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement (“Consent Agreement”) is entered into this 27th day of June, 2022, by and between the Allegheny County Health Department (“ACHD”) and TMS International, LLC (hereinafter referred to as “TMS”).

WHEREAS, the Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001 et seq., and the ACHD is a local health agency organized under Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 Pa.C.S. § 12001 et seq., whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including the Allegheny County Health Department’s Rules and Regulations, Article XXI, Air Pollution Control (hereinafter “Article XXI”);

WHEREAS, TMS owns and operates a slag processing facility located adjacent to US Steel – Edgar Thomson Works in Braddock, PA. This source operates screening, magnetic separation, and materials conveying equipment.

WHEREAS, on June 27, 2017, the ACHD issued an amended Operating Permit No. 0225a (hereinafter “OP #0225a”) for processes that separate magnetic from non-magnetic slag into 3 size ranges for repurpose or transport.

Non-metallic slag is loaded onto trucks for removal from the site. The slag processing area is located in a partial enclosure. The roadways are watered on a routine basis to control fugitive dust.

The facility, which is located in Braddock, Pennsylvania, is a minor source of all criteria pollutants, and a major source of a Hazardous Air Pollutant (HAP), methanol, as defined in Section 2101.20 of Article XXI. The facility is also considered a major source of pollution based on its operating, managing, or supporting the United States Steel – Edgar Thomson Plant “BOP Slag Handling”.

WHEREAS, OP #0225a, condition V.D.1, prohibits the winterized pot coat usage in excess of 36,600 gallons per twelve (12) month consecutive period. TMS reported 2 instances of having exceeded the aforementioned permit restriction and because emissions are calculated based on material usage it resulted in a corresponding methanol HAP exceedance.

WHEREAS, the ACHD and TMS recognize that this Consent Agreement has been negotiated in good faith and that any actions undertaken by TMS in accordance with this Consent Agreement do not constitute an admission of fault or liability;

WHEREAS, after a full and complete negotiation of all matters set forth in this Consent Agreement and upon mutual exchange of covenants contained herein, the Parties agree that this Consent Agreement is in the best interest of the Parties and the public.

NOW, THEREFORE, without any final determination of fact or law, and intending to be legally bound hereby, the Parties hereto agree as follows:

I. JURISDICTION

1. Solely for the purposes of this Consent Agreement, TMS waives all objections and defenses that it may have to jurisdiction or venue. TMS shall not challenge ACHD's jurisdiction to enter into or to enforce this Agreement.

II. APPLICABILITY

2. The provisions of this Consent Agreement shall apply to, be binding upon, and inure to the benefit of the ACHD and TMS and upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

3. The duties and obligations under this Consent Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in TMS or any part thereof. In the event that TMS proposes to sell or transfer its Braddock Plant after the effective date of this Consent Agreement or any part thereof, TMS shall provide written notice to the ACHD of such purchaser or transferee at least thirty (30) days prior to the sale or transfer. TMS shall also provide a copy of this Consent Agreement to any person or entity TMS intends to make any such sale or transfer to at least thirty (30) days prior thereto.

4. The undersigned representative of TMS certifies that he or she is fully authorized to execute this Consent Agreement on behalf of TMS, and to legally bind TMS to this Agreement.

III. GENERAL TERMS

5. This Consent Agreement addresses and is intended to resolve all outstanding issues between the Parties relating to the recent 12-month consecutive pot coat usage and the methanol HAPS exceedances.

6. The Parties do not authorize any other persons to use the findings in this Consent Agreement in any matter or proceeding.

7. Nothing herein is intended to limit the authority of the ACHD with respect to violations that may have occurred prior to the date of this Consent Agreement, if any, that are not intended to be the subject of resolution hereunder, or to limit the authority of ACHD to seek enforcement of this Agreement in the event that TMS fails to comply with its terms and conditions.

IV. CONDITIONS

8. Within thirty (30) days from the date of this Consent Agreement, TMS is hereby assessed a civil penalty of FOUR THOUSAND EIGHT HUNDRED DOLLARS (\$4,800.00).

V. FORCE MAJEURE

9. For purposes of this Consent Decree, “force majeure” as applied to TMS or to any entity or person controlled by TMS, is defined as any event arising from circumstances or causes beyond the control of TMS or of any entity or person controlled by TMS, including but not limited to, its officers, directors, employees, agents, representatives, contractors, subcontractors and consultants, that could not have been prevented by reasonable due diligence and that delays or may delay or prevent the performance of any condition under this Consent Agreement despite TMS’s diligent efforts to fulfill the condition. The requirement to exercise “diligent efforts to fulfill the condition” includes using diligent efforts to anticipate any potential force majeure event and diligent efforts to address the effects of any potential force majeure event (i) as it is occurring, and (ii) following the potential force majeure event, such that the delay or nonperformance is minimized to the greatest extent possible.

10. If any event occurs or has occurred that may delay or prevent the performance of any condition under this Consent Agreement, and if TMS is to have the right to claim such event constitutes force majeure, TMS shall:

- (a) Telephonically notify and inform the ACHD of the occurrence of the event within forty-eight (48) hours after TMS first knew, or with the exercise of reasonable care, should have known, of the event;

- (b) Provide in writing to ACHD, within five (5) days after TMS first knew, or with the exercise of reasonable care, should have known, of the event, a statement which:
- (1) Describes and explains the reasons for the delay or nonperformance;
 - (2) Describes and explains the reasons for the duration or anticipated duration of the delay or nonperformance;
 - (3) Identifies all measures taken or to be taken by TMS to prevent or minimize the delay or nonperformance;
 - (4) Includes a timetable and schedule pursuant to which such measures shall be implemented;
 - (5) Contains TMS's rationale for attributing such delay or nonperformance to a force majeure event if it intends to assert such a claim;
 - (6) States whether, in the opinion of TMS, such event may cause or contribute to an endangerment to public health, welfare or the environment; and
 - (7) Includes available documentation which, to the best knowledge and belief of TMS, supports TMS's claim that the delay or nonperformance was attributable to a force majeure event.

11. Failure by TMS to comply with each of the notice requirements above shall constitute a waiver of TMS's right to invoke the Force Majeure provision as a basis for delay or nonperformance under this Consent Agreement.

VI. GENERAL PROVISIONS

12. In the event that TMS fails to comply with any provision of this Consent Agreement, the ACHD may pursue any remedy available under Article XXI of the ACHD's Rules and Regulations for a violation of an Order of the ACHD, including an action to enforce this Consent Agreement.

13. The ACHD reserves the right to require additional measures to achieve compliance with this Consent Agreement. TMS reserves the right to challenge any action that the ACHD may take to require those measures.

14. TMS shall be liable for any violations of this Consent Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors.

15. All correspondence with ACHD concerning this Consent Agreement shall be addressed to:

Dean DeLuca
Program Manager
Air Quality Program
Allegheny County Health Department
301 39th Street, Building 7
Pittsburgh, PA 15201-1811

With a copy to:

Jason Willis, Solicitor
Allegheny County Health Department
Legal Section
301 39th Street, Building 7
Pittsburgh, PA 15201-1811

16. All correspondence with TMS concerning this Consent Agreement shall be addressed to:

Stephanie N. Hahn, E.I.T.
Environmental Manager
TMS International, LLC
1155 Business Center Drive, Suite 200
Horsham, PA 19044

With a copy to:

John E. Minihan
General Counsel
TMS International, LLC
1155 Business Center Drive, Suite 200

Horsham, PA 19044

17. TMS shall notify ACHD whenever there is a change in the contact person's name, title or address. Service of any notice or any legal process for any purpose under this Consent Agreement, including its enforcement, may be made by mailing an original or true and correct copy by first class mail to the above addresses.

18. The paragraphs of this Consent Agreement are severable, and should any part hereof be declared invalid or unenforceable, the remainder shall remain in full force and effect between the Parties.

19. This Consent Agreement shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for the purposes of determining the meaning or intent of any provisions herein in any litigation or other proceeding.

20. The Parties shall bear their respective attorneys' fees, expenses, and other costs with regard to the prosecution or defense of this matter or any related matters arising prior to the execution of this Consent Agreement.

21. This Consent Agreement may be modified only by written agreement of the Parties hereto.


IN WITNESS WHEREOF, the Parties hereto have caused this Consent Agreement to be executed by their duly authorized representatives. The undersigned representatives of TMS and ACHD certify under penalty of law, as provided by 18 Pa.C.S. § 4909, that he or she is authorized to execute this Consent Agreement on behalf a party; that TMS consents to the entry of this Agreement as a final ORDER of the ACHD; and that, except as otherwise provided herein, TMS hereby knowingly waives its rights to appeal this Consent Agreement and to challenge its content

or validity, which rights may be available under Article XI of the ACHD Rules and Regulations for Hearings and Appeals, and Pennsylvania Administrative Agency Law, 2 Pa.C.S. §103(a), or any other applicable provision of law. Signature by TMS's attorney certifies only that this Consent Agreement has been signed after consulting with counsel.

FOR TMS INTERNATIONAL, LLC


Date: June 27, 2022


Stephanie N. Hahn
Environmental Manager



John E. Minihan
General Counsel

FOR THE ALLEGHENY COUNTY HEALTH DEPARTMENT

Date: June 29, 2022



Geoffrey Rabinowitz
Deputy Director of Environmental Health



Jason Willis
ACHD Solicitor