



APPENDIX C-2

Jewel Acquisition Redacted Consent Order and Agreement

**Bureau of Air Quality
Department of Environmental Protection**

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

In The Matter Of:

Jewel Acquisition, LLC
950 10th Street
Midland, PA 15059

: 1-hour SO₂ NAAQS
: Beaver Nonattainment Area
:

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement ("COA") is entered into this 21st day of September, 2017 by and between the Commonwealth of Pennsylvania, Department of Environmental Protection ("Department" or "DEP") and Jewel Acquisition, LLC ("Jewel").

~~The Department has found and determined the following:~~

~~A. The Department is the agency with the duty and authority to administer and enforce the Air Pollution Control Act, Act of January 8, 1960, P.L. 2119 (1959), as amended, 35 P.S. § 4001 et seq. ("APCA"); Section 1917-A of the Administrative Code of 1929, Act of April 9, 1929, P. L. 177, as amended, 71 P.S. § 510-17; and the rules and regulations promulgated thereunder.~~

~~B. Jewel is a Delaware limited liability company, with a mailing address of 100 River Road, Brackenridge, PA 15014.~~

~~C. Jewel owns a steel production facility ("Midland Facility"), located at 950 10th Street, Midland Borough, Beaver County, Pennsylvania.~~

~~D. The Midland Facility is presently covered by Title V Operating Permit No. 04-00013, which expires on September 6, 2017. Jewel submitted a timely application to renew its Title V Operating Permit, which is pending with the Department.~~

~~F. The Midland Facility presently includes the following sulfur dioxide (SO₂) emitting sources ("SO₂ Emitting Sources"):~~

- ~~1. Melishop (Source ID 106);~~
- ~~2. Other sources with the potential to emit insignificant amounts of SO₂.~~

~~F. Each of the Midland Facility's SO₂ Emitting Sources described in Paragraph E, above, is an air contamination source as that term is defined in Section 3 of the APCA, 35 P.S. § 4003.~~

Background Of Requirements For The Commonwealth To Submit A Revision To The State Implementation Plan (SIP)

G. On June 2, 2010, the United States Environmental Protection Agency (EPA) promulgated a revised primary (health based) national ambient air quality standard (NAAQS) for Sulfur Dioxide (SO₂) (hereinafter "2010 1 Hour SO₂ NAAQS"). The rule was published in the Federal Register on June 22, 2010 (75 FR 35520), and became effective on August 23, 2010. Specifically, the EPA established a new 1 hour standard at a level of 75 parts per billion (ppb), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of 1 hour daily maximum concentrations is less than or equal to 75 ppb.

H. On August 5, 2013, at 78 FR 47191, EPA designated the following municipalities in Beaver County as being in nonattainment for the 2010 1 Hour SO₂ NAAQS: Industry Borough, Shippingport Borough, Midland Borough, Brighton Township, Potter Township and Vanport Township ("Beaver nonattainment area"). The designations took effect October 4, 2013.

I. Pursuant to Section 191 of the Clean Air Act (CAA), 42 U.S.C. § 7415, the Commonwealth of Pennsylvania was required to develop and submit to EPA a revision to the EPA approved Pennsylvania State Implementation Plan ("SIP revision") to address the Beaver

nonattainment area within 18 months (April 4, 2015) from the effective date of the 2010 1-Hour SO₂ NAAQS nonattainment designations.

J. On March 18, 2016, effective April 18, 2016, the EPA published a final action at 81 FR 14736, finding that Pennsylvania failed to submit a SIP to satisfy nonattainment area planning requirements of the CAA for the 2010 1-Hour SO₂ NAAQS. EPA's finding of "failure to submit" triggered mandatory deadlines for EPA to impose sanctions pursuant to Section 179 of the CAA, 42 U.S.C. § 7509, if Pennsylvania does not submit a revision to its SIP addressing those requirements and for the EPA to promulgate a Federal Implementation Plan (FIP) to address any outstanding SIP requirements. If a state has not submitted a SIP revision and EPA has not found it to be complete on or before 18 months (October 18, 2017) after the effective date of the finding, offset sanctions will apply. If a state has not submitted a SIP revision and EPA has not found it to be complete on or before 24 months (April 18, 2018) after the effective date of the finding, highway funding sanctions will apply, and EPA must promulgate a FIP.

K. Specific statutory requirements for a SIP revision submittal can be found in Section 172(e) of the CAA, 42 U.S.C. § 7502(e). SIPs must provide an accurate emission inventory of current emissions for all sources of SO₂ within the nonattainment area, a New Source Review permit program, and an attainment demonstration using an EPA approved air quality dispersion model, Reasonable Further Progress, and a control strategy implementing Reasonably Available Control Measures and Reasonably Available Control Technology, as well as adequate contingency measures for the affected area.

L. The SIP revision is subject to a public comment period and opportunity for a public hearing.

M. Because the Midland Facility is a point source located in the Beaver nonattainment area, with SO₂ emissions that are reasonably expected to contribute to nonattainment of the area, it would need to be included in atmospheric dispersion modeling for demonstration of attainment per Appendix W to 40 C.F.R. Part 51, unless the Midland Facility is no longer a major source of SO₂ emissions.

N. The Midland Facility is currently not operating and has not emitted SO₂ from the Meltshop since August 14, 2015. Jewel has submitted a maintenance plan for the Midland Facility and, therefore, may be eligible to reactivate the Midland Facility Meltshop until August 14, 2020 in accordance with 25 Pa. Code §§ 127.11a and 127.215.

O. Jewel has no present intention to operate the Meltshop at the Midland Facility.

P. If the Meltshop is shutdown, the Midland Facility would no longer be a point source located in the Beaver nonattainment area with SO₂ emissions that are reasonably expected to contribute to nonattainment in the area.

Q. DEP has completed a modeling determination for the Beaver nonattainment area, concluding that the area would achieve modeled attainment of the 2010 1-hour SO₂ NAAQS if, *inter alia*, the Meltshop were shut down and emitted no SO₂. That modeling determination has been incorporated into the SIP revision for the Beaver nonattainment area.

R. The Midland Facility is not included in the Department's modeling determination submitted to EPA with the SIP revision for the Beaver nonattainment area.

ORDER

After full and complete negotiation of all matters set forth in this Consent Order and Agreement and upon mutual exchange of covenants contained herein, the parties desiring to avoid

litigation and intending to be legally bound, it is hereby ORDERED by the Department and AGREED to by Jewel as follows:

1. Authority. This Consent Order and Agreement is an Order of the Department authorized and issued pursuant to Sections 4 and 10.1 of the APCA, 35 P.S. §§ 4004 and 4010.1, and Section 1917 A of the Administrative Code, 71 P.S. § 510-17.

2. Findings.

a. Jewel agrees that the findings in Paragraphs A through R are true and correct and, in any matter or proceeding involving Jewel and the Department, Jewel shall not challenge the accuracy or validity of these findings.

b. The parties do not authorize any other persons to use the findings in this COA in any matter or proceeding.

3. Required Action.

a. **Meltshop Reactivation Restrictions**. The Meltshop (Source ID 106) at the Midland Facility may not be operated or emit SO₂ unless and until each of the following requirements is fully satisfied:

i. An air quality dispersion modeling analysis of the Beaver nonattainment area, which demonstrates, to the Department's satisfaction, that Federally enforceable emission limitations and/or other Federally enforceable control measures at the Midland Facility will provide for the continued attainment and maintenance of the 2010 1-Hour SO₂ NAAQS in the Beaver nonattainment area ("Reactivation Modeling Analysis"). The Reactivation Modeling Analysis shall be performed in accordance with Jewel's modeling protocol, which the Department has found to be appropriate under Subparagraph 3.a.ii, below. Jewel shall submit the following to the Department in accordance with Paragraph 9, below: 1) a

report that summarizes the results of the Reactivation Modeling Analysis; and 2) all of the air dispersion modeling files and data files associated with the Reactivation Modeling Analysis in an electronic format acceptable to the Department.

ii. Should Jewel decide to reactivate the Midland Facility Meltshop, Jewel shall submit to the Department a written notice of its intent to reactivate the Meltshop. At least six months prior to conducting the Reactivation Modeling Analysis pursuant to Subparagraph 3.a.i., a modeling protocol specifying how the modeling will be performed shall be prepared and submitted to the Department for review in accordance with Paragraph 9, below. The protocol shall, among other things, comply with 40 C.F.R. Part 51, Appendix W.

iii. Jewel shall submit to the Department, in accordance with Paragraph 9, below, a full and complete application to revise the operating permit for the Midland Facility to include SO₂ emission limitations for the Meltshop (Source ID 106) that reflect the Meltshop SO₂ emissions in the Reactivation Modeling Analysis.

iv. The Department approves a revised operating permit for the Jewel facility with SO₂ emission limitations for the Meltshop (Source ID 106) that reflect the Meltshop SO₂ emissions in the Modeling Analysis.

v. The Midland Facility operating permit, as revised pursuant to Paragraph 3.a.iv, above, is incorporated into Pennsylvania's EPA-approved SIP.

vi. The requirements of 25 Pa. Code §§ 127.11a and 127.215 have been fully satisfied.

b. **Contingency Measures.** If the Midland Facility Meltshop is reactivated and if any of the Department's monitors in the Beaver nonattainment area measures a 1-hour concentration of 75 ppb (or greater), the Department will notify Jewel both verbally and in writing.

Jewel shall notify the Department, in accordance with Paragraph 9, below, of the operational status of the Melkshop within 10 days of the notice.

4. Stipulated Civil Penalties.

a. ~~In the event Jewel fails to comply in a timely manner with any provision of Paragraph 3, above, Jewel shall be in violation of this COA and, in addition to other applicable remedies, shall pay a civil penalty in the amount of \$100 per day that any of the provisions of Paragraph 3 remain unfulfilled.~~

b. ~~Stipulated civil penalty payments shall be payable within 15 days of notification by the Department that they are due. Payments shall be made by corporate check or the like payable to the Commonwealth of Pennsylvania - Clean Air Fund and sent to Mark Gorog, PE, Regional Air Quality Program Manager, Pennsylvania Department of Environmental Protection, 400 Waterfront Drive, Pittsburgh, PA 15222-4745, along with a transmittal of penalty form, a copy of which is attached.~~

e. ~~Any payment under this paragraph shall neither waive Jewel's duty to meet its obligations under this COA nor preclude the Department from commencing an action to compel Jewel's compliance with the terms and conditions of this COA. The payment resolves only Jewel's liability for civil penalties arising from the violation of this COA for which the payment is made.~~

5. Additional Remedies.

a. ~~In the event Jewel fails to comply with any provision of this COA, the Department may, in addition to the remedies prescribed herein, pursue any remedy available for a violation of an order of the Department, including an action to enforce this COA.~~

b. The remedies provided by this paragraph and Paragraphs 3 and 4 are cumulative and the exercise of one does not preclude the exercise of any other. The failure of the Department to pursue any remedy shall not be deemed to be a waiver of that remedy. The payment of a stipulated civil penalty, however, shall preclude any further assessment of civil penalties for the violation for which the stipulated civil penalty is paid.

6. Reservation of Rights. The Department reserves the right to require additional measures to achieve compliance with applicable law. Jewel reserves the right to challenge any action which the Department may take to require those measures.

7. Liability of Operator. Jewel shall be liable for any violations of this COA, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors.

8. Transfer of Site.

a. The duties and obligations under this COA shall not be modified, diminished, terminated or otherwise altered by the transfer of any legal or equitable interest in the Jewel Facility or any part thereof.

b. If Jewel intends to transfer any legal or equitable interest in the Midland Facility which is affected by this COA, Jewel shall serve a copy of this COA upon the prospective transferee of the legal and equitable interest at least 30 days prior to the contemplated transfer and shall simultaneously inform the Southwest Regional Office of the Department of such intent.

9. Correspondence with Department. All correspondence with the Department concerning this COA shall be addressed to:

Southwest Regional Office
Mark Gorog, PE
Regional Air Quality Program Manager
Pennsylvania Department of Environmental Protection

400 Waterfront Drive
Pittsburgh, PA 15222-4745
Phone: (412) 442-4000
Fax: (412) 442-4194

10. ~~Correspondence with Jewel.~~ All correspondence with Jewel concerning this COA shall be addressed to:

Deborah L. Calderazzo
Director, Environmental Affairs
100 River Road
Brackenridge, PA 15014

and

Lauren S. McAndrews
Assistant General Counsel
1000 Six PPG Place
Pittsburgh, PA 15222

Jewel shall notify the Department 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 COA, including its enforcement, may be made by mailing a copy by first class mail to the above address.

11. ~~Severability.~~ The paragraphs of this COA shall be severable and should any part hereof be declared invalid or unenforceable, the remainder shall continue in full force and effect between the parties.

12. ~~Entire Agreement.~~ This COA shall constitute the entire integrated agreement of the parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

13. Attorney Fees. The parties shall bear their respective attorney fees, expenses and other costs in the prosecution or defense of this matter or any related matters, arising prior to execution of this COA.

14. Modifications. No changes, additions, modifications, or amendments of this COA shall be effective unless they are set out in writing and signed by the parties hereto.

15. Titles. A title used at the beginning of any paragraph of this COA may be used to aid in the construction of that paragraph, but shall not be treated as controlling.


16. This COA shall not be considered as a limitation or abridgment of the Department's rights and duties to take action as necessary to implement emergency control strategies under Section 6.2 of the APCA, 35 P.S. § 4006.2.


17. Counterparts. This COA may be signed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. Facsimile signatures or those transmitted by electronic means shall be valid and effective.

18. This COA does not grant a variance from any requirement of the APCA, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, or any regulations promulgated under either of these statutes; nor does it purport to modify any requirement of Pennsylvania's SIP as approved under Section 110 of the Clean Air Act, 42 U.S.C. § 7410.


IN WITNESS WHEREOF, the parties hereto have caused this COA to be executed by their duly authorized representatives. The undersigned representatives of Jewel certify under penalty of law, as provided by 18 Pa. C.S. § 4904, that they are authorized to execute this COA on behalf of Jewel; that Jewel consents to the entry of this COA as a final ORDER of the Department; and that Jewel hereby knowingly waives its rights to appeal this COA and to challenge its content or validity, which rights may be available under Section 4 of the Environmental Hearing Board Act, the Act of July 13, 1988, P.L. 530, No. 1988-94, 35 P.S. § 7514; the Administrative Agency Law, 2 Pa. C.S. § 103(a) and Chapters 5A and 7A; or any other provision of law.


FOR JEWEL ACQUISITION, LLC:


Robert S. Wetherbee
President, Flat Rolled Products


Lauren S. McAndrews
Vice President, Assistant Secretary &
Assistant General Counsel

FOR THE COMMONWEALTH OF
PENNSYLVANIA, DEPARTMENT OF
ENVIRONMENTAL PROTECTION:


Mark Gorog, P.E.
Southwest Region
Air Quality Program


Michael J. Heilman
Assistant Regional Counsel

