STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	* **SETTLEMENT NO. SA-AE-05-0059**
	*
CII CARBON, L.L.C.	* **ENFORCEMENT TRACKING NO.**
AI # 44866 (Norco)	* **AE-PP-04-0046**
AI# 2557 (Chalmette)	* **AE-L-04-0120**
	*
PROCEEDINGS UNDER THE LOUISIANA	*
ENVIRONMENTAL QUALITY ACT	*
LA. R.S. 30:2001, ET SEQ.	*

SETTLEMENT

The following Settlement is hereby agreed to between CII Carbon, L.L.C. ("Respondent") and the Department of Environmental Quality ("DEQ" or "the Department"), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. ("the Act").

I.

Respondent is a Limited Liability Company which operates petroleum coke calcining facilities located at 801 Prospect Avenue in Norco, St. Charles Parish (the "Norco Facility") and at 700 Coke Plant road in Chalmette, St. Bernard Parish, Louisiana (the "Chalmette Facility").

II.

On March 12, 2004, the Department issued a Notice of Potential Penalty, Enforcement Tracking Number AE-PP-04-0046, to Respondent with regard to the Norco Facility, which noted the following:

A. On or about October 24, 2003, Conestoga-Rovers & Associates (CRA) submitted additional information regarding the Respondent's Second Quarter 2003 deviation report on behalf of the Respondent. This information details 133 exceedances of the nitrous (NOx) limit of 108 lbs/hr as contained in Air

Permit No. 2520-00003-03 and PSD Permit Number PSD-LA-582 (M-1). Each exceedance is a violation of General Condition II of Air Permit Number 2520-00003-03, Specific Condition Number 1 of PSD Permit Number PSD-LA-582 (M-1), LAC 33:III.501.C.4, and Sections 2057(A)(1) and 2057(A)(2) of the Act.

B. On or about November 14, 2003, CRA submitted additional information regarding the Respondent's Third Quarter 2003 deviation report on behalf of the Respondent. This information details 14 exceedances of the NOx limit of 108 lbs/hr as contained in Air Permit Number 2520-00003-03 and PSD Permit Number PSD-LA-582 (M-1). Each exceedance is a violation of General Condition II of Air Permit Number 2520-00003-03, Specific Condition Number 1 of PSD Permit Number PSD-LA-582 (M-1), LAC 33:III.501.C.4, and Sections 2057(A)(1) and 2057(A)(2) of the Act.

III.

The Department received a letter from Respondent dated October 22, 2004, regarding certain effluent discharges and sampling efforts at the Norco Facility. Respondent operates this facility under LPDES Permit No. LAG53137 issued during May 2001. Upon receipt of this letter the Department conducted a file review that identified the following excursions:

Date	Outfall	Parameter	Limit	Result
January 15, 2002		TSS	45 mg/L Weekly average	88 mg/L
December 7, 2002		TSS	Weekly average	58 mg/L*
January 15, 2002		BOD	45 mg/L Weekly average	225 mg/L
January 15, 2002		TSS	Weekly average	73 mg/L
January 15, 2002		Fecal Coliform	400 colonies/100mL	8,280 colonies/100mL

*During 2002, two samples were collected. The first sample was collected on January 15, 2002 had a TSS value of 88 mg/l; the second sample was December 7, 2002 with a TSS value of 58 mg/l. The weekly average was reported as 58 mg/l, the permit limit is 45 mg/l.

Each excursion of an effluent limitation constitutes a violation of LPDES permit LAG53137 (Part I, Pages 1 - 4, and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A. These excursions were not part of any enforcement action but are subject to the terms of this Settlement Agreement.

IV.

Based on the Department's file review and Respondent's letter, the Department identified the following with regard to the Chalmette Facility:

> Respondent failed to sample for fecal coliform during the first sampling period after issuance of the LPDES Permit.

Each failure to record temperature readings constitutes a violation of LPDES permit LA0081353 (Part I, Pages 1 - 4, and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

V.

Based on the Department's file review and Respondent's letter, the Department identified the following with regard to the Chalmette Facility:

> During the period January 10, 2005 through April 13, 2005, Respondent recorded weekly temperature readings at Outfall 001 but failed to record temperature readings on a daily basis as required for the first time by LPDES Permit Number LA0081353 issued January 10, 2005.

Each failure to record temperature readings constitutes a violation of LPDES permit LAG53137 (Part I, Pages 1 - 4, and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

VI.

On or about April 13, 2004 the Department issued Warning Letter, Enforcement Tracking No. AE-L-04-0120 to the Chalmette Facility, and stated the following:

> On or about May 19, 2003, an inspection of the above referenced facility was conducted to determine compliance with the Louisiana Environmental Quality Act and supporting regulations. The inspection report, noting areas of concern, has been forwarded to the Enforcement Division.

VII.

In response to the Notices of Potential Penalty, Respondent made timely requests for a hearing.

VIII.

Respondent submitted additional information with regard to both NOPP's and the Warning Letter on July 3, 2003, July 7, 2003, September 26, 2003, October 24, 2003, November 14, 2003, December 17, 2003, March 29, 2004, May 5, 2004, May 27, 2004. October 22, 2004 and October 4, 2005.

IX.

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

X.

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of FIFTEEN THOUSAND FOUR HUNDRED SIXTY-THREE AND 13/100 DOLLARS ($15,463.13), including a monetary benefit in the amount of Two Hundred Sixty-Six and 95/100

Dollars ($266.95) and enforcement costs in the amount of Two Hundred Eighty-Five and 25/100 Dollars ($285.25), in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to DEQ as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

XI.

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order & Notice of Potential Penalty, the March 23, 2005 file review, and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the alleged violations alleged herein for the sole purpose of determining Respondent's compliance history.

XII.

This agreement shall be considered a final order of the secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this agreement.

XIII.

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing

to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act.

XIV.

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in St. Bernard Parish, Louisiana. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

XV.

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Penalties are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

XVI.

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XVII.

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

CII CARBON, L.L.C.

BY: Stephen Rowland
(Signature)

Stephen L Rowland
(Printed)

TITLE: Chief Operations Officer

THUS DONE AND SIGNED in duplicate original before me this 30th day of May, 20 06, at Kingwood, Texas.

Jodi M Canadas
NOTARY PUBLIC

JODI M CANADAS
My Commission Expires
January 6, 2010

Jodi M Canadas
(Printed)

STATE OF LOUISIANA
Mike McDaniel, Secretary
Department of Environmental Quality

BY: Harold Leggett
Dr. Harold Leggett, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 31st day of October, 20 06, at Baton Rouge, Louisiana.

NOTARY PUBLIC Bar # 20451

Jed R. Pryles, Jr
(Printed)

Approved: Harold Leggett
Harold Leggett, Ph.D, Assistant Secretary