

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CARGILL, INCORPORATED

AI # 51744

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT
LA. R.S. 30:2001, ET SEQ.

* Settlement Tracking No.
* SA-AE-11-0006
*
* Enforcement Tracking No.
* AE-PP-08-0146
*
*
*
*

SETTLEMENT

The following Settlement is hereby agreed to between Cargill, Incorporated (“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 corporation that owns and/or operates a salt mining facility located on Avery Island, Iberia Parish (“the Facility”).

II

On June 26, 2009, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. AE-PP-08-0146, which was based upon the following findings of fact:

On or about April 13, 2009, a file review of Cargill Salt – Avery Island Mine (the facility), owned and/or operated by Cargill, Incorporated (Respondent), was performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Air Quality Regulations. The facility is located on Louisiana Highway 329 South in Avery Island, Iberia Parish,

Louisiana. The facility currently operates under Air Permit 1260-00034-04 issued on or about November 7, 2006.

The following violations were noted during the course of the file review:

- A. In correspondence dated on or about January 30, 2006, the Respondent notified the Department that wet scrubber EQT086 (9-04) was put into service on or about June 15, 2005. In that correspondence, the Respondent reported that the initial stack test was performed on or about December 13, 2006, a period of 181 days after start up. The failure to perform an initial stack test within 60 days of start up is a violation of Louisiana General Condition VIII of Air Permit 1260-00034-04, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(2).
- B. In correspondence dated on or about May 25, 2006, the Respondent notified the Department that wet scrubber EQT089 (17-05-WSV) was put into service on or about December 21, 2005. In that correspondence, the Respondent reported that the initial stack test was performed on or about March 27, 2006, a period of 96 days after start up. The failure to perform an initial stack test within 60 days of start up is a violation of Louisiana General Condition VIII of Air Permit 1260-00034-04, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(2).
- C. In correspondence dated on or about May 25, 2006, the Respondent notified the Department that an initial stack test was performed on wet scrubber vent EQT089 (17-05-WSV) on or about March 27, 2006. Test results indicated that the scrubber water flow did not attain the required flow rate. The failure to demonstrate compliance with the limits of the permit for scrubber water flow rate is a violation of Specific Requirement 594 of Air Permit 1260-00034-04, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).
- D. In correspondence dated on or about March 6, 2008, the Respondent reported that wet scrubber vent EQT086 (9-04) had failed. In further correspondence dated August 27, 2008, the Respondent verified that the scrubber failed on or about February 6, 2008 and was not returned to service until July 23, 2008, a period of 168 days. During that time, six (6) emission points were not scrubbed of emission pollutants. The failure to diligently maintain the emission control device is a violation of Specific Requirement 579 of Air Permit 1260-00034-04, LAC 33:III.905.A, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- E. In correspondence dated on or about July 21, 2008, the Respondent reported variations related to wet scrubber vent EQT089 (17-05-WSV). The water flow rate to the scrubber and the differential pressure across the scrubber are required by the permit to be within +/- 30% of the most recent performance test. On January 4, 2008, January 18, 2008, January 21, 2008, February 6, 2008 and February 12, 2008, both the water flow rate and differential pressure differed by more than 30% from the required values. Each failure to maintain each parameter within the required range is a violation of Specific Requirement 34 of Air Permit 1260-00034-04, LAC 33:III.905.A, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).
- F. In correspondence dated on or about February 19, 2009, the Respondent reported emissions from the mine shaft vent in excess of permit requirements. The current permit restricts the facility to usage of Ammonium Nitrate and Fuel Oil (ANFO) of less than or equal to 1,040 tons of ANFO for any twelve (12) consecutive months. The Respondent reported a 2.0% excess consumption of ANFO at 1,063 tpy, for the period February 1, 2008 to January 31, 2009. The failure to maintain ANFO consumption within the limits of the permit is a violation of Specific Requirement 17 of Air Permit 1260-00034-04, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).
- G. In correspondence dated on or about, March 11, 2009, the Respondent reported emissions from the mine shaft vent in excess of permit requirements. The current permit restricts the facility to usage of Ammonium Nitrate and Fuel Oil (ANFO) of less than or equal to 1,040 tons of ANFO for any twelve (12) consecutive months. The Respondent reported a 4.9% excess consumption of ANFO at 1,063 tpy, for the period March 1, 2008 to February 28, 2009. The failure to maintain ANFO consumption within the limits of the permit is a violation of Specific Requirement 17 of Air Permit 1260-00034-04, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).
- H. In correspondence dated on or about April 17, 2009, the Respondent reported emissions from the mine shaft vent in excess of permit requirements. The current permit restricts the facility to usage of Ammonium Nitrate and Fuel Oil (ANFO) of less than or equal to 1,040 tons of ANFO for any twelve (12) consecutive months. The Respondent reported a 6.9% excess consumption of ANFO at 1,112 tpy, for the period April 1, 2008 to March 31, 2009. The failure to maintain ANFO consumption within the limits of the permit is a violation of Specific Requirement 17 of Air Permit 1260-00034-04, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- I. In correspondence dated on or about April 17, 2009, the Respondent reported emissions from the mine shaft vent in excess of permit requirements. The current permit restricts the facility to usage of less than or equal to 300,000 gallons of diesel fuel for any twelve (12) consecutive months. The Respondent reported a 2.0% excess consumption of diesel fuel at 306,023 gallons for the period April 1, 2008 to March 31, 2009. The failure to maintain diesel fuel consumption within the limits of the permit is a violation of Specific Requirement 16 of Air Permit 1260-00034-04, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

The following violations, although not cited in the foregoing enforcement actions nor included in any other enforcement actions issued to the Respondent, are included within the scope of the settlement herein.

The facility's 2006, 2007, 2008 and 2009 Annual Compliance Certifications do not list the dates on which the scrubber water flow/differentials exceeded +/-30% of the average determined during the most recent stack tests. This violation was not cited in Enforcement Action No. AE-PP-08-0146. The failure to list the hours during which values exceeded +/- 30% from the average determined during the most recent stack tests are violations of Specific Requirements 578 and 597 of Air Permit 1260-00034-04, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(2).

III

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

IV

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 FIVE THOUSAND SIX HUNDRED FORTY-SIX AND 31/100 DOLLARS (\$5,646.31), of which Six Hundred Forty-Six and 31/100 Dollars (\$646.31) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

V

Respondent further agrees that the Department may consider the file review report(s), the Notice of Potential Penalty 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 violations alleged herein for the sole purpose of determining Respondent's compliance history.

VI

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.

VII

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 La. R. S. 30:2025(E) of the Act.

VIII

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Iberia 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 an original proof-

of-publication affidavit and an original public notice 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.

IX

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. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

X

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

XI

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

CARGILL, INCORPORATED

BY: _____
(Signature)

(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20 _____, at _____.

NOTARY PUBLIC (ID # _____)

(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch Secretary

BY: _____
Cheryl Sonnier Nolan, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20 _____, at Baton Rouge, Louisiana.

NOTARY PUBLIC (ID # _____)

(stamped or printed)

Approved: 
Cheryl Sonnier Nolan, Assistant Secretary