

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CARGILL, INCORPORATED

AI # 9290

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

- \* Settlement Tracking No.
- \* SA-AE-06-0048
- \*
- \*
- \* Enforcement Tracking No.
- \* AE-CN-05-0100
- \*
- \*
- \* Docket No. 2005-4189-EQ
- \*

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 who owned and/or operated a midstream bulk transfer facility located on the Mississippi River near Convent, St. James Parish, Louisiana ("the Facility").

II

On June 20, 2005, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-05-0100 to Respondent, which was based upon the following findings of fact:

The Respondent owned and/or operated the Midstream Loader K-2, a midstream bulk transfer facility that was located on the Mississippi River near Convent, St. James Parish,

Louisiana. Under the Respondent's ownership and/or operatorship, the facility operated under Air Permit Number 2560-00035-03, issued on March 14, 2004, until October 14, 2005.

On or about July 17, 2003, an Administrative Order (AO), Enforcement Tracking No. AE-AO-03-0169, was issued to the Respondent in response to a number of citizen complaints regarding dust emissions from ship loading operations conducted by the Respondent and its contractors. The Respondent was required to institute procedures to ensure that all contract companies are permitted to perform the operations as contracted at the Respondent's facility. The Respondent was also required to provide written notification to the Capital Regional Office within two (2) calendar days prior to the contract company performing operations at the Respondent's facility and was to provide a copy of the Respondent's operating permit to all contract companies prior to the contractor beginning operations at the Respondent's facility. A response to the AO was received by the Department on or about July 30, 2003.

On or about December 19, 2003, an Amended Administrative Order (AAO), Enforcement Tracking No. AE-AO-03-0169A, was issued, revising the notification requirements noted in the previous AO and requiring the Respondent to also submit a comprehensive plan for the prevention of airborne particulate matter during loading operations. The plan was to include steps to be taken to ensure that no public nuisance will be created as a result of facility loading operations. These measures were to include, but not be limited to, all reasonable precautions cited in LAC 33:III.1305, and a determination as to when the wind speed and direction may adversely affect adjacent landowners during loading operations.

On or about January 9, 2004, the Department received the Respondent's response to the Amended Administrative Order. According to this letter, "it is generally only when the winds are

from the westerly direction that potential problems arise.” On or about January 13, 2004, the Department requested that the Respondent make a more specific determination as to when the wind speed and direction may adversely affect adjacent landowners during loading operations. The Respondent submitted a letter dated January 28, 2004, to the Department in response to this request. This letter stated “At this time Cargill is unable to provide a specific wind speed or direction which will meet the goals of reducing the potential for impacts from Cargill’s operations on the neighboring residents. More particularly, we do not believe the dust control of our operations to be simply a meteorological issue and therefore is not susceptible to being tested and regulated based upon those parameters. While wind speed and direction certainly can be factors in the process, they are a small part of the overall issue.”

Air Permit No. 2560-00035-03 was issued to the Respondent on March 17, 2004. Specific Condition No. 6 of this permit requires the permittee to develop Standard Operating Procedures (SOPs) designed to control particulate emissions. The permittee is required to maintain these records onsite and make them available to the Office of Environmental Compliance, Surveillance Division. The permittee is also required by Specific Condition No. 17 of this permit to take precautions during loading/unloading/transfer operations of meals or dusty cargo whenever the prevailing winds of 15-20 miles per hour (mph) or greater have potential for fugitive dust emissions to impact residential and/or public property. These precautions are to be included in the SOPs.

On or about November 18, 2004, representatives of the Respondent met with members of the Department to discuss possible modifications of the operating permit and SOPs in order to clarify what is considered a “topping off operation”. A follow-up letter was submitted to the

Department on or about December 1, 2004, providing details of the proposed language changes to the operating procedures and permit requirements regarding "topping off". The Respondent also suggested the addition of a provision into the SOPs relating to the use of one or more water cannons and or/ moderating the speed of grain flow to control the amount of grain dust generated from the loading operation when loading conditions warrant.

On or about December 19, 2004, the Department received a citizen complaint regarding particulate emissions from the Respondent's facility. On or about December 20, 2004, members of the Department met with the complainant. Samples of particulate material were taken from the complainant's porch and from a vehicle parked on the complainant's property and were submitted for analysis. Members of the Department then went to the Respondent's facility. According to facility records, the Respondent was loading grain on December 19, 2004. Facility logs recorded wind speeds up to 23 mph from the northwest between 2:00 and 3:00 p.m. However, a facility representative stated that there was not any dust being kicked up by the wind and that water cannons were being used. Sample results were received by the Department on or about January 17, 2005. The results show that the components of the material taken from the complainant's porch and vehicle were wood dust, starch, and plant dust. A typical Fourier Transform Infrared Spectroscopy (FTIR) spectrum of the particulate in the samples matches with that of the starch standard and other carbohydrate standards.

On or about January 21, 2005, the Department received a citizen complaint regarding particulate emissions from the Respondent's facility. The complaint was received at approximately 10:17 a.m. Members of the Department met with the complainant and took dust samples from the hood and bed of the complainant's vehicle (Samples 1 and 2, respectively).

Members of the Department then went to the Respondent's facility. At the time of the Department's visit, the facility was loading feed pellets. A sample of the feed pellet material was obtained from the facility (Sample 3). All samples were submitted to the lab for analysis. The facility's control room log and weather report for January 21, 2005, were obtained from the facility. The weather report indicated winds from the west and west southwest prior to the Department receiving the complaint. Sample results were received by the Department on or about February 7, 2005. The results show that Samples 1 and 2 contain fine particles similar to Sample 3. According to the results, the majority of the particulate is various forms of natural plant matter, including wood, starch, and natural cellulose. The Department contends Respondent failed to conduct loading/unloading/transferring operations in such a manner, regardless of the inconvenience and even when all other special conditions are complied with, such that the fugitive emissions created by such operations are not a nuisance to the public. The Department contends this is a violation of Specific Condition No. 16 of Air Permit No. 2560-00035-03, LAC 33:III.501.C.4, and Sections 2057(A)(1) and 2057(A)(2) of the Act.

The Department contends an inspection conducted by the Department on or about January 21, 2005, in response to a citizen complaint, revealed that the Respondent failed to include in the SOPs precautions to be taken during loading/unloading/transferring operations of meals or dusty cargo whenever the prevailing winds of 15-20 mph or greater have the potential for fugitive dust emissions to impact residential and/or public property. The Department contends this is a violation of Specific Condition No. 17 of Air Permit No. 2560-00035-03, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.

On or about April 8, 2005, a Notice of Deficiency (NOD) was issued to the Respondent

for the Respondent's failure to provide SOPs indicating special precautions to be taken when the wind speeds reach greater than 15-20 mph. The Department received a response dated May 4, 2005. The response referenced the November 2004 meeting between representatives of the Respondent and members of the Department and the subsequent letter submitted to the Department on or about December 1, 2004.

III

In response to the Consolidated Compliance Order & Notice of Potential Penalty, Respondent made a timely request for a hearing.

IV

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

V

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 TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00) of which One Thousand twenty-five and 59/100 (1,025.59) represents DEQ'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 DEQ as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VI

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order and 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.

VII

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.

VIII

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.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in St. James 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.

X

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 Darryl Serio, Office of Management and Finance, 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).

XI

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

XII

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.

**CARGILL, INCORPORATED**

BY: [Signature]  
(Signature)

George Nally  
(Print)

TITLE: Attorney

THIS DONE AND SIGNED in duplicate original before me this 29<sup>th</sup> day of May, 20 08, at Metairie, LA.

Rebecca Davis  
NOTARY PUBLIC (ID # 28896)

Rebecca Davis  
(Print)

**LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Harold Leggett, Ph.D., Secretary

BY: [Signature]  
Peggy M. Hatch, Assistant Secretary  
Office of Environmental Compliance

THIS DONE AND SIGNED in duplicate original before me this 29<sup>th</sup> day of September, 20 08, at Baton Rouge, Louisiana.

[Signature]  
NOTARY PUBLIC (ID # 410539)

Terrell R. Boyle, II  
(Print)

Approved: [Signature]  
Peggy M. Hatch, Assistant Secretary