

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

* Settlement Tracking No.
* SA-AE-07-0028

CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.

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AI # 33659

* Enforcement Tracking No.
* AE-CN-06-0116

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

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SETTLEMENT

The following Settlement is hereby agreed to between Clean Harbors Environmental Services, Inc. ("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 operated a Portable Thermal Desorption Unit facility at 2201 Old Spanish Trail in Westlake, Calcasieu Parish, Louisiana ("the Facility").

II

On January 10, 2007, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-06-0116, to Respondent, which was based upon the following findings of fact:

The Respondent owns and/or operates a Portable Thermal Desorption Unit used for remediation purposes which was located at or near Georgia Gulf Lake Charles, LLC's VCM Plant

at 2201 Old Spanish Trail in Westlake, Calcasieu Parish, Louisiana. The Respondent had attained from the previous owner, Laidlaw Environmental Services, Inc., Portable Source Air Permit No. 7777-00268-00, which was amended on August 1, 1996, which allowed the operation of a Portable Thermal Desorption Unit for remediation purposes at the Cytec Fortier Plant in Westwego. At the request of the Respondent, the Department authorized the Respondent to move and operate the Portable Thermal Desorption Unit at Georgia Gulf Lake Charles, LLC's VCM Plant location by issuing Temporary Variances to Portable Source Air Permit No. 7777-00268-00. The Department issued a Temporary Variance on July 22, 2003, which expired December 31, 2003; and a Temporary Variance on February 19, 2004, which was extended by issuance of another Temporary Variance on April 22, 2004, which was to expire on June 30, 2004.

On July 10, 1996, the Department issued Laidlaw Environmental Services, Inc. Portable Source Air Permit No. 7777-00268-00, which was amended on August 1, 1996, to operate a Portable Thermal Desorption Unit for remediation purposes at the Cytec Fortier Plant in Westwego. On or about July 7, 2003, the Department received a Notification of Change of Ownership dated July 2, 2003, from Clean Harbors Environmental Services, Inc. According to Notification of Change of Ownership Form, the ownership of the Portable Desorption Unit was transferred from Safety-Kleen (FS), Inc. to the Respondent on or about September 1, 2002. By letter dated June 13, 2003, Clean Harbors Environmental requested approval to relocate the portable thermal dryer unit to Georgia Gulf Lake Charles, LLC in Westlake, Louisiana to perform a sludge dewatering (contaminated with ethylene dichloride) project. The Respondent submitted a letter dated July 15, 2003, to the Department containing additional data for the permit request for the project. On or about July 22, 2003, the Department issued a Temporary Variance to the

Respondent to treat 1,099 tons of ethylene dichloride (EDC) contaminated sludge in Tanks 550, 551, and 451 at the Georgia Gulf Lake Charles, LLC facility in Westlake, Louisiana. The Temporary Variance expired on December 31, 2003, without the project being initiated, according to the Respondent. By letter dated February 4, 2004, the Respondent again submitted a request for approval to relocate the Portable Thermal Desorption Unit to begin the project on March 1, 2004. The Department issued a Temporary Variance to Clean Harbors Environmental Services, Inc. for the same project on February 19, 2004, which was to expire on April 30, 2004. However, by letter dated April 15, 2004, the Respondent requested an extension to the variance to increase the project time to 63 days and to increase the volume of material to be remediated from 1,099 tons to 4,788 tons of EDC. A Temporary Variance was issued on April 22, 2004, which expired on June 30, 2004.

On January 5, 2005, an inspection of the Respondent's facility was performed to determine the degree of compliance with the Act and the Air Quality Regulations. A Warning Letter was issued on August 14, 2006, by the Department to the Respondent in response to areas of concern noted during the inspection. The Respondent sent a response to the Warning Letter dated October 9, 2006. The Respondent's response was taken into consideration.

The following violations were noted during the course of the inspection:

- A. The Respondent submitted a Form for Notification of Change of Ownership under cover letter dated July 2, 2003, to the Department indicating a change in ownership of the Portable Thermal Dryer Unit. According to the Notification of Change of Ownership, the change in ownership of the Portable Thermal Dryer Unit from Safety-Kleen, Inc. to the Respondent was effective on or about September 1, 2002. At the time that notification was required to be made by the Respondent,

LAC 33:III.517.G required that notification of any change in ownership must be given to the permitting authority within ninety (90) days after the change. The Respondent's failure to notify the Department of the change in ownership within ninety (90) days of the change is a violation of LAC 33:III.517.G and Section 2057(A)(2) of the Act.

- B. In the letter dated April 15, 2004, the Respondent reported that it had exceeded the twelve (12) day operating time authorized by the Temporary Variance issued on February 19, 2004. According to the Respondent's letter, the project was started on March 1, 2004, and material processing began on or about March 13, 2004. According to the letter, the project was still ongoing as of April 15, 2004. The Respondent also explained in the letter that processing had not been continuous due to various hydraulic motor failures and requests by the plant to halt processing to accept process effluent which resulted in approximately 193 hours of downtime. The Respondent noted the reason for exceeding the twelve (12) day operating time was due to more in-situ material being located in the tanks than the original 1,099 tons estimated. Each day of operation of the treatment process in excess of the permitted twelve (12) day operating time is a violation of Portable Source Air Permit No. 7777-00268-00, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.
- C. Condition No. 2 of the Temporary Variance issued on February 19, 2004, required the Respondent submit a report by May 31, 2004, of the number of breakthroughs for the variance period. Condition No. 2 of the Temporary Variance issued on April 22, 2004, also required a report of the number of breakthroughs for the variance period which ended on June 30, 2004. The Respondent submitted one report dated July 14, 2004, containing carbon bed monitoring logs for the time period of April 13, 2004 through June 17, 2004. The failure to submit a report of the number of carbon bed breakthroughs for the period for which the Temporary Variance issued on February 19, 2004, was effective, by the May 31, 2004, due date as required by Condition No. 2 is a violation of Portable Source Air Permit No. 7777-00268-00, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.
- D. The Respondent submitted a report dated July 14, 2004, containing monitoring logs for the time period of April 13, 2004 through June 17, 2004. The report included monitoring logs for the variance period covered by the Temporary Variance issued on April 22, 2004. However, the July 14, 2004 report, failed to indicate the variance time period of March 13, 2004 through April 12, 2004, for which the

treatment project was operating under the Temporary Variance issued on February 19, 2004. The Department has not received any information for this time period. Each failure to report the number of breakthroughs for the variance period time of March 13, 2004 through April 12, 2004, as required by Condition No. 2 of the Temporary Variance issued on February 19, 2004, is a violation of Portable Source Air Permit No. 7777-00268-00, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.

- E. According to the inspection report dated September 20, 2005, at the time of the inspection, the Respondent's personnel indicated that they could not locate the monitoring logs for the period of March 17, 2004 through April 12, 2004. The Department has no knowledge of receipt of this information to this date. Information submitted in a letter dated July 15, 2003, from the Respondent, used as the basis for the Temporary Variance issued on February 19, 2004, noted that the Respondent would monitor the piping connecting the two (2) carbon beds with a PID and/or Draeger Tubes and log those readings. The Respondent also noted that the initial carbon bed would be replaced if breakthrough occurred. Condition No. 2 of the Temporary Variance issued on February 19, 2004, required a record of the number of breakthroughs be maintained on site and available for inspection by the Office of Environmental Compliance, Surveillance Division. The Respondent failed to have a record of the number of breakthroughs maintained on site and available for inspection by the Office of Environmental Compliance, Surveillance Division as required by Condition No. 2. Each failure to have a record of the number of breakthroughs maintained on site and available for inspection is a violation of Portable Source Air Permit No. 7777-00268-00, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.
- F. In accordance with Condition No. 2 of the Temporary Variances issued on February 19, 2004, and April 22, 2004, the Respondent was required to monitor the emissions from carbon beds daily for volatile organic compounds (VOC) breakthrough using a portable VOC detector. According to the inspection report dated September 20, 2005, the Respondent's personnel stated that a Thermo Environmental 580 PID with a 10.6 electron volt (eV) lamp was initially used for monitoring when the treatment project began on March 17, 2004. Invoices were provided confirming the rental of this monitoring device. The inspection report also noted that according to the Respondent's personnel, this device was used until March 23, 2004, when a MiniRae Plus Classic PID an 11.7 eV lamp was used for monitoring. Since the ionization energy of EDC is 11.04 eV, any

monitoring performed with the Thermo Environmental 580 with the 10.6 eV lamp would not be expected to detect EDC. Each of the Respondent's failure to use a portable VOC detector capable of detecting breakthrough of EDC at the carbon canisters for the period of March 17, 2004 through March 21, 2004, as required by Condition No. 2 of the Temporary Variance issued on February 19, 2004 is a violation of Louisiana Air Emission Permit General Condition I of Air Permit No. 7777-00268-00, LAC 33:III.501.C.4, LAC 33:III.905, and Section 2057(A)(2) of the Act.

In the inspection report dated September 20, 2005, an area of concern was noted in regard Condition No. 2 of the Temporary Variance issued on April 22, 2004. In accordance with Condition No. 2 of the Temporary Variance issued on April 22, 2004, the Respondent was required to cease the treatment system when breakthrough occurred and shall not use the system until the units have been regenerated or replaced. The air monitoring log for April 29, 2004, attached to the report under cover letter dated July 14, 2004, appeared to indicate that the Respondent failed to discontinue operation of the treatment system or replace the spent carbon from 8:00 a.m. until 3:30 p.m. as required by Condition No. 2 of the Temporary Variance issued on April 22, 2004. In the Respondent's letter dated October 9, 2006, in response to the Warning Letter dated August 14, 2006, the Respondent noted that air monitoring logs clearly document a problem with a carbon system. The Respondent provided a written description of the process set up for the carbon system. According to the October 9, 2006 letter, the project was set up with a series of four (4) carbon beds, two (2) of which were installed and operated by the Respondent. The Respondent noted that its two (2) carbon beds could then be routed, if necessary, to a second carbon system maintained by Georgia Gulf Lake Charles, LLC. According to the Respondent's letter, the Respondent's carbon system could not be skipped before it reached the Georgia Gulf Lake Charles, LLC system, and the Georgia Gulf Lake Charles, LLC system was always

disconnected from the Respondent's beds if it was not functional. The Respondent noted in the October 9, 2006 letter that at 8:00 a.m., upon shift change, the day supervisor noted that Georgia Gulf Lake Charles, LLC's carbon beds were reading 165 ppm and noted on the log that they should be changed. At 8:15 a.m., he changed the Respondent's carbon beds prior to startup of operations. Georgia Gulf Lake Charles LLC's carbon beds were disconnected from the Respondent's carbon system at the time. According to the Respondent, there were no breakthroughs associated with operational equipment. In the Respondent's October 9, 2006 letter, it was noted that at 2:00 p.m., the day supervisor documented a reading of 44 ppm from the Georgia Gulf Lake Charles, LLC carbon beds. According to the Respondent's letter, its supervisor was simply noting that Georgia Gulf Lake Charles, LLC's carbon system needed to be changed.

The issue listed below is not the subject matter of an enforcement action issued by the Department:

On or about March 12, 2007, a review of the Respondent's letter dated February 16, 2007, submitted in response to Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-06-0116, was performed to determine the degree of compliance with the Act and the Air Quality Regulations.

The Respondent reported in the response letter to the Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-06-0116 dated February 16, 2007, the emissions for the treatment project for the effective time period of the Variance issued on February 19, 2004. The emissions reported were for the time period of February 19, 2004 through April 21, 2004. The emissions reported by the Respondent for the time period of February 19, 2004 through April 21, 2004, and the limits established in the Variance issued February 19, 2004, were as follows:

Pollutant	Variance Limits (tons per variance period)	Actual Emissions (tons)
SO ₂	0.07	0.129
NO _x	0.05	0.09
CO	0.01	0.022
VOC	0.04	0.072

Based on the Respondent's letter dated February 16, 2007, the Respondent exceeded the SO₂, NO_x, CO and VOC ton limits for the variance period which were established in the Variance to the Portable Source Air Permit No. 7777-00268-00 issued on February 19, 2004. Each exceedance of each pollutant limit is a violation of Portable Source Air Permit No. 7777-00268-00, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.

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 TWENTY-THREE THOUSAND AND NO/100 DOLLARS (\$23,000.00), of which Eleven Thousand Eight Hundred Ninety and 43/100 Dollars (\$11,890.43) 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).

V

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.

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 LSA- 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 Calcasieu 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.

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/her respective party, and to legally bind such party to its terms and conditions.

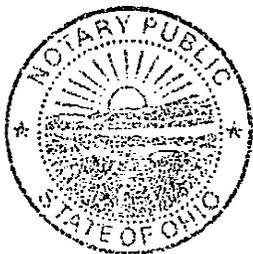
CLEAN HARBORS ENVIRONMENTAL SERVICES, INC.

BY: Michael Crisenbery
(Signature)

Michael Crisenbery
(Print)

TITLE: Director, Env Compliance

THIS DONE AND SIGNED in duplicate original before me this 3rd day of April, 20 08, at Cincinnati, OH.



Tracey Brooks
NOTARY PUBLIC (ID # _____)

TRACEY BROOKS
Notary Public, State of Ohio
My Commission Expires
December 25, 2011

(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Harold Leggett, Ph.D., Secretary

BY: Peggy M. Hatch

Peggy M. Hatch, Assistant Secretary
Office of Environmental Compliance

THIS DONE AND SIGNED in duplicate original before me this 2nd day of April, 20 08, at Baton Rouge, Louisiana.

Jeff H. Drayton, Jr.
NOTARY PUBLIC (ID # 40839)

Jeff H. Drayton, Jr.
(Print)

Approved Peggy M. Hatch
Peggy M. Hatch, Assistant Secretary