

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CONAGRA FOODS, INC.

AI # 12806

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

- \* Settlement Tracking No.
- \* SA-AE-07-0044
- \*
- \* Enforcement Tracking No.
- \* AE-CN-03-0402
- \*
- \*
- \* Docket No. 2005-2289-EQ
- \*

SETTLEMENT

The following Settlement is hereby agreed to between Conagra Foods, 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 who owns and/or operates the Peavey Company that owned and/or operated the Saint Elmo Terminal Elevator, a grain elevator facility located at 3338 Louisiana Highway 44 in Paulina, St. James Parish, Louisiana ("the Facility") until ADM/Growmark River System, Inc. became the owner and/or operator of the facility on May 10, 2005.

II

On February 19, 2004, the Department issued a Consolidated Order and Notice of Potential Penalty, Enforcement No. AE-CN-03-0402, to Respondent, which was based upon the

following findings of fact:

The Respondent owns and/or operates the Peavey Company which owns and/or operates the Saint Elmo Terminal Elevator, a grain elevator located at 3338 Louisiana Highway 44 in Paulina, St. James Parish, Louisiana. This facility operates under Air Permit Number 2560-00018-03 issued on April 25, 1995. An Administrative Amendment to Air Permit Number 2560-00018-03 was issued to the facility on November 12, 2002.

On October 30, 2003, an inspection of the Respondent's facility was conducted to determine the degree of compliance with the Act and Air Quality Regulations in response to a citizen's complaint regarding dust emissions from the facility. At the time of the inspection, heavy dust emissions from barge unloading were observed.

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

- A. The Respondent failed to conduct loading/unloading operations in such a manner, regardless of the inconvenience to the Respondent, such that fugitive emissions created were not a nuisance to the public. This is a violation of Specific Condition Number 4 of Air Permit Number 2560-00018-03, LAC 33:III.501.C.4, and Sections 2057(A)(1) and 2057(A)(2) of the Act.
- B. The Respondent failed to take all reasonable precautions to prevent particulate matter from becoming airborne during facility operations. This is a violation of LAC 33:III.1305.A and Sections 2057(A)(1) and 2057(A)(2) of the Act.

On November 12, November 17, and December 3, 2003, inspections of the Respondent's facility were conducted to determine the degree of compliance with the Act and Air Quality Regulations in response to a citizen's complaint regarding dust emissions from the facility.

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

- A. The Respondent failed to keep a log record of the dates and times when meal was handled, containing a report of emission controls in use (including prevailing meteorological conditions at the time of loading), on site and available for inspection for a minimum of one year. This is a violation of Specific Condition 12 of the Administrative Amendment to Air Permit Number 2560-00018-03, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.
  
- B. The Respondent failed to keep records of the wind speed and direction while handling meal, logged at two-hour intervals, on site and available for inspection for a minimum of one year. This is a violation of Specific Condition 11 of the Administrative Amendment to Air Permit Number 2560-00018-03, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.
  
- C. The Respondent failed to prevent fugitive emissions at the ship loading area during loading/unloading operations. Furthermore, the Respondent failed to prevent fugitive emissions at the barge unloading area from the return roller of U3 and the tail of B1 during barge unloading operations to the silos due to a leaky cover on the receiving section of the operations. The Respondent failed to conduct loading/unloading operations in such a manner, regardless of the inconvenience to the Respondent, such that fugitive emissions created were not a nuisance to the public. This is a violation of Specific Condition Number 4 of Air Permit Number 2560-00018-03, LAC 33:III.501.C.4, LAC 33:III.1305.A, and Sections 2057(A)(1) and 2057(A)(2) of the Act. According to the facility's Daily Maintenance Log, the Respondent addressed the fugitive emissions from the barge unloading area on November 19, 2003, by putting a patch on U3 and adjusting the dust cover on the tail of B1 to control fugitive emissions.

Paragraphs III.A and III.B of the Findings of Fact portion of Compliance Order and Notice of Potential Penalty (CONOPP), Enforcement Tracking No. AE-CN-03-0402, cited the Respondent for failure to keep records of the dates, times, emission controls used, wind speed, and wind direction when meal was handled. After further investigation, the Department discovered that St. James Stevedoring was the contracted company handling the meal at the

facility and was maintaining these records for the facility. In a Notice of No Further Action dated November 3, 2006, and issued on April 3, 2007, the Department decided not to take further action on Paragraphs III.A and III.B of the Findings of Fact portion of CONOPP, Enforcement Tracking No. AE-CN-03-0402, at the time.

A file review conducted by the Department on or about December 7, 2006, and March 29, 2007, revealed the following effluent violations as reported by the Respondent on Discharge Monitoring Reports (DMRs) for the monitoring periods from June 2001 through April 2005:

DATE	OUTFALL	PARAMETER	PERMIT LIMIT	SAMPLE VALUE
3/12/02	003	TSS, daily maximum	45 mg/L	60 mg/L
3/18/02	003	TSS, daily maximum	45 mg/L	100 mg/L
6/26/02	003	TSS, daily maximum TOC, daily maximum	45 mg/L 50 mg/L	953 mg/L 400 mg/L
10/16/02	001	TSS, daily maximum	45 mg/L	104 mg/L
10/23/02	003	TOC, daily maximum TSS, daily maximum	50 mg/L 45 mg/L	62 mg/L 98 mg/L
10/23/02	004	TOC, daily maximum	50 mg/L	109 mg/L
11/05/02	003	TSS, daily maximum	45 mg/L	68 mg/L
12/14/02	003	TSS, daily maximum	45 mg/L	130 mg/L
12/19/02	001	TSS, daily maximum	45 mg/L	130 mg/L
3/27/03	001	BOD <sub>5</sub> , daily maximum	45 mg/L	49 mg/L
3/27/03	103	TSS, daily maximum	45 mg/L	53 mg/L
4/8/03	003	TSS, daily maximum	45 mg/L	64 mg/L
6/16/03	003	TSS, daily maximum	45 mg/L	101 mg/L
1/8/04	003	TOC, daily maximum TSS, daily maximum	50 mg/L 45 mg/L	76 mg/L 73 mg/L
1/8/04	004	TOC, daily maximum	50 mg/L	52 mg/L
2/6/04	003	TSS, daily maximum	45 mg/L	80 mg/L
5/11/04	003	TSS, daily maximum	45 mg/L	123 mg/L
6/25/04	003	TSS, daily maximum	45 mg/L	61 mg/L
11/3/04	003	TSS, daily maximum	45 mg/L	178 mg/L
2/1/05	003	TSS, daily maximum	45 mg/L	84 mg/L
2/2/05	003	TSS, daily maximum	45 mg/L	83 mg/L
3/15/05	003	TSS, daily maximum	45 mg/L	84 mg/L

Also, noted during a file review of the DMRs of Outfall 003 for the months of 1/03, 5/03, 3/04, 4/04, 7/04 through 10/04, and 12/04 was that the Respondent reported flow but did not report the results of analytical analysis. Additionally, the file review revealed that the Respondent failed to sample the effluent for the monitoring periods of July 2004, August 2004, and September 2004 for Outfall 003.

The violations noted above, although not cited in any enforcement action issued to the Respondent, are included herein and made a part of this settlement agreement.

III

In response to the Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-03-0402, 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 THIRTEEN THOUSAND AND NO/100 DOLLARS (\$13,000), of which Nine Hundred Ninety-Nine and 03/100 Dollars (\$999.03) 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 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).

XI

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

XII

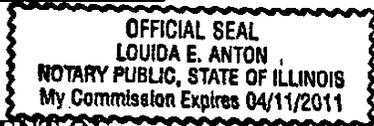
Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

CONAGRA FOODS, INC.

BY: [Signature]  
(Signature)  
Michael J. Gewrts  
(Print)  
TITLE: Operations Manager

THUS DONE AND SIGNED in duplicate original before me this 3<sup>rd</sup> day of January, 20 08, at 905 Falling Springs Rd. Cahokia, IL 62204

[Signature]  
NOTARY PUBLIC (ID # 673308)  
Louida E Anton  
(Print)



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

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

THUS DONE AND SIGNED in duplicate original before me this 3<sup>rd</sup> day of April, 20 08, at Baton Rouge, Louisiana.

[Signature]  
NOTARY PUBLIC (ID # 610555)  
Fred A. Bryan, II  
(Print)

Approved: [Signature]  
Harold Leggett, Ph.D., Assistant Secretary