

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CONOCOPHILLIPS COMPANY

AI # 16996

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

* Settlement Tracking No.
* SA-AE-12-0012
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* Enforcement Tracking No.
* AE-CN-07-0019
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SETTLEMENT

The following Settlement is hereby agreed to between ConocoPhillips Company (“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 petroleum products facility located in Westlake, Calcasieu Parish, Louisiana (“the Facility”).

II

On December 19, 2007, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-07-0019, which was based upon the following findings of fact:

The Respondent owns and operates the Westlake Products Terminal, a bulk petroleum products facility located at 1980 Old Spanish Trail in Westlake, Calcasieu Parish, Louisiana. The facility is currently permitted to operate under Title V Permit No. 0520-00053-V2 issued on

May 24, 2007. The facility previously operated under Title V Permit No. 0520-00053-V1 issued on July 6, 2005.

On or about December 14, 2006, the Department conducted an inspection of the Respondent's facility to determine the degree of compliance with the Act and the Air Quality Regulations.

The following violation was noted during the course of the inspection:

At the time of the inspection, it was noted that the Respondent was not recording the date a leak was detected in accordance with 40 CFR 63.428(e)(3). Each time the Respondent failed to record the date a leak was detected is a violation of 40 CFR 63.428(e)(3) which language has been adopted as a Louisiana regulation in LAC 33:III.5122 and Specific Requirement No. 73 of Title V Permit No. 0520-00053-V1. This is also a violation of LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(2). During the inspection, the Respondent added a column to the leak log to document the date a leak is detected.

During the inspection on or about December 14, 2006, it was noted that the Respondent was not following LAC 33:III.2122 as set forth in Specific Requirement Nos. 50 through 71 of Title V Permit No. 0520-00053-V1. On or about January 5, 2007, a representative of the Respondent spoke with the Department regarding the inspection. The representative stated that Specific Requirement Nos. 50 through 71 do not apply to this facility.

By letter, dated January 11, 2007, and received by the Department on or about January 17, 2007, the Respondent submitted a minor modification request for the facility's Title V Air Permit, No. 0520-00053-V1. The letter requests that Specific Requirement Nos. 50 through 71 be removed from the operating permit because, "per [LAC 33:III.]2122.A.1, only process units within 'petroleum refineries...' within ozone a [*sic*] non-attainment area and specified parishes are required to meet the LDAR [Leak Detection And Repair] requirements listed under [LAC 33:III.]2122." The letter further states that, "the terminal is co-located at the ConocoPhillips

Lake Charles Refinery, but is not a process unit of the refinery. The loading rack and associated piping is covered by NSPS XX and GD MACT regulations as well as the leak inspections required by LAC 33:III.2107, 2135, and 2137. The requirement to perform instrument monitoring for fugitive component leak detection is considered excessive.”

On May 24, 2007, the Department issued Title V Permit No. 0520-00053-V2 to the Respondent. According to this permit, fugitive emissions from the Respondent’s terminal are subject to LAC 33:III.2121, which corresponds with Specific Requirement Nos. 50 through 66 of Title V Permit No. 0520-00053-V2.

On or about September 14, 2007, the Department conducted a follow-up inspection of the Respondent’s facility to determine the degree of compliance with the Act and the Air Quality Regulations, specifically LAC 33:III.2121.

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

The Respondent is not conducting a Leak Detection and Repair program in accordance with Specific Requirement Nos. 50 through 66 of Title V Permit No. 0520-00053-V2. This is a violation of LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(2).

III

In correspondence dated January 30, 2009, the Respondent submitted a regulatory interpretation and applicability determination request to the LDEQ Air Permits Division. The request sought the Department’s concurrence that the Westlake Products Terminal is not subject to certain requirements in the Louisiana Air Quality Regulations, including LAC 33:III.2121.

IV

On December 15, 2010, the Department issued Title V Permit No. 0520-00053-V3 to the Respondent. According to this permit, the Westlake Products Terminal is not subject to LAC 33:III.2121. In the above Title V permit, the Department concluded that LAC 33:III.2121 “does

not apply” to this facility because “the terminal is not classified as a part of the petroleum refinery.”

V

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

VI

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 ONE THOUSAND TWO HUNDRED AND NO/100 DOLLARS (\$1,200.00), of which Five Hundred Ninety-Seven and 87/100 Dollars (\$597.87) 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).

VII

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

VIII

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.

IX

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.

X

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 an original proof-of-publication affidavit and an original public notice from the newspaper of the affected parish 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.

XI

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).

XII

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

XIII

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.

CONOCOPHILLIPS COMPANY

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