

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

DELTA PETROLEUM COMPANY, INC.

AI # 4921

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

* Settlement Tracking No.
* SA-HE-10-0066
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* Enforcement Tracking No.
* HE-CN-09-0021
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SETTLEMENT

The following Settlement is hereby agreed to between Delta Petroleum Company, 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 owns and/or operates a commercial chemical blending and repackaging facility located in St. Gabriel, Iberville Parish, Louisiana (“the Facility”).

II

On April 21, 2009, the Department issued to Respondent a Consolidated Compliance Order and Notice of Potential Penalty Enforcement, No. HE-CN-09-0021, which was based upon the following findings of fact:

The Respondent owns and/or operates a commercial chemical blending and repackaging facility known to the Department as Delta Chemical Services – St. Gabriel. The facility is located at

3950 Highway 30 in St. Gabriel, Iberville Parish, Louisiana. The facility has notified the Department as a large quantity generator of hazardous waste and operates under the EPA facility identification number LAD980812705.

On or about June 25, 2008, an inspection of the facility was conducted to assess compliance with the Hazardous Waste Regulations. The inspection and subsequent file review revealed the following violations:

- A. The Respondent stored hazardous waste for greater than ninety (90) days without a permit, in violation of LAC 33:V.303.B. Specifically, the Respondent stored seven (7) containers storing hazardous waste for greater than ninety (90) days without a permit or other authorization from the Department. Additionally, three (3) of the containers were stored onsite in excess of one (1) year. The containers were manifested for offsite disposal at a permitted facility on July 11, 2008, as documented in the Respondent's correspondence to the Department dated March 9, 2009.
- B. The Respondent failed to sufficiently close containers storing hazardous waste in accordance with the requirements of LAC 33:V.2107.A, in violation of LAC 33:V.1109.E.1.a.i. Specifically, the bung rings were not fastened for four (4) hazardous waste containers stored in the less than ninety (90) day container storage area. The containers were manifested for offsite disposal at a permitted facility on July 11, 2008, as documented in the Respondent's correspondence to the Department dated March 9, 2009.
- C. The Respondent failed to conduct weekly inspections of the less than ninety (90) day hazardous waste container storage area and the containers stored therein in accordance with LAC 33:V.2109.A, in violation of LAC 33:V.1109.E.1.a.i. Specifically, Bobby Gibbs, Production Manager, stated that the containers and container storage area have not been inspected since the previous owner/operator, Grief USA, LLC, ceased operation of the facility at the end of 2007. This violation

was addressed by the Respondent's resumption of weekly inspections beginning on June 27, 2008, as documented in the Respondent's correspondence to the Department dated March 9, 2009.

- D. The Respondent failed to develop and retain a waste minimization plan onsite in accordance with LAC 33:V.2245.K, in violation of LAC 33:V.1109.E.1.e. The Respondent included a "Waste Reduction Plan" in its correspondence to the Department dated March 9, 2009. However, the plan was not certified in accordance with LAC 33:V.2245.J.
- E. The Respondent failed to keep accumulation containers of hazardous waste closed in accordance with LAC 33:V.2107.A, in violation of LAC 33:V.1109.E.4. Specifically, the Respondent failed to keep a 5-gallon container used to accumulate hazardous waste closed except when necessary to add or remove waste.
- F. The Respondent failed to mark containers of hazardous waste with an accumulation start date, in violation of LAC 33:V.1109.E.1.c. Specifically, the Respondent failed to mark an accumulation start date on two (2) 55-gallon containers containing hazardous waste stored within the less than ninety (90) day container storage area. The containers were manifested for offsite disposal at a permitted facility on July 11, 2008, as documented in the Respondent's correspondence to the Department dated March 9, 2009.
- G. The Respondent failed to mark containers storing hazardous waste with the words "Hazardous Waste" in violation of LAC 33:V.1109.E.1.d. Specifically, the Respondent failed to label two (2) containers containing hazardous waste stored within the less than ninety (90) day container storage area with the words "Hazardous Waste". The containers were manifested for offsite disposal at a permitted facility on July 11, 2008, as documented in the Respondent's correspondence to the Department dated March 9, 2009.
- H. The Respondent failed to develop and maintain a site specific contingency plan meeting the content requirements specified in LAC 33:V.1513.B, in violation of LAC 33:V.1109.E.1.e.

- I. The Respondent failed to develop and implement a personnel training program instructing personnel on hazardous waste management procedures relevant to their jobs as specified in LAC 33:V.1515, in violation of LAC 33:V.1109.E.1.e.
- J. The Respondent failed to store used lamps managed under LAC 33:V.3809 in a structurally sound container sufficient to prevent breakage in violation of LAC 33:V.3821.D.1. Specifically, universal waste lamps were stored in an open cardboard container and leaned against a wall. This violation has been addressed as documented in the Respondent's correspondence to the Department dated March 9, 2009.
- K. The Respondent failed to mark each used lamp or the container storing used lamps with the words "Universal Waste – Lamp(s)" or "Waste Lamps" or "Used Lamps" in violation of LAC 33:V.3823.A.6.

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 THIRTY THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$30,500.00), of which One Thousand One Hundred Eighty-three and 24/100 Dollars (\$1,183.24) 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 inspection report(s), the Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. HE-CN-09-0021,

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 Iberville 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.

DELTA PETROLEUM COMPANY, INC.

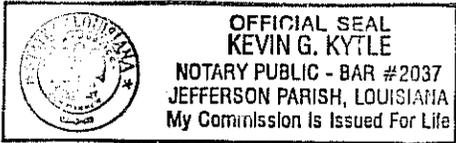
BY: [Signature]
(Signature)

Tom Newman
(Print)

TITLE: General Manager - LA Operations

Witness: Linda Watson

THUS DONE AND SIGNED in duplicate original before me this 12th day of November, 20 10, at Kenner Louisiana



[Signature]
NOTARY PUBLIC (ID # La Bar # 2037)
By witness Kevin G. Kytle
(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch, Secretary

BY: [Signature]

Cheryl-Sonnier Nolan, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 29th day of March, 20 11, at Baton Rouge, Louisiana.

Roger K Ward
NOTARY PUBLIC (ID # 55881)

Roger K. Ward
(Print)

Preliminary Approval: [Signature]
Beau James Brock, Assistant Secretary