

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

DISCOVERY ALUMINAS, INC.

**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT**

LA. R.S. 30:2001, ET SEQ.

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* **Enforcement Tracking No.**

* **HE-CN-99-0169**

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* **Docket No. 2001-5918-EQ**

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SETTLEMENT

The following Settlement is hereby agreed to between Discovery Aluminas, Inc. (“Discovery”) and the Louisiana Department of Environmental Quality (“the Department”), under authority granted by the Louisiana Environmental Quality Act, LSA- R.S. 30:2001, et seq. (“the Act”).

I

Discovery owns and previously operated a “Hi-Q Alumina” manufacturing facility (“the facility”) that processed recycled aluminum wire into high-grade, spray-dried alumina, located at 1471 Safe Energy Drive in Port Allen, West Baton Rouge Parish, Louisiana. Discovery closed the facility in late 2001. DEQ terminated the water discharge and air permits on October 16, 2001.

II

On May 21, 2001, a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. HE-CN-99-0169, was issued to Discovery and, in response thereto, Discovery made a timely request for a hearing. The allegations that form the basis of that enforcement action are:

On or about April 19, 1999, and thereafter representatives of the Department performed inspections of the facility and noted the following:

- A. Discovery failed to attempt to make arrangements with local authorities as appropriate for the type of waste handled at the facility and the potential need for the services of these organizations as specified in LAC 33:V.1511.G., in violation of LAC 33:V.1115.
- B. On or about August 1, 1997, July 10, 1998, and July 16, 1998, Discovery offered for transportation 6.64 tons, 10.01 tons, and 16.40 tons, respectively of D001/D003 hazardous waste (filter cake) for off-site disposal without preparing a manifest before transporting the waste off-site, in violation of LAC 33:V.1107.A.I.
- C. On or about August 1, 1997, July 10, 1998, and July 16, 1998, Discovery offered 6.64 tons, 10.01 tons, and 16.40 tons, respectively, of D001/D003 hazardous waste (filter cake) to a transporter and solid waste disposal facility, identified as Woodside Landfill and Recycling Center, that had not received an active EPA identification number and the required permits (or interim status) necessary to receive and manage the generator's waste, in violation of LAC 33:V.1105.C.
- D. Discovery failed to notify the administrative authority, within seven (7) days, of changes in the information submitted in the application for the identification number, in violation of LAC 33:V.1105.B.

III

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

IV

Nonetheless, Discovery, without making any admission of fact and/or liability under state or federal statute or regulation, and in an effort to compromise and to resolve this matter without incurring

the attendant risks and expenses of litigation or an adjudicatory hearing, agrees to pay, and the Department agrees to accept, a cash payment in the amount of SEVENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$75,000.00) in settlement of the claims set forth in this agreement. Of this amount, \$13,601 is reimbursement to DEQ of the costs of investigating and preparing the enforcement action. The total amount of money expended by Discovery 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

Because the facility has been closed and its DEQ permits terminated, the requirements of the Compliance Order portion of Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. HE-CN-99-0169, are no longer applicable. However, nothing in this agreement shall be construed to relieve Discovery of its duty to comply with all applicable statutes and regulations, in connection with any current or future activities or conditions at the facility.

VI

Upon receipt of the cash payment identified in Paragraph IV above, the Department will release Discovery, its corporate affiliates, parent corporations, subsidiary corporations, heirs and assigns from all claims for civil penalties for the violations alleged in Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. HE-CN-99-0169.

VII

Discovery further agrees that the Department may consider the inspection reports, 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. Discovery reserves all rights to object to said allegations and to present evidence in

support of its position in any future proceeding.

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 Discovery hereby waives any right to administrative or judicial review of the terms of 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).

X

Discovery has caused a public notice advertisement to be placed in the official journal of the parish governing authority in West Baton Rouge Parish. 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. Discovery 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 days have elapsed since publication of the notice.

XI

Payment is to be made within thirty 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. Payment is to be made payable to the Department of Environmental Quality and mailed 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.

XII

The parties agree and acknowledge that final approval by the Department is subject to the requirements of La. R. S. 30:2050.7, which has been addressed in paragraph X, above, and by the concurrence by the State Attorney General. This Settlement shall be deemed final upon notification by the Department that the Secretary has signed the Settlement.

XIII

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

XIV

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.

WITNESSES:

DISCOVERY ALUMINAS, INC.

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BY: Allen R. Ness
(Signature)

ALLEN R. NESS
(Printed)

Amelia R. Kelly

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 28th day of May, 2003, in West Baton Rouge La.

[Signature]
NOTARY PUBLIC

WITNESSES:

STATE OF LOUISIANA
Hall Bohlinger, Secretary
Department of Environmental Quality

Peggy M. Hatch

[Signature]

BY: R. Bruce Hammatt
R. Bruce Hammatt, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 30 day of September, 2003, in Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC

Approved: R. Bruce Hammatt
R. Bruce Hammatt, Assistant Secretary

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This Settlement Agreement has been reviewed, and is concurred in, by the Attorney General, under the provisions of La. R.S. 30:2050.7.

RICHARD P. IEYOUB
ATTORNEY GENERAL

DATED: 8-20-03

BY: 
ASSISTANT ATTORNEY GENERAL