

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

DIVERSIFIED FOODS AND SEASONINGS, INC.  
AI # 90971

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

- \* Settlement Tracking No.
- \* SA-WE-06-0027
- \*
- \* Enforcement Tracking No.
- \* WE-CN-04-0613
- \*
- \*
- \* Docket No. 2006-0728-EQ
- \*

SETTLEMENT

The following Settlement is hereby agreed to between Diversified Foods & Seasonings, 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 a frozen foods manufacturing facility located at 109 La. Hwy. 1085 in Madisonville, St. Tammany Parish, Louisiana ("the Facility").

II

On September 7, 2004, the Department issued to Respondent a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. WE-CN-04-0613, which was based upon the following findings of fact:

The Respondent owns and/or operates a frozen foods manufacturing facility located at 109 LA. Hwy 1085 in Madisonville, St. Tammany Parish, Louisiana. The Respondent was granted coverage under Louisiana Pollutant Discharge Elimination System (LPDES) general permit LAG480000 on September 20, 2002, and specifically was assigned permit number LAG480187.

This permit expired on July 31, 2006. LPDES general permit LAG480187 authorizes the Respondent to discharge certain quantities and qualities of treated cooling tower blowdown and stormwater into local drainage thence into Fox Branch, all water of the state.

An inspection by the Department on September 19, 2003, revealed the following violations:

- A. The Respondent did cause or allow the unauthorized discharge of wastewater into waters of the state. Specifically, a grease trap was allowed to overflow on or about September 9, 2003, and discharge its contents into a drainage ditch that flows into the stormwater retention pond that eventually discharge from outfall 001 into an unnamed ditch thence into Fox Branch. LPDES general permit LAG480187 only authorizes the discharge of cooling tower blowdown from this outfall. The unauthorized discharge of wastewater is in violation of LPDES general permit LAG480187 (Appendix A and Part III, Section A.2), La. R.S. 30:2076 (A)(1)(a), LAC 33:IX.501.A, LAC 33:IX.501.C, and LAC 33:IX.2355.A;
- B. The Respondent did cause or allow the discharge of inadequately treated wastewater. Specifically, laboratory results of a sample taken from outfall 001 at the time of the inspection revealed a TOC concentration of 145 mg/L. The limit for this parameter in LPDES general permit LAG480187 is 50 mg/L. The unauthorized discharge of inadequately treated wastewater is in violation of LPDES general permit LAG480187 (Section U, page 1247 and Part III, Section A.2), La. R.S. 30:2076 (A),(1)(b), LAC 33:IX.501.A, LAC 33:IX501,D, and LAC 33:IX.2355.A;
- C. The Respondent did cause of allow the unauthorized discharge of wastewater not specified in LPDES general permit LAG480187. Specifically, LPDES general permit LAG480187 specifies only the discharge of cooling tower blowdown and stormwater runoff. Also noted at the time of the inspection was a discharge of boiler blowdown and condensate. The unauthorized discharge of wastewater not specified in LPDES general permit LAG480187 is in violation of said permit (Appendix A and Part III, Section A.2), La. R.S. 30:2076 (A)(1)(a), LAC 33:IX.501.A, LAC 33:IX.501.C, and LAC 33:IX.2355.A;
- D. The Respondent failed to prepare a Stormwater Pollution Prevention Plan (SWP<sup>3</sup>) within sixty days of the effective date of LPDES general permit LAG480187. The Respondent was granted coverage under permit on September 20, 2002; therefore, the SWP<sup>3</sup> was to be completed by November 19, 2002. As of the date of inspection, the Respondent had only completed a

partial draft of the SWP<sup>3</sup>. The failure to prepare a SWP<sup>3</sup> in a timely manner is in violation of LPDES general permit LAG480187 (Part I, page 19 and Part III, Section A.2), La. R.S. 30:2076 (A)(1)(a), LAC 33:IX.501.A, AND LAC 33:IX.2355.A.

The Respondent applied for a permit modification to include boiler blowdown and condensate on or about October 7, 2003. The modification was deemed administratively complete on or about November 17, 2003.

A file review conducted by the Department on or about April 20, 2004, revealed that the Respondent failed to fill out its DMRs accurately. Specifically, DMRs submitted for the period October 2002 through June 2003 had a pH and the flow parameters listed on the wrong row that matches the specific results. Each of these DMRs indicated that the outfall had no flow for the monitoring period. The failure to submit an accurate DMR is in violation of LPDES general permit LAG 480187 (Part III, Sections A.2 and D.4), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, 33:ix.2355.A, and LAC 33:IX.2355.L.4.a.

The Respondent did submit an SWP<sup>3</sup> to the Department on or about May 18, 2004. The plan is currently under administrative review.

III

In response to the Consolidated Compliance Order and Notice of Potential Penalty, 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 TWELVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$12,500.00) of which One Thousand Five Hundred and No/100 Dollars (\$1,500.00) 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. Tammany 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 Darryl Serio, Office of Management and Finance, 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 or her respective party, and to legally bind such party to its terms and conditions.

**DIVERSIFIED FOODS AND SEASONINGS, INC.**

BY: [Signature]  
(Signature)

Richard K Chapman  
(Print)

TITLE: Pres/COO

THUS DONE AND SIGNED in duplicate original before me this 20 day of December, 20 04, at St. Tammany Parish, LA.

[Signature]  
NOTARY PUBLIC (ID # 18134 La) Bo-#  
Lew Brigance  
(Print)

**LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Mike D. McDaniel, Ph.D., Secretary

BY: [Signature]  
Harold Leggett, Ph.D., Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 16<sup>th</sup> day of January, 20 07, at Baton Rouge, Louisiana.

[Signature]  
NOTARY PUBLIC (ID # 27771)

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

Randall S. Beard  
(Print)