

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

E.I. DUPONT DE NEMOURS AND
COMPANY, INC.
AI # 1101

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

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* **Enforcement Tracking No.**
* **AE-PP-04-0226**
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SETTLEMENT

The following Settlement is hereby agreed to between E.I. DuPont de Nemours and 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 who operates a p-Phenylenediamine production facility located at 586 Louisiana Highway 44 in LaPlace, St. John the Baptist Parish, Louisiana ("the Facility").

II

On September 22, 2004, the Department issued a Notice of Potential Penalty, Enforcement No. AE-PP-04-0226, to Respondent, which was based upon the following findings of fact:

On or about June 18, 2004, a file review of the Pontchartrain Site, owned and/or operated by E.I. DuPont de Nemours and Company, Inc. (Respondent), was performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Air Quality

Regulations. The facility is located at 586 Louisiana Highway 44 in LaPlace, St. John the Baptist Parish, Louisiana. The Respondent operates the facility under Air Permit Number 2090-V0, issued on May 7, 2003.

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

- A. The Department received the Respondent's Title V semiannual monitoring form and annual compliance certification form dated March 26, 2004, for the periods encompassing July 1 through December 31, 2003, and May 7 through December 31, 2003, respectively. According to the Respondent's reports, the Respondent failed to maintain the water flow rate at Emission Source Number 1500-17/18 at or above 0.5 gallons per minute on June 20, 2003, and July 5, 2003, during one monitoring period for each day. Each failure to maintain the water flow rate at or above 0.5 gallons per minute is a violation of State Only Specific Condition Number 4 of Air Permit Number 2090-V0, LAC 33:III.501.C.4, and Sections 2057(A)(1) and 2057(A)(2) of the Act.
- B. According to the Respondent's Title V semiannual monitoring form dated March 26, 2003, the Respondent's Data Acquisition System at Emission Source Number 1500-8 was down for approximately 2.75 hours on August 26, 2003, and the water flow rate to the scrubber was therefore not recorded. This is a violation of State Only Specific Condition Number 4 of Air Permit Number 2090-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.
- C. According to the Respondent's Title V annual compliance certification form dated March 26, 2003, the Respondent discovered seven open-ended lines (OELs) on June 24, 2003. Each OEL is a violation of 40 CFR 63.167(a)(1) which language has been adopted as a Louisiana regulation in LAC 33:III.5122. Each is also a violation of Part 70 Specific Condition Number 2 of Air Permit Number 2090-V0, LAC 33:III.501.C.4 and Section 2057(A)(2) of the Act.
- D. According to the Respondent's Title V semiannual monitoring form and annual compliance certification dated March 26, 2004, the Respondent failed to record the flow rate at Emission Source Number 1500-17/18 on 63 occasions during 2003. Each failure to record the flow rate at this source is a violation of State Only Specific Condition Number 4 of Air Permit Number 2090-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.

E. The Department received the Respondent's letter dated May 20, 2003, regarding a release of benzene that occurred on May 16, 2003. The Respondent also submitted additional information by electronic mail to the Department regarding this release. According to the Respondent's information, the release occurred for approximately 24 hours during which benzene was released at a rate of 0.002 pounds per hour in excess of the 0.001 pound per hour permitted limit for a total of 0.048 pounds of benzene over the permitted limit. The incident occurred while loading a truck from a benzene storage tank. The incident reportedly occurred due to a valving error that was made when a tank farm operator incorrectly allowed flow to the hydrogenate tank, resulting in the release of benzene through the Hydrogenate Tank Scrubber (Emission Source Number 1500-38) in excess of permitted limits. Therefore, the release was due to operator error. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.905 which states "When facilities have been installed on a property, they shall be used and diligently maintained in proper working order whenever any emissions are being made which can be controlled by the facilities, even though the ambient air quality standards in affected areas are not exceeded." Control equipment as defined by LAC 33:III.111 is "any device or contrivance, operating procedure or abatement scheme used to prevent or reduce air pollution." This is also a violation of General Condition II of Air Permit Number 2090-V0, LAC 33:III.501.C.4, and Sections 2057(A)(1) and 2057(A)(2) of the Act.

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 TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$2,500.00) of which Three Hundred Thirty-Six and 97/100 Dollars (\$336.97) 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).

V

Respondent further agrees that the Department may consider the inspection report(s), the 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 by the Department 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 St. John the Baptist 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.

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 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).

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/her respective party, and to legally bind such party to its terms and conditions.

E. I. DUPONT DE NEMOURS AND COMPANY, INC.

BY: _____

(Signature)

GUY D. TENINI

(Printed or Typed)

TITLE: PART MANAGER

THUS DONE AND SIGNED in duplicate original before me this 15th day of April, 2005, at Hammond, Louisiana.

S. A. McKee

NOTARY PUBLIC (ID # 26417)

Shawn A. McKee

(Printed or Typed)

STATE OF LOUISIANA

Mike D. McDaniel, Ph.D., Secretary
Department of Environmental Quality

BY: _____

Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 18th day of August, 2005, at Baton Rouge, Louisiana.

Neil R. Bradley, II
NOTARY PUBLIC (ID # 204556)

(Printed or Typed)

Approved: _____

Harold Leggett, Ph.D., Assistant Secretary



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

August 3, 2005

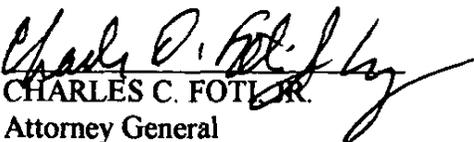
Mr. Herman Robinson, Executive Counsel
La. Department of Environmental Quality
Legal Affairs Division
P.O. Box 4302
Baton Rouge, LA 70821-4302

Re: AG Review of DEQ Settlement;
E.I. Dupont De Nemours and Company, Inc.
AE-PP-04-0226

Dear Mr. Robinson:

Pursuant to the authority granted to me by Art. IV, Sec. 8 of the state constitution and R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,

By: 
CHARLES C. FOTI, JR.
Attorney General

CCF/mlc