

**STATE OF LOUISIANA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**FERRO CORPORATION**

**AI # 3387**

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

- \* **Settlement Tracking No.**
- \* **SA-WE-09-0007**
- \*
- \* **Enforcement Tracking No.**
- \* **WE-CN-07-0258**
- \*
- \*
- \* **Docket No. 2008-10416-EQ**
- \*

**SETTLEMENT**

The following Settlement is hereby agreed to between Ferro Corporation (“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 an existing specialty organic and inorganic chemicals manufacturing and blending facility located in Zachary, East Baton Rouge Parish, Louisiana (“the Facility”).

**II**

On August 30, 2007, the Department issued to Respondent a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. WE-CN-07-0258, which was based upon the following findings of fact:

The Respondent owns and/or operates an existing specialty organic and inorganic chemicals manufacturing and blending facility located at 111 West Irene Road in Zachary, East Baton Rouge Parish, Louisiana. Louisiana Water Discharge Permit System (LWDPS) permit WP0325 was issued

to the Respondent on December 30, 1993, which expired on December 29, 1998. National Pollutant Discharge Elimination System (NPDES) permit LA0004057 was effective on May 1, 1990, was modified on April 17, 1993, and expired on April 20, 1995. An NPDES permit renewal application was submitted to EPA on October 28, 1994, and NPDES permit LA0004057 was administratively continued. In accordance with the assumption of the NPDES program, NPDES permit LA0004057 became a Louisiana Pollutant Discharge Elimination System (LPDES) permit with the same expiration date. The Respondent submitted an updated LPDES permit application on or about September 9, 1999, and was re-issued LPDES permit LA0004057 which became effective November 1, 2003, and will expire on October 31, 2008. LPDES permit LA0004057 was also modified to clarify requirements of the permit. LPDES permit LA0004057 authorizes Ferro Corporation to discharge via Outfall 001 treated process wastewater, process area stormwater, sanitary wastewater, treated groundwater remediation wastewater, non-process area stormwater runoff, and utility wastewaters, including boiler blowdown, and condensate, cooling tower blowdown, and once through cooling water into the Mississippi River (Outfall 101, and untreated low contamination potential stormwater (Outfall 201), and low contamination potential stormwater to an unnamed tributary of Bayou Baton Rouge, thence into the Mississippi River (Outfalls 002 and 003), all waters of the state.

An inspection conducted by the Department on or about March 21, 2002, revealed that the environmental treatment plant contained heavy foam. The north clarifier scum box return line had decayed and was scheduled to be replaced. A one (1) yard dumpster containing filter aid was located on the containment levee and the dumpster was not covered. The sump pump was not operating and was full of water, and/or oil and grease. In the multipurpose unit, there were several drums stored in the containment area, but were not covered. The containment area drains to the process stormwater

tank. Also, 2 (two) 5-gallon buckets were uncovered and one of the buckets contained oil. There were two (2) opened dumpsters, with one containing rainwater and the other contained some type of solid material and rainwater. In the Main Unit, oil was observed on the ground around the hot oil pumps, which drains to a stormwater tank. At the time of the inspection, the stormwater drain had two hoses draining to it. One was a steam condensate line, and the other was a water line from a tank. On the east side of the customs area, a valve was observed in the open position and the water from this area was draining into a sump located at the oil tank. There was a hole in the west containment curbing observed at the pumps with an oily material was leaking through a hole to the sump. There was no curbing on the west side of the slab. The sump area at the used and new oil tanks appeared to have been recently cleaned out and that material was piled on the ground. On or about March 22, 2002, the Respondent submitted a written response to this inspection stating that all areas of concern noted have been corrected.

On or about September 23, 2003, the Respondent notified the Department in writing that an unauthorized discharge of contaminated washwater containing 1, 4-dioxane was discovered on September 19, 2003. Specifically, hydro-blasting and pressure washing activities of a contained area to the west of a culvert had occurred on or about September 22, 2003. Due to these activities, the containment area had been compromised which allowed for the seepage of this unauthorized discharge of this parameter and contaminated washwater into a culvert, thence into the Mississippi River. The unauthorized discharge of a pollutant not authorized by the Respondent's permit is in violation of NPDES permit LA0004057 (Part I, Part II, Section B, and Part III, Section A.2), La. R. S. 30:2075, La. R. S. 30:2076 (A) (1) (a), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.C, and LAC 33:IX.2311.A.1.

On or about April 13, 2004, the Respondent contacted the Department by telephone to report a release of approximately 5,900 pounds of diethyl glycol dimethyl ether due to the overfilling of a storage tank. This material was picked up and sent to the wastewater treatment plant and released through Outfall 001 into the Mississippi River. The unauthorized discharge of a pollutant not authorized by the Respondent's LPDES permit is in violation of LPDES permit LA0004057 (Part I, Part II, Section B, and Part III, Section A.2), La. R. S. 30:2075, La. R. S. 30:2076 (A) (1) (a), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2311.A.1.

An inspection conducted by the Department on or about June 15, 2004, revealed that the Respondent was not continuously monitoring the flow at Outfall 101 as required by LPDES permit LA00004057. Specifically, the inspection revealed the Respondent used a totalizer and the tank volume to determine the flow. The failure to continuously record the flow from Outfall 101 is in violation of LPDES permit LA0004057 (Part I, page 4 of 8, and Part III, Sections A.2 and C.6), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.

A June 15, 2004, inspection revealed that the Respondent's Discharge Monitoring Reports (DMRs) indicated that for some monitoring periods, the Respondent reported only one sample was collected during monitoring periods. However, more than one sample result was recorded on the DMRs. Specifically, the pH values listed on the DMRs for Outfall 002 during the 1<sup>st</sup> quarter of 2004 monitoring period and for Outfall 003 during the 4<sup>th</sup> quarter 2003, and the 2<sup>nd</sup> quarter 2004 monitoring periods, have different minimum and maximum values. The failure to submit accurate DMRs is in violation of LPDES permit LA0004057 (Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2701.A, and LAC 33:IX.2701.L.4.b.

On or about October 6, 2004, the Respondent did cause or allow the unauthorized discharge of treated wastewater into a natural ravine, thence into a man-made canal, thence into the Mississippi

River at a point not permitted by its LPDES permit LA00004057. Specifically, upon an investigation, it was determined the pipelines that transport the effluent had been pulled apart and the treated wastewater was discharging into a ravine, thence into a man-made canal, thence into the Mississippi River, waters of the state. The Respondent is not authorized to discharge into the ravine and canal. These two (2) discharges from a location point not authorized are in violation of LPDES permit LA0004057 (Part I, Part III, Sections A.2 and D.1.b), La. R. S. 30:2075, La. R. S. 30:2076 (A) (1) (a), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.C, LAC 33:IX.501.D, and LAC 33:IX.2311.A.1. The failure to operate and maintain its discharge lines is in violation of LPDES permit LA0004057 (Part III, Sections A.2 and B.3), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2701.A, and LAC 33:IX.2701.E. On or about October 14, 2004, the Respondent notified the Department in writing that the pipelines were repaired and the treated wastewater flow was returned to the pipeline and eventually discharging into the Mississippi River.

Inspections conducted by the Department on or about March 21, 2002, June 15, 2004, June 1, 2005, and a subsequent file review conducted by the Department on or about July 11, 2007, revealed the following effluent violations, as reported by the Respondent on its DMRs and Non-Compliance Reports (NCRs) for the monitoring periods of June 2000 through March 2007:

<b>Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Permit Limit</b>	<b>Sample Value</b>
06/30/00	101A	BOD Daily Average	26 lbs/day	29 lbs/day
		BOD Daily Maximum	69 lbs/day	122 lbs/day
01/31/01	002A	TOC Daily Maximum	50 mg/l	103 mg/l
04/30/03	101Y	Hexachloroethane Daily Average	0.014 lbs/day	0.02 lbs/day
		2,4-Dinitrophenol Daily Average	0.046 lbs/day	0.05 lbs/day
06/30/03	101A	BOD Daily Maximum	69 lbs/day	129 lbs/day
07/31/03	101A	BOD Daily Average	26 lbs/day	81 lbs/day
		BOD Daily Maximum	69 lbs/day	248 lbs/day
7/17/03	101A	BOD Daily Maximum	69 lbs/day	97 lbs/day
7/21/03	101A	BOD Daily Maximum	69 lbs/day	102 lbs/day

Date	Outfall	Parameter	Permit Limit	Sample Value
7/24/03	101A	BOD Daily Maximum	69 lbs/day	117 lbs/day
7/28/03	101A	BOD Daily Maximum	69 lbs/day	248 lbs/day
7/31/03	101A	BOD Daily Maximum	69 lbs/day	158 lbs/day
03/31/04	101A	TSS Monthly Average	61 lbs/day	88 lbs/day
		TSS Daily Maximum	192 lbs/day	408 lbs/day
	201A	TOC Daily Maximum	50 mg/L	123 mg/L
01/31/05	101A	TSS Daily Maximum	192 lbs/day	302 lbs/day
02/28/05	101A	BOD Monthly Average	44 lbs/day	90 lbs/day
		BOD Daily Maximum	116 lbs/day	272 lbs/day
2/3/05	101A	BOD Daily Maximum	116 lbs/day	137 lbs/day
2/8/05	101A	BOD Daily Maximum	116 lbs/day	272 lbs/day
2/10/05	101A	BOD Daily Maximum	116 lbs/day	183 lbs/day
09/30/05	101A	BOD Monthly Average	44 lbs/day	222 lbs/day
		BOD Daily Maximum	116 lbs/day	574 lbs/day
		TSS Monthly Average	61 lbs/day	85 lbs/day
		TSS Daily Maximum	192 lbs/day	195 lbs/day
9/5/05	101A	BOD Daily Maximum	116 lbs/day	274 lbs/day
9/8/05	101A	BOD Daily Maximum	116 lbs/day	259 lbs/day
9/15/05	101A	BOD Daily Maximum	116 lbs/day	205 lbs/day
9/19/05	101A	BOD Daily Maximum	116 lbs/day	574 lbs/day
9/22/05	101A	BOD Daily Maximum	116 lbs/day	506 lbs/day
11/30/05	101A	BOD Daily Maximum	116 lbs/day	182 lbs/day
		TSS Monthly Average	61 lbs/day	84 lbs/day
		TSS Daily Maximum	192 lbs/day	222 lbs/day
12/31/05	101A	BOD Monthly Average	44 lbs/day	50 lbs/day
		TSS Monthly Average	61 lbs/day	63 lbs/day
09/30/06	002Q	pH Minimum	9.0 SU	9.4 SU
	101A	TSS Monthly Average	61 lbs/day	104 lbs/day
		TSS Daily Maximum	192 lbs/day	253 lbs/day
01/31/07	201A	TOC Daily Maximum	50 mg/L	110 mg/L
02/28/07	002A	TOC Daily Maximum	50 mg/L	98 mg/L
02/28/07	101A	BOD Monthly Average	44 lbs/day	86 lbs/day
		BOD Daily Maximum	116 lbs/day	231 lbs/day
03/31/07	101A	BOD Monthly Average	44 lbs/day	83 lbs/day
		BOD Daily Maximum	116 lbs/day	200 lbs/day

Each of the above-noted effluent excursions that occurred prior to November 1, 2003 is a violation of NPDES permit LA0004057 (Part I, pages 1 through 11 and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.

Each of the above-noted effluent excursions that occurred after November 1, 2003 is a violation of

LPDES permit LA0004057 (Part I, pages 2 through 8 and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.

A file review conducted by the Department on or about July 12, 2007, revealed that the Respondent did cause and or allow the discharge of pollutants not authorized by LPDES permit LA0004057. Specifically, on January 15, 2007, the rear loading valve on a tanker trailer failed and released 6,384 lbs of sodium hydroxide and 1,750 lbs of nitric acid to the ground. These materials were captured in the stormwater system and were processed through the wastewater treatment plant. The contaminated soil and limestone was excavated and was properly disposed of at a permitted off-site facility. The discharge of unauthorized pollutants is in violation of LPDES permit LA0004057 (Part I, Part II, Section B, and Part III, Section A.2), La. R. S. 30:2075, La. R. S. 30:2076 (A) (1) (a), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.C, and LAC 33:IX.2311.A.1.

A file review conducted by the Department on or about July 12, 2007, revealed that the Respondent had failed to sample Outfall 101, TX1, and 101Y. Specifically, the Respondent failed to sample Outfall 101, and TX1, for the monitoring period of November 2003 through December 2003 and Outfall 101Y for the monitoring period of January 1, 2005 through December 31, 2005. The Respondent submitted blank DMRs on or about March 14, 2006, notifying the Department of the failure to sample. The failure to sample annually for Outfall 101Y is in violation of LPDES permit LA0004057 (Part I, and Part III, Sections A.2 and D.4), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2701.A, and LAC 33:IX.2701.J.3.

### III

The following violations were not cited in Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. WE-CN-07-0258, but are hereby included and settled as part of this settlement agreement:

A file review conducted by the Department on or about January 19, 2009, revealed that the Respondent failed to submit an NCR for the monitoring period of January 2005. The failure to submit an NCR is a violation of LPDES permit LA0004057 (Part III, Sections A.2 and D.7), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.2701.A, and LAC 33:IX.2701.L.7.

A file review conducted by the Department on or about January 19, 2009, revealed that the Respondent failed to sample Outfall 201A for the parameters of Total Organic Carbon and Oil and Grease for the monitoring periods of October 2006 and October 2008. Each failure to sample is a violation of LPDES permit LA0004057 (Part I, page 6 of 8 and Part III, Sections A.2 and D.4), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.2701.A.

A file review conducted by the Department on or about January 19, 2009, revealed the following effluent violation, as reported by the Respondent on the DMR and NCR for the monitoring period of February 2008:

Date	Outfall	Parameter	Permit Limit	Sample Value
02/28/08	101A	BOD Daily Maximum	116 lbs/day	121 lbs/day

The above-referenced effluent exceedance is a violation of LPDES permit LA0004057 (Part I, page 4 of 8 and Part III, Section A.2), La. R.S. 30:2076 (A)(1), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.

A file review conducted by the Department on or about January 19, 2009, revealed that the Respondent failed to measure the flow for Outfall 101A for the monitoring period of August 2008 as required by LPDES permit LA0004057. Specifically, the Respondent estimated the flow of Outfall 101A for the monitoring period of August 2008 instead of measuring the flow using a continuous recorder. Failure to measure flow as required by the permit is a violation of LPDES permit

LA0004057 (Part I, page 4 of 8 and Part III, Sections A.2, and C.6), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.

IV

In response to the Consolidated Compliance Order and Notice of Potential Penalty, Respondent made a timely request for a hearing.

V

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 SIXTEEN THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$16,900.00), of which One Thousand Eight Hundred Fifty-Six and 04/100 Dollars (\$1,856.04) 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 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.

## 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 LSA- 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 East Baton Rouge 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.

## XI

Payment is to be made in installments as follows: \$5000.00, six (6) months from notice of the Secretary's signature; \$5000.00, one (1) year from notice of the Secretary's signature; \$6,900, one (1) year and six (6) months 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).

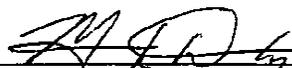
## XII

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.

**FERRO CORPORATION**

BY:   
(Signature)

MARK DUVENSEKER  
(Print)

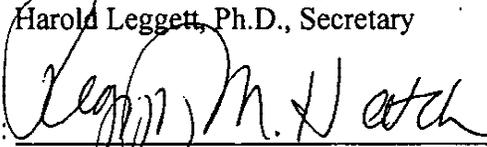
TITLE: VP, GENERAL COUNSEL & SECRETARY

THIS DONE AND SIGNED in duplicate original before me this 8<sup>th</sup> day of September, 2009, at 10:43 am Cleveland, OH.

  
NOTARY PUBLIC (ID #RE-123857)

**CHRISTINE DUBREUIL**  
Notary Public, State of Ohio, Cuy. Cty.  
My commission expires Nov. 28, 2010  
(Print)

**LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Harold Leggett, Ph.D., Secretary

BY:   
Peggy M. Hatch, Assistant Secretary  
Office of Environmental Compliance

THIS DONE AND SIGNED in duplicate original before me this 18<sup>th</sup> day of November, 2009, at Baton Rouge, Louisiana.

  
NOTARY PUBLIC (ID # 104911)

Christopher A. Ratcliff  
(Print)

Approved:   
Peggy M. Hatch, Assistant Secretary