

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

THE FOLGER COFFEE COMPANY

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

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* Enforcement Tracking No.
* AE-CN-02-0208
*
* Docket No. 2003-0022-EQ
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SETTLEMENT

The following Settlement is hereby agreed to between The Folger Coffee Company (“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 coffee plant facility located on or near 14601 Gentilly Road in New Orleans, Orleans Parish, Louisiana (“the Facility”).

II.

On September 26, 2002, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-02-0208, to Respondent which was based upon the following findings of fact:

The Respondent owns and/or operates the New Orleans Coffee Plant located on or near 14601 Gentilly Road in New Orleans, Orleans Parish, Louisiana. Air Quality Permit No. 2140-00005-V0 was issued to the Respondent on December 20, 2000. The facility currently operates under Permit No. 2140-00005-V2 issued on April 1, 2003.

On or about November 26, 2001, the semi-annual monitoring report for the period encompassing January through June 2001 was submitted to the Department. On or about April 26, 2002, the semi-annual monitoring report for the period encompassing July through December 2001 was submitted to the Department.

On or about July 2, 2002, the Respondent met with the Department. The meeting was held to discuss results of roaster NO_x and PM₁₀ stack tests performed by Respondent. Test results indicated that roaster emissions exceeded Respondent's expectations, which were based on manufacturer representations. Based on test data, these unexpected high emissions triggered Prevention of Significant Deterioration (PSD) regulations. In response, Respondent planned to install LHC catalysts on all new roasters. The catalyst installations reduced emissions below PSD standards.

On or about August 29, 2002, the Respondent met with the Department. At the time of the meeting, the Respondent's representatives submitted a compliance schedule as well as the annual compliance certification report for the period encompassing January through December 2001.

On or about September 19, 2002, a file review of The Folger Coffee Company was performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and Air Quality Regulations.

While the Department's investigation is not yet complete, the following violations were noted during the course of the review:

1. Major modifications occurred at the Respondent's facility which triggered the applicability of Prevention of Significant Deterioration (PSD) regulation requirements for PM₁₀ to the facility. The modifications were part of the Capacity Project (CP), which included the installation of two (2) new coffee roasters (Roasters Nos. 4 and 5). The modifications were conducted without prior PSD permitting authorization. This is a violation of LAC 33:III.509.I.1 and Section 2057(A)(2) of the Act.

2. Eight (8) new coffee roasters have been installed at the Respondent's facility (Roasters Nos. 4, 5, 6, 7, 8, 9, 10, and 11). Compliance tests conducted indicate Roasters Nos. 4 and 5 exceed the permitted emission rates for PM₁₀ and NO_x. Each is a violation of Air Quality Permit No. 2140-00005-V1, LAC 33:III.501.C.4 and Sections 2057(A)(1) and 2057(A)(2) of the Act.
3. On or about September 12, 2002 the Department received the Respondent's semiannual monitoring report for the period encompassing December 20, 2000, through December 31, 2000. The Respondent failed to submit the semiannual monitoring report to the Department no later than March 31, 2001, for the period encompassing December 20, 2000, through December 31, 2000. This is a violation of Part 70 General Condition K of Air Permit Number 2140-00005-V0, LAC 33:III.501.C.4 and Section 2057(A)(2) of the Act.
4. On or about September 16, 2002 the Respondent's annual compliance certification for the period encompassing December 20, 2000, through December 31, 2000. The Respondent failed to submit the annual compliance certification to the Department by March 31, 2001. This is a violation of Part 70 General Condition M of Air Permit Number 2140-00005-V0, LAC 33:III.501.C.4 and Section 2057(A)(2) of the Act.
5. On or about November 26, 2001, the Department received the semiannual monitoring report for the period encompassing January through June 2001. The report should have been submitted to the Department no later than September 30, 2001, as required by General Condition K of Air Permit Number 2140-00005-V0. This is a violation of Part 70 General Condition K of Air Permit Number 2140-00005-V0, LAC 33:III.501.C.4 and Section 2057(A)(2) of the Act.
6. On or about April 26, 2002, the Department received the semiannual monitoring report for the period encompassing July through December 2001. The report should have been submitted to the Department no later than March 31, 2002, as required by General Condition K of Air Permit Number 2140-00005-V0. This is a violation of Part 70 General Condition K of Air Permit Number 2140-00005-V0, LAC 33:III.501.C.4 and Section 2057(A)(2) of the Act.
7. On or about August 29, 2002, the Department received the annual compliance certification report for the 2001 calendar year. The report should have been submitted to the Department no later than March 31, 2002, as required by General Condition M of Air Permit Number 2140-

00005-V0. This is a violation of Part 70 General Condition M of Air Permit Number 2140-00005-V0, LAC 33:III.501.C.4 and Section 2057(A)(2) of the Act.

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, the 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-EIGHT THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$38,500.00) of which ONE THOUSAND FIVE HUNDRED AND NO/100 (\$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 the 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 Orleans 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. Penalties are 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.

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

WITNESSES:

Brandy M Seig

[Signature]

RESPONDENT

BY: [Signature]
(Signature)

Pat Bourque
(Printed)

TITLE: Plant Manager

THUS DONE AND SIGNED in duplicate original before me this 22 day of

January, 2004, at New Orleans.

[Signature]
NOTARY PUBLIC

WITNESSES:

Peggy M. Hatch
Holly Smith

STATE OF LOUISIANA
Hall Bohlinger, Secretary
Department of Environmental Quality

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

THUS DONE AND SIGNED in duplicate original before me this 29th day of
April, 2004, in Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC

Approved: [Signature]
R. Bruce Hammatt, Assistant Secretary



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

RECEIVED
APR 21 2004
LA. DEPT. OF ENV. QUALITY
LEGAL AFFAIRS DIVISION

April 19, 2004

Mike D. McDaniel, Secretary
La. Department of Environmental Quality
Office of the Secretary
P.O. Box 4301
Baton Rouge, LA 70821-4301

Re: Review of DEQ Settlement;
The Folger Coffee Company
AE-CN-02-0208

Dear Secretary McDaniel:

Pursuant to the authority granted to me by R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,


NICHOLAS GACHASSIN
First Assistant Attorney General

NG/cbw