

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**FORMOSA PLASTICS CORPORATION,
LOUISIANA**

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

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TRACKING NO. WE-CN-00-0261

TRACKING NO. MM-CN-02-0058

AGENCY INTEREST NO. 288

SETTLEMENT AGREEMENT

The following Settlement is hereby agreed to between Formosa Plastics Corporation, Louisiana (Respondent) and the State of Louisiana through the Department of Environmental Quality, (Department), under authority granted by the Louisiana Environmental Quality Act, LSA- R.S. 30:2001, *et seq.*, (the Act).

I.

At all times pertinent hereto, Respondent owned and/or operated a chemical plant located on the north end of Gulf States Road in Baton Rouge, Louisiana, in East Baton Rouge Parish, which is permitted to operate under Air Permit Number 0840-00002-10 issued on March 7, 1997, Air Permit Number PSD-LA-560 (M-1) issued March 2, 1995, Air Permit PSD-LA-560 (M-2) issued March 7, 1997 and several other permits. Respondent is authorized to discharge certain quantities and qualities of treated process, utility and sanitary wastewaters and storm water to Monte Sano Bayou and the Mississippi River, both waters of the state, under the terms and conditions of Louisiana Water Discharge Permit System (LWDPS) permit WP0714 issued on January 9, 1990, with an expiration date of January 9, 1995. Respondent submitted a permit renewal application on July 14, 1994, and an updated application on March 14, 1999. On or about May 24, 1996, LWDPS permit WP0714 was modified to

reflect the addition of a new outfall (Outfall 003) for uncontaminated storm water runoff. Respondent was issued National Pollutant Discharge Elimination System (NPDES) permit LA0006149 by the Environmental Protection Agency (EPA) on July 29, 1994, with an expiration date of August 31, 1999. On March 4, 1999, an application for the renewal of Louisiana Pollutant Discharge Elimination System (LPDES) (formerly NPDES) permit LA0006149 was submitted to the Department and is currently under administrative review. The LPDES permit has not been modified to reflect the addition of Outfall 003; however, this outfall is identified in Respondent's 1999 LPDES permit renewal application. Under the terms and conditions of the LPDES permit, Respondent is authorized to discharge wastewater to the Mississippi River, waters of the state.

**Consolidated Compliance Order and
Notice of Potential Penalty No. WE-CN-00-0261
Finding of Fact VI, VIII and IX**

II.

On or about September 22, 2000, the Department issued Consolidated Compliance Order and Notice of Potential Penalty (CCONPP) No. WE-CN-00-0261 for various alleged violations of the Act. All of the allegations contained therein, with the exception of Finding of Fact VI, VIII and IX, were resolved through a Settlement Agreement between Respondent and the Department effective January 7, 2003.

III.

The remaining allegations contained in Finding of Fact VI are:

- VI. An inspection by the Department on or about May 7, 2000, revealed that Respondent caused or allowed the unauthorized discharge of 110 gallons of liquid which contained approximately 1.7 lbs. of 1,2 dichloroethane, 614 lbs. of caustic, and 0.84 lbs. of vinyl chloride into the Mississippi River. This unauthorized discharge was caused by the

Respondent's failure to lock the control lever for the automatic pump in the collection tank which then caused the pump to "kick on" when the liquid in the tank increased to the height of the automatic high-level switch. When the pump automatically turned on, the liquid was pumped out to an area of the dock that drains to the Mississippi River. This unauthorized discharge of process wastewater is a violation of La. R.S. 30:2075, La. R.S. 30:2076(A)(1), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.501.C, and LAC 33:IX.501.D.

IV.

As noted in discussions with the Department, Respondent self-reported the discharge, which took place on May 7, 2000 during Respondent's internal investigation into the alleged EDC spill on April 30, 2000. As part of its investigation, during the week of May 1, 2000, Respondent pressure tested the EDC product transfer line and the holding tank transfer line. Both lines passed the pressure test, and no leaks were found. However, in order to test the holding tank transfer line, the line had to be disconnected from the pump, pressured up with nitrogen, and allowed to stand under pressure. During the line test, a maintenance worker failed to properly lock out the pump when he disconnected the line, as required by Respondent's operating procedures. The pump is automatically activated by a high-level switch in the tank and is shut off by a low-level switch. During the test, the liquid in the tank increased to the level of the switch, which caused the disconnected pump to automatically turn on and pump liquid onto an area of the dock which drains to the Mississippi River. As set forth in Respondent's May 15, 2000 report to the Department, Respondent calculates that approximately 110 gallons of liquid, which contained approximately 1.7 lbs. of 1,2 dichloroethane, 614 lbs. of caustic, and 0.84 lbs. of vinyl chloride, was pumped out of the tank on May 7, 2000, not all of which drained into the Mississippi River. None of these amounts is a Reportable Quantity under the terms of the permit and regulations in question.

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, the cash payment described in Paragraph XIV below and the additional measures agreed to herein, in full and complete settlement of any and all claims of noncompliance, through execution of this document, as set forth in this agreement, for all allegations set forth in Finding of Fact VI in CCONPP No. WE-CN-00-0261.

VI.

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 adjudicatory hearings, and is fair, reasonable and in the public interest. In agreeing to this compromise and settlement, the Department considered the factors for issuing civil penalties set forth in La. R.S. 30:2025(E) of the Act. Respondent and Department agree that this Settlement shall compromise and settle all Findings of Fact and allegations of violations contained in Finding of Fact VI in CCONPP No. WE-CN-00-0261.

VII.

The remaining allegations contained in Finding of Fact VIII and IX are:

- VIII) Information obtained by the Department revealed that respondent caused or allowed the unauthorized discharge of 1,2 dichloroethane (EDC) from its facility into the Mississippi River, waters of the state, during the weekend of April 29 - 30, 2000. This unauthorized discharge of EDC is a violation of La. R.S. 30:2075, La. R.S. 30:2076(A)(1), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.501.C, and LAC 33:IX.501.D.
- IX) Additional information obtained by the Department revealed that Respondent failed to notify the Department of the April 29 - 30, 2000 EDC spill incident. However, Respondent did submit a letter (dated May 25, 2000) to the Department which stated a probable source of the spill and indicated that it was not responsible for the incident. Respondent's failure to notify the Department of the EDC spill incident is a violation of LWDPS permit WP0714 (Part III, Paragraph 7 and Part IV, Section D.5.a.2), LPDES permit LA0006149 (Part III, Section D.7.a), La. R.S. 30:2025(J)(2), La. R.S. 30:2076(A)(3), La. R.S. 30:2076(D), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.6.

VIII.

Respondent has met on numerous occasions with officials from the Department regarding this matter and has provided the Department with additional information and documents clarifying certain legal and factual issues. Additionally, on September 11, 2003, Dr. Jim Duke and Mr. Chris Quinn, leading experts in their respective fields who were retained by Respondent to investigate the allegations, presented their expert analyses and findings to the Department. Dr. Duke presented the results of his analyses to determine the point of origin of the measured EDC plume in the reach of the Mississippi River extending from north of Baton Rouge, Louisiana to New Orleans, Louisiana. Mr. Quinn presented the results of his investigation of Respondent's barge loading operations, equipment and procedures and the events related to the unloading of barge K700 on April 29, 2000. After considering the information submitted by Respondent and the investigations made by Dr. Duke and Mr. Quinn and after further investigation, the Department has decided to take no further action with regard to the allegations contained in Finding of Fact VIII and IX in CCONPP No. WE-CN-00-0261.

Consolidated Compliance Order & Notice of Potential Penalty No. MM-CN-02-0058

IX.

On or about December 24, 2002, the Department issued Consolidated Compliance Order & Notice of Potential Penalty (CCONPP) Enforcement Tracking No. MM-CN-02-0058 for various alleged violations of the Act, Water Quality Regulations, and Air Quality Regulations. A copy of CCONPP No. MM-CN-02-0058 is made a part of this Settlement Agreement and incorporated herein by reference as Exhibit 1.

X.

Following receipt of the Department's December 24, 2002 CCONPP, Respondent met with officials from the Department on April 3, 2003, April 8, 2003, April 29, 2003, and May 12, 2003, and provided the Department with additional information and documents clarifying certain legal and factual issues. On May 9, 2003, Respondent submitted to the Department an evaluation of each of the allegations listed in the CCONPP in terms of the "nature and gravity of the alleged violations" and the "degree of risk to human health or property" caused by the alleged violations, as set forth in La. R.S. 30:2025.E. Additionally, on June 2, 2003, Respondent submitted a report to the Department containing an analysis of the violator-specific factors (5 adjustment factors as set forth in La. R.S. 30:2025.E.) for each of the allegations set forth in the CCONPP, as well as an evaluation of the two final elements of "monetary benefits of noncompliance" and "response costs" that are considered by the Department to reach a potential penalty amount.

XI.

After considering the information provided by Respondent, the Department determined that certain violations that it had alleged in sections II.D., VII.C., and X.F. of CCONPP No. MM-CN-02-0058 were not actual violations. In particular, the Department determined that the six bypasses and/or overflows as alleged in section II.D., which occurred on June 7, 2001, January 12, 2002, January 19, 2002, February 19, 2002, March 31, 2002, and April 12, 2002, were "upsets" or "bypasses" as set forth in the applicable regulations and Respondent's permit. Consequently, they were not violations. The Department also determined that it did not have sufficient evidence to show that Respondent failed to discharge no visible emissions to the outside air as alleged in section VII.C. of the CCONPP. Finally, the Department determined that the circumstances of the alleged event in section X.F. were

unanticipated situations that fall beyond the realm of normal operations. The Department determined that Respondent followed its startup, shutdown, and malfunction plan for this malfunction event to the greatest extent possible in order to minimize emissions and return the incinerator to normal operation. Therefore, no violations occurred as alleged in section X.F.

XII.

As for the remaining matters that the Department has alleged in CCONPP No. MM-CN-02-0058, Respondent does not admit that it committed the violations as alleged, or that it is liable for any fines, forfeitures or penalties. Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, the cash payment described in Paragraph XIV below and the additional measures agreed to herein, in full and complete settlement of any and all claims of noncompliance, as set forth in this agreement, for all remaining allegations set forth in CCONPP No. MM-CN-02-0058.

XIII.

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 adjudicatory hearings, and is fair, reasonable and in the public interest. In agreeing to this compromise and settlement, the Department considered the factors for issuing civil penalties set forth in La. R.S. 30:2025(E) of the Act. Respondent and Department agree that this Settlement shall compromise and settle all Findings of Fact and allegations of violations contained in CCONPP No. MM-CN-02-0058.

XIV.

For and in consideration of the covenants made by Respondent as set forth herein, the Department agrees to undertake and to do the following:

- A. The Department agrees to accept the sum of One Hundred Fifty-Five Thousand Two Hundred and no/100 Dollars (\$155,200.00) (of which \$3,512.00 are the Department's enforcement costs) which, along with the other covenants to be completed by Respondent as described herein, shall constitute full payment, satisfaction and compromise of and from any and all claims, demands, actions, damages, penalties, attorneys fees and costs as set forth herein above.
- B. The Department consents not to initiate or maintain any administrative enforcement action, lawsuit, penalty, order, claim, permit revocation, permit modification, adjudicatory hearing, or injunctive relief against Respondent with respect to the matters resolved and settled herein.
- C. In consideration of the above, any and all claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.
- D. The total amount of money expended by Respondent on cash payment(s) 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).

XV.

Respondent agrees that the Department may consider the inspection report(s), CCONPP No. MM-CN-02-0058, this Settlement Agreement, attached exhibits and other related submissions 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.

XVI.

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.

XVII.

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. 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.

XVIII.

Payment of the settlement amount of One Hundred Fifty-Five Thousand Two Hundred and no/100 Dollars (\$155,200.00) described in paragraph XIV. above shall be made within forty-five (45) days of the effective date of this Agreement. If payment is not timely received, 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, Louisiana Department of Environmental Quality, Post Office Box 4311, Baton Rouge, La. 70821-4311.

XIX.

This Settlement Agreement is to be governed by Louisiana law and shall be effective upon the last date signed by any party to the Agreement. The last signatory shall promptly provide a signed copy to the other parties, by U.S. mail, after executing the Agreement.

XX.

The provisions of this Settlement Agreement are severable. In the event any section, paragraph, clause, provision or condition of the Settlement Agreement is declared unenforceable, all other sections, paragraphs, clauses, provisions or other conditions not affected shall remain in force and effect.

XXI.

The undersigned agents and representative of the Department and Respondent represent and warrant that they are duly authorized to execute this Settlement Agreement to legally bind the parties on whose behalf they have executed the Settlement Agreement.

WITNESSES:

FORMOSA PLASTICS, LOUISIANA

Rachelle Lane

BY: Kelly Serio

Jones

NAME: Kelly Serio

TITLE: General Manager

THUS DONE AND SIGNED before me this 19th day of December, 2003, in Baton Rouge, Louisiana.

Ben B. Ho
NOTARY PUBLIC

WITNESSES:

Joni Evans
Reggie M. Hatch

STATE OF LOUISIANA
Mike D. McDaniel, Ph.D., Secretary
Louisiana Dept. of Environmental Quality

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

THUS DONE AND SIGNED before me this 11th day of May, 2014 in Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC

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

TRACKING NO. WE-CN-00-0261
TRACKING NO. MM-CN-02-0058



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

P.O. BOX 94005

BATON ROUGE

70804-9005

April 29, 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;
Formosa Plastics Corporation, Louisiana
WE-CN-00-0261 & MM-CN-02-0058



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