STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	**Settlement Tracking No.**
	*	**SA-WE-13-0083**
FREEPORT-MCMORAN ENERGY LLC	*	
	*	**Enforcement Tracking No.**
AI # 17227	*	**WE-CN-09-0311**
	*	**WE-CN-09-0311A**
	*	
PROCEEDINGS UNDER THE LOUISIANA	*	
ENVIRONMENTAL QUALITY ACT	*	**Docket No. 2012-16586-EQ**
LA. R.S. 30:2001, ET SEQ.	*	

SETTLEMENT

The following Settlement is hereby agreed to between Freeport-McMoRan Energy LLC ("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 limited liability company that owns and/or operates an inactive sulphur processing, shipping, and receiving terminal located in Port Sulphur, Plaquemines Parish, Louisiana ("the Facility").

II

On July 29, 2011, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty (CONOPP), Enforcement No. WE-CN-09-0311, which was based upon the following findings of fact:

"The Respondent owns and/or operates an inactive sulphur processing, shipping, and receiving terminal located at 28310 LA Highway 23 in Port Sulphur, Plaquemines Parish,

Louisiana. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0004898 on or about September 18, 2003, with an effective date of October 1, 2003. A minor modification of LPDES permit LA0004898 was issued on or about November 24, 2003, with an effective date of December 1, 2003. A second minor modification of LPDES permit LA0004898 changing the Respondent's name from Freeport-McMoRan Sulphur LLC to Freeport-McMoRan Energy LLC was issued on or about December 1, 2003, with an effective date of December 1, 2003. The Respondent submitted a LPDES permit application on or about April 1, 2008. LPDES permit LA0004898 expired on September 30, 2008, but was administratively continued until it was re-issued on April 24, 2009, with an effective date of June 1, 2009, and an expiration date of May 31, 2014. On or about February 14, 2011, the Respondent submitted a permit application for coverage under the LPDES Multi-Sector General Permit (MSGP) and requested that LPDES permit LA0004898 terminated. LPDES permit LA0004898 was terminated effective March 11, 2011. The Respondent was granted coverage under LPDES MSGP LAR050000 and specifically assigned permit number LAR05P368 on or about April 1, 2011. LPDES MSGP LAR050000 issued on April 28, 2006, expired on April 30, 2010, but is currently being administratively continued. Under the terms and conditions of LPDES permit LAR05P368, the Respondent is authorized to discharge storm water associated with industrial activity to the Mississippi River, waters of the state.

Inspections conducted by the Department on or about April 27, 2009, in response to a citizen's complaint, and January 21, 2010, and a subsequent file review conducted on or about May 19, 2011, revealed that the Respondent did cause or allow the following unauthorized discharges:

A. The inspection conducted on or about April 27, 2009, revealed that the underground line which carries low pH storm water from the Vat Reservoir to the mixing chamber

developed a leak. The low pH water flowed into the LA Highway 23 storm water catchment basins, then into the drainage ditch at the former golf course, and finally into the Gainard Woods Canal. Low pH water was found approximately 1.5 miles down the canal from the intersection of the canal and the golf course ditch. The inspection revealed a pH of 1.7 SU in the drainage ditch 400 yards northwest of the Milan Street crossover, a pH of 1.73 SU in the drainage ditch that crossed the former golf course from west to east, a smell similar to hydrogen sulfide in the drainage ditch southeast of the fence line, and a low pH reading in the soil next to LA Highway 23. On or about May 4, 2009, the Respondent submitted correspondence to the Department. The Respondent reported that through their calculations they believe approximately 5.8 million pounds of low pH water was released into the storm water drainage system and possibly into the Gainard Woods Canal. On or about May 8, 2009, the facility conducted a dye test which confirmed that the low pH water found during the inspection was caused by a leak in the facility's underground storm water line.

B. On or about September 5, 2009, the discharge line between Outfall 101 and Outfall 001 developed a hole due to wear from line support allowing less than 300 gallons of storm water with a pH less than 6.0 SU to discharge directly into the Mississippi River.

C. On or about September 14, 2009, a small leak developed in the vacuum relief valve on the discharge line between Outfall 101 and Outfall 001 allowing less than 720 gallons of storm water with a pH less than 6.0 SU to discharge directly into the Mississippi River.

D. On or about September 17, 2009, a small leak developed in the new vacuum relief valve on the discharge line between Outfall 101 and Outfall 001 allowing less than 2 gallons of storm water with a pH less that 6.0 SU to discharge directly into the Mississippi River.

The unauthorized discharge of pollutants into waters of the state prior to June 1, 2009, is a violation of LPDES permit LA0004898 (Part II, Sections B and J.2 and Part III, Section A.2), La. R.S. 30:2076 (A) (1) (a), and LAC 33:IX.501.D. The unauthorized discharge of pollutants into waters of the state on or after June 1, 2009, is a violation of LPDES permit LA0004898 (Part II, Sections B and K.2 and Part III, Section A.2), La. R.S. 30:2076 (A) (1) (a), and LAC 33:IX.501.D. The failure to properly operate and maintain the facility is a violation of LPDES permit LA0004898 (Part III, Sections A.2 and B.3.a), La. R.S. 30:2076 (A) (3), and LAC 33:IX.2701.E.

Follow-up inspections conducted by the Department on or about May 4, 2009, and May 6, 2009, and correspondence submitted to the Department by the Respondent on or about July

15, 2009, and March 19, 2010, revealed the following corrective actions taken by the Respondent in response to the April 2009 leak of low pH storm water:

A. A berm was placed in the golf course ditch to prevent contaminated storm water from leaving the property. Water contained by the berm was pumped into the Vat Reservoir. A pH meter was placed downstream from the berm to ensure that stormwater leaving the facility was not contaminated.

B. The highway storm water system was flushed with Mississippi River water which discharged into the golf course ditch.

C. The Respondent maintained 24-hour security until neutralization was completed and constructed a fence along the east and west sides of the golf course. Warning signs were posted along the canal and representatives of the Respondent went door-to-door informing local residents of the situation.

D. Six temporary pumps were used to remove low pH water from the canal. The water was neutralized with sodium hydroxide and pumped back into the canal. The pumps were then used to circulate the water in the canal until the pH stabilized.

E. Eighteen drainage ditches and/or inlets were identified between the facility and the Gainard Woods pumping station. All the inlets were tested and treated until the pH was above 6.0. This was achieved by June 9, 2009.

F. The failed portion of the storm water line was abandoned and replaced with a temporary line during the mitigation process. The pipeline was later replaced entirely with a permanent line.

G. The contaminated soil near the highway was excavated, refilled, and then sodded or hydro seeded.

An inspection conducted by the Department on or about April 27, 2009, in response to a citizen's complaint, revealed that the Respondent failed to immediately notify the Department of an emergency situation. Specifically, the Respondent was notified on or about April 27, 2009, that water with a pH of less than 2.0 SU had been discovered in an on-site drainage ditch and the Gainard Woods Canal. The Respondent confirmed the existence of low pH water in several locations of the property and the drainage system on or about April 28, 2009. The Respondent is required by LPDES permit LA0004898 to report emergency situations to the Department within

a reasonable amount of time, but in no case later than one hour after learning of the discharge. The Respondent notified the Department of the emergency condition on or about May 1, 2009. Failure to properly notify the Department is a violation of LPDES permit LA0004898 (Part III, Sections A.2 and D.6.a), La. R.S. 30:2025 (J) (2), La. R.S. 30:2076 (A) (3), and LAC 33:IX.2701.L.6.

An inspection conducted by the Department on or about April 27, 2009, in response to a citizen's complaint, revealed that the Respondent failed to develop and implement a Storm Water Pollution Prevention Plan (SWP_3). Specifically, the Respondent was required to develop and implement a SWP_3 within six (6) months of the effective date of the permit, October 1, 2003. The inspection revealed the following: the Respondent had not developed a SWP_3, there was a breach in the east side of the levee about thirty (30) yards north of the weir, the area in front of the weir showed signs of an overflow, there was excess filter cake material taking up space intended for storm water, and there was no low spot to retain storm water from the filter cake pile. Failure to develop and implement a SWP_3 is a violation of LPDES permit LA0004898 (Part II, Section J.3 and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2701.A. On or about August 24, 2009, and on or about May 19, 2010, the Respondent submitted a draft of the newly developed SWP_3.

An inspection conducted by the Department on or about April 27, 2009, in response to a citizen's complaint, revealed that the Respondent failed to maintain records of pH calibrations. Specifically, there were no records of calibration of the Outfall 001 pH meter. Failure to maintain records of calibration is a violation of LPDES permit LA0004898 (Part III, Sections A.2, C.3, and C.5.b), La. R.S. 30:2076 (A) (3), LAC 33:IX.2701.J.3, and LAC 33:IX.6515.A.

A file review conducted by the Department on or about May 19, 2011, revealed that the

Respondent failed to submit complete Discharge Monitoring Reports (DMRs). Specifically, the Respondent failed to report the total accumulated minutes of pH range exceedences and the number of pH range exceedences greater than sixty minutes in the LDEQ format on the DMRs for Outfall 001 for the following monthly monitoring periods: February 2006, September 2006, October 2006, January 2007, May 2007 through March 2008, May 2008, July through October 2008, December 2008, and March 2009 through March 2010. Each failure to submit a complete DMR is a violation of LPDES permit LA0004898 (Part I, page 2 of 5 and Part III, Section A.2), La. R.S. 30:2076 (A) (3), and LAC 33:IX.2701.L.4.a.

An inspection conducted by the Department on or about April 27, 2009, in response to a citizen's complaint, revealed that yellow material, which appeared to be sulphur, was present outside the weir. In addition, a portion of land east of the Vat Storage Area levee had been affected by sulphur due to Hurricane Katrina. There was no grass or trees growing in the area and there could be a potential for future low pH conditions during heavy rain events.

Correspondence submitted to the Department on or about March 19, 2010, by the Respondent revealed that the east side of the ring levee had been elevated by approximately eighteen inches, the levee in the area of the southwest weir had been raised to a consistent height, and the weir had been eliminated and replaced with a continuation of the existing earthen ring levee."

On May 16, 2014, the Department issued to Respondent an Amended Consolidated Compliance Order & Notice of Potential Penalty (CONOPP), Enforcement No. WE-CN-09-0311A, which was based upon the following findings of fact:

"The Department hereby removes Findings of Fact Paragraph VI in its entirety.

The Department incorporates all of the remainder of the original **CONSOLIDATED**

COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. WE-CN-09-0311 and **AGENCY INTEREST NO. 17227** as if reiterated herein."

III

In response to the CONOPP and its Amendment, 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 THIRTY-SIX THOUSAND AND NO/100 DOLLARS ($36,000.00), of which Five Thousand Six Hundred Eighty-Eight and 01/100 Dollars ($5,688.01) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement.

VI

Respondent, in addition to the penalty amount specified in Paragraph V above and as part of this Settlement, agrees to expend the amount of $18,000.00 to implement and/or perform the following beneficial environmental project:

A. Plaquemines Parish 911/Emergency Operations Center –

Plaquemines Parish Office of Homeland Security and Emergency Preparedness will build a 911/Emergency Operations Center to allow parish and regional response agencies to coordinate resources and activities during emergencies,

incidents, and complex planned events that have potential for loss of life, damage to property or impact to the environment. The total cost of the project is $11.5 million and Plaquemines Parish is requesting $6 million from the Emergency Management Preparedness Grants. Plaquemines Parish has recently purchased a tract of land within the 100 year protection levee, a section of which has been dedicated to the site for the 911/EOC. The building will house the parish 911 operations and include office space for the EOC Director, Planning, Operations, Logistics and Finance Section Chief. It will also include space for all Primary Emergency Support Function representatives and space for Unified Command as well as the parish 911 operators and Plaquemines Parish Sheriff's Office dispatchers. In addition, this budget includes funds to purchase technology equipment for personnel from each Emergency Support Function and the upgrade to the new E911 system. The 911/EOC is currently in the design phase, and Plaquemines Parish has already dedicated $2 million from their FEMA funds towards the construction costs and $3.5M from general funds towards design and engineering.

B. Respondent shall transfer the supplemental beneficial project funds to Plaquemines Parish as partial funding for the project as described in A above within 30 days of the date the Department signs this settlement. Within 60 days of the executed settlement, Respondent shall submit a report that includes proof of transfer, and certification that the transfer is complete.

C. Submission of Respondent's report to the Department as described in B above shall constitute completion of Respondent's obligations under Paragraph VI.

D. If Respondent does not transfer the amount of $18,000.00 as stated above then it will, in its report, propose additional projects for the Department's approval or pay to the Department, an amount equal to the difference between the amount of money agreed to be spent and the amount of money actually spent.

E. The total amount of money expended by Respondent on cash payments to the Department and on the beneficial environmental project, as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30: 2050.7(E)(1).

F. In addition, Respondent will voluntarily donate $7,000 to Plaquemines Parish toward completion of the 911/Emergency Operations Center project. This donation is not part of this Settlement Agreement.

VII

Respondent further agrees that the Department may consider the inspection report(s), permit record(s), CONOPPs and its Amendment, 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 La. R. S. 30:2025(E) of the Act and the rules relating to beneficial environmental projects set forth in LAC 33:I.Chapter 25.

X

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Plaquemines 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 an original proof-of-publication affidavit and an original public notice 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 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 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.

FREEPORT-MCMORAN ENERGY LLC

BY: _____
(Signature)

_____
(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20 _____, at _____.

_____
NOTARY PUBLIC (ID #_____)

_____
(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch, Secretary

BY: _____
Cheryl Sonnier Nolan, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20_____, at Baton Rouge, Louisiana.

_____
NOTARY PUBLIC (ID # _____)

_____
(stamped or printed)

Approved: _____
Cheryl Sonnier Nolan, Assistant Secretary