

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

GEORGIA GULF CHEMICALS
AND VINYLS, L.L.C.
AI # 2455

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

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* Enforcement Tracking No.
* HE-CN-04-0051
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SETTLEMENT AGREEMENT

The following Settlement is hereby agreed to between Georgia Gulf Chemicals and Vynyls, L.L.C. (“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 corporation that owns and operates a chemical manufacturing complex located at 26100 Louisiana Highway 405 in Plaquemine, Iberville Parish, Louisiana (“the Facility”).

II.

On July 19, 2004, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. HE-CN-04-0051, to Respondent, which was based upon the following findings of fact:

The Respondent owns and/or operates an inorganic and organic chemical manufacturing plant which is a permitted hazardous

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waste treatment, storage and disposal facility located at 26100 La. Highway 405 in Plaquemine, Iberville Parish, Louisiana, and bears the EPA identification number LAD 057 117 434.

The Respondent conducted repair activities in 1999 that required Tank 02-47520 to be removed from service, decontaminated, repaired for failed shell thickness and the addition of two (2) nozzles, pressure tested, and then reseated and sealed to the concrete base. The Respondent failed to notify the Department prior to placing the tank back into service after the repairs were completed, in violation of LAC 33:V.309.A. and Condition V.A.2c (4) of the Hazardous Waste Operating Permit. In addition, these activities require the Respondent to obtain and submit to the Department a certification by an independent, qualified, registered, professional engineer that the repaired system is capable of handling hazardous waste without release for the intended life of the facility. The Respondent's failure to obtain and submit this certification to the Department within seven (7) days of returning the tank to service is a violation of LAC 33:V.1913.F. These violations are continuing from the 2003 inspection.

On or about February 18, 2004, representatives of the Department performed a RCRA Compliance Evaluation Inspection of the facility. The following violations were found during this inspection:

- A. The Respondent failed to perform biennial shell thickness testing on six (6) permitted tanks, in violation of LAC 33:V.309.A and Condition V.A.2c(2) of the Hazardous Waste Operating Permit issued on June 27, 1990, and now administratively continued. Specifically, Tank 629, Tank 623a, Tank V-411-B, Tank 47520, Tank 47536, and Tank 47600 did not have shell thickness testing performed on a biennial basis for a total of sixteen (16) missed testing dates. Included in this violation is Tank 02-47520 that has not been re-tested since failing shell thickness tests in 1999.
- B. The Respondent failed to mark containers and individual spent lamps with the

words “Universal Waste – Lamp(s)”, “Waste Lamp(s)”, or “Used Lamp(s)”, in violation of LAC 33:V.3825.A.5. Specifically, approximately twenty-eight (28) cardboard containers of spent fluorescent lamps, twenty-two (22) individual spent fluorescent lamps, and one (1) cardboard box of spent mercury lamps were not marked as required. These fifty-one (51) violations were addressed on the day of the inspection.

III.

In response to the Consolidated Compliance Order and Notice of Potential Penalty, Respondent made a timely request for a hearing. In addition, Respondent responded to and stated its position on all allegations arising out of the above allegations referenced in Paragraph II in correspondence to the Department dated August 20, 2004, October 7, 2004, October 21, 2004, December 9, 2004, December 30, 2004, and January 24, 2005.

IV.

Respondent neither admits nor denies the Department’s findings of fact, and denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties. Furthermore, Respondent contends that all allegations in Paragraph II above concerning any repair and/or certification of Tank 02-47520 were resolved as part of the Settlement Agreement between Respondent and the Department finalized on or about October 8, 2004. The Department agrees that it will not consider any allegations in Paragraph II above concerning the repair and/or certification of Tank 02-47520 as repeat or continuing violations for purposes of determining Respondent’s permit, compliance, or enforcement history.

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 ELEVEN THOUSAND AND NO/100 DOLLARS (\$11,000.00) of which Three Thousand Six Hundred and No/100 Dollars (\$3,600.00) represents DEQ's enforcement costs, in full and final settlement of any and all claims raised by DEQ in Enforcement Tracking No. HE-CN-04-0051. 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.

Neither by entering into this agreement nor by taking any action in accordance with it (including making the payments required by the agreement), shall Respondent be deemed to have admitted any liability for any purpose or any responsibility for, or wrongdoing relating to, the matters addressed in this agreement, or to have admitted any issues of law or fact relating to or arising out of the matters addressed in this agreement.

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.

However, the Department agrees that it will not consider any allegations in Paragraph II above concerning any repair and/or certification of Tank 02-47520 as repeat or continuing violations for purposes of determining Respondent's permit, compliance, or enforcement 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. Respondent, however, expressly reserves the right to such review of the actions of the Department acting upon, interpreting, applying, and/or enforcing the terms of this agreement. Respondent further expressly reserves any and all rights, defenses, claims, demands, and causes of action which it may have with respect to any matter, action, event, claim or proceeding relating in any way to the matters addressed in this agreement against any person, firm, or corporation except as expressly provided herein.

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 Iberville 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 within thirty (30) 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).

XII.

In consideration of the above, any claims for penalties or other relief 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/her respective party, and to legally bind such party to its terms and conditions.

GEORGIA GULF CHEMICALS AND VINYLs, L.L.C.

BY: _____
(Signature)

TITLE: _____
(Printed or Typed)

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

NOTARY PUBLIC (ID # _____)

(Printed or Typed)

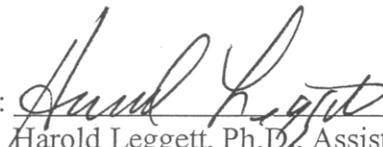
STATE OF LOUISIANA
Mike D. McDaniel, Ph.D., Secretary
Department of Environmental Quality

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

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

NOTARY PUBLIC (ID # _____)

(Printed or Typed)

Approved: 

Harold Leggett, Ph.D., Assistant Secretary