

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	Settlement Tracking No.
	*	SA-AE-07-0043
LONE STAR INDUSTRIES, INC.	*	
	*	Enforcement Tracking No.
AI # 1182	*	AE-P-07-0013
	*	AE-P-07-0013A
PROCEEDINGS UNDER THE LOUISIANA	*	
ENVIRONMENTAL QUALITY ACT	*	
LA. R.S. 30:2001, <u>ET SEQ.</u>	*	

SETTLEMENT

The following Settlement is hereby agreed to between Lone Star Industries, Inc. ("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 owns and/or operates a cement plant facility located at 14900 Intracoastal Drive in New Orleans, Orleans Parish, Louisiana ("the Facility").

II

On May 29, 2007, the Department issued a Penalty Assessment, Enforcement Tracking No. AE-P-07-0013, in the amount of \$1,076.93 to Respondent, which was based upon the following findings of fact:

The Respondent owns and/or operates New Orleans Cement Plant, located at 14900 Intracoastal Drive in New Orleans, Orleans Parish, Louisiana. Lone Star Industries, Inc. owns

and/or operates the facility; however, the facility does business as Buzzi Unicem USA. The Respondent currently operates under Title V Air Permit No. 2140-00038-V0 issued September 14, 2005.

On October 13, 2006, a file review was performed to determine the degree of compliance with the Act and the Air Quality Regulations. The following violation was noted during the course of the file review.

The Respondent installed and has been operating, without a permit modification, various systems and equipment including emission points (1-03, 2A-03, 2B-03, 3A-03, 3B-03, 4-03, 5-03, 6-03, 7-03, 8-03, 9-03, 10-03, 11-03, 12-03) which total 4.38 tons per year of PM₁₀. The Respondent failed to obtain a permit modification prior to the construction, modification, or operation of a facility which may ultimately result in an initiation or increase in emission of air contaminants. This is a violation of LAC 33:III.501.C.2 and Sections 2057(A)(1) and 2057(A)(2) of the Act. On or about October 16, 2003, the Department received a Part 70 permit modification application from the Respondent. The Respondent currently operates under Title V Air Permit No. 2140-00038-V0 issued September 14, 2005.

On December 1, 2006, a Notice of Potential Penalty (NOPP), Enforcement Tracking No. AE-PP-06-0132, was issued to the Respondent. On December 29, 2006, the Department received a response to NOPP, Enforcement Tracking No. AE-PP-06-0132, dated December 21, 2006.

On August 14, 2007, the Department issued an Amended Penalty Assessment, Enforcement Tracking No. AE-P-07-0013A, to the Respondent which amended the Penalty Assessment, Enforcement Tracking No. AE-P-07-0013, which states:

The Louisiana Department of Environmental Quality (the Department) hereby amends the Penalty Assessment, Enforcement Tracking No. AE-P-07-0013, issued to Lone Star Industries, Inc. (Respondent) on May 29, 2007, as follows:

The Department hereby amends paragraph I of the Findings of Fact to read as follows:

"I.

The Respondent owns and/or operates New Orleans Cement Plant, located at 14900 Intracoastal Drive in New Orleans, Orleans Parish, Louisiana. The facility does business as Buzzi Unicem USA. The Respondent filed a timely appeal of Permit No. 2140-00038-VO. The Permit currently remains on appeal before the State of Louisiana Division of Administrative Law-Docket No. 2005-6123-EQ."

The Department hereby amends paragraph II of the Findings of Fact to read as follows:

"II.

On October 13, 2006, a file review was performed to determine the degree of compliance with the Act and the Air Quality Regulations. While the Department's investigation is not yet complete, the following violation was noted during the course of the file review.

The Respondent installed and has been operating, without a permit modification, various systems and equipment including emission points (1-03, 2A-03, 2B-03, 3A-03, 3B-03, 4-03, 5-03, 6-03, 7-03, 8-03, 9-03, 10-03, 11-03, 12-03) which total 4.38 tons per year of PM₁₀. The Respondent failed to obtain a permit modification prior to the construction, modification, or operation of a facility which may ultimately result in an initiation or increase in emission of air contaminants. This is a violation of LAC 33:III.501.C.2 and Sections 2057(A)(1) and 2057(A)(2) of the Act."

The Department incorporates all of the remainder of the original Penalty Assessment, Enforcement Tracking No. AE-P-07-0013 and Agency Interest No. 1182, as if reiterated herein.

The Amended Penalty Assessment, issued on August 14, 2007, was effective upon receipt.

III

In response to the Penalty Assessment, Enforcement Tracking No. AE-P-07-0013, 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 ONE THOUSAND SEVENTY-SIX AND 93/100 DOLLARS (\$1,076.93), of which One Hundred Seventy-Six and 93/100 Dollars (\$176.93) 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 Penalty Assessment, the Amended Penalty Assessment 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.

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. 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).

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.

LONE STAR INDUSTRIES, INC.

BY: _____
(Signature)

(Print)

TITLE: _____

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

NOTARY PUBLIC (ID # _____)

(Print)

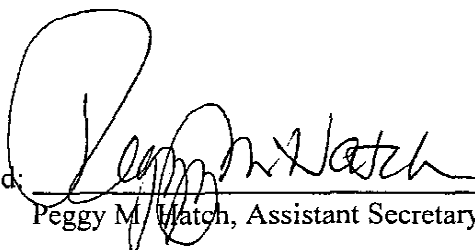
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Harold Leggett, Ph.D., Secretary

BY: _____
Peggy M. Hatch, 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 # _____)

(Print)

Approved: 

Peggy M. Hatch, Assistant Secretary