

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

NALCO COMPANY
GARYVILLE, LOUISIANA

AI # 2290

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

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* SETTLEMENT TRACKING NO.
* SA-MM-06-0329
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SETTLEMENT AGREEMENT

The following Settlement is hereby agreed to between Nalco 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 that owns and operates a chemical manufacturing complex located at 3628 Highway 44, Garyville, St. James Parish, Louisiana (EPA Identification No. LAD 050901669) (the "Facility").

II.

On May 16, 2003, Respondent became aware of a criminal investigation by the U.S. Environmental Protection Agency, Criminal Investigation Division, in cooperation with DEQ concerning certain containers of nitric acid pickle that had been stored at the facility and sent off-site for disposal in November 2002. During the investigation, the government interviewed numerous employees and individuals.

Based upon the investigation, including the interviews, EPA and DEQ found the following:

A. Storage of Nitric Acid Pickle

On November 12, 2002, Respondent sent approximately 26 totes of material labeled "nitric pickle high copper" for disposal at a permitted commercial hazardous waste facility. The material was properly manifested, transported, and disposed of as hazardous waste because of its corrosive characteristic. According to EPA and DEQ, the material was stored in totes (knowingly or otherwise) by Respondent at the Facility for more than 90 days without a permit in violation of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, and the Louisiana Hazardous Waste Regulations ("LHWR"), LAC 33:V, *et seq.*

B. Storage of "Labor Day Drums"

Over the Labor Day weekend in September, 2003, four (4) drums of unidentified liquid material were discovered at the Facility by Facility personnel. The drums were marked with waste numbers from 1996 and the phrase "nitric acid pickle." The Facility conducted tests on the material in the drums and determined that the material was "nitric acid pickle." According to EPA and DEQ, the drums of material were stored by Respondent at the Facility for more than 90 days without a permit in violation of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, and the Louisiana Hazardous Waste Regulations, LAC 33:V, *et seq.*, and Section 2057(A)(2) of the Act.

C. Bypass of Air Pollution Control Device

On December 18, 2003, DEQ inspected the air emissions control system in the Facility's Polydiallyldimethylammonium Chloride (DADMAC) processing unit. EPA and DEQ had

received a complaint that the Facility was bypassing a pollution control device in Building 23 (the DADMAC Unit), specifically, a carbon absorption system, and unlawfully emitting various air pollutants. According to EPA and DEQ, Respondent (knowingly or otherwise) bypassed pollution control devices in violation of Respondent's Air Permit No. 2580-0007-12), LAC 33:III.905 and Section 2057(A)(2) of the Act.

D. Discharge of Pollutants Resulting From Leaking Agitator Seal in T-816

On May 9, 2003, Respondent's employee placed a work order in Respondent's maintenance system to repair a leaking agitator seal (A-816A) in Tank T-816 in the Facility's PACT wastewater treatment unit. The seal was replaced on or about November 4, 2003. According to EPA and DEQ, Respondent's failure to repair the leaking agitator seal resulted in the unpermitted discharge of wastewater from T-816 in violation of the Clean Water Act. In addition, according to EPA and DEQ, some of wastewater had a pH higher than 12.5 and was discharged to the ground in violation of RCRA, 42 U.S.C. § 6901, *et seq.*, and the LHWR, LAC 33:V, *et seq.* Finally, according to EPA and DEQ, Respondent failed to report the discharge in violation of Part III, Section D(6) of Respondent's LPDES permit, and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601, *et seq.*

E. Storage of DMA and DMAA in Trailer 631

Trailer No. 631 was located at the Facility and stored off-specification DMA, DMAA, and water. The off-specification DMA and DMAA was generated in the DADMAC process in 1996. The materials contained in Trailer No. 631 were sampled by Facility personnel on July 11, 2002. The material in Trailer No. 631 was properly manifested, transported, and disposed of as hazardous waste on September 19, 2002, because of its ignitability characteristic.

According to EPA and DEQ, the material was not properly labeled as a hazardous waste, and was stored in Trailer No. 631 (knowingly or otherwise) by Respondent at the Facility for more than 90 days without a permit in violation of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, *et seq.*, and the Louisiana Hazardous Waste Regulations ("LHWR"), LAC 33:V, *et seq.*

III.

Respondent denies that it committed any violations or that it is liable for any fines, forfeitures, and/or penalties.

IV.

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 FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00), of which no enforcement costs were incurred by DEQ, 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).

V.

Respondent further agrees that the Department may consider the inspections report(s), and this Settlement for the purposes of determining compliance history in connection with any future enforcement or permitting action by the Department against the 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. 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.

VI.

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.

VII.

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.

VIII.

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in St. James 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.

IX.

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).

X.

In consideration of the above, any claims for penalties or other relief asserted or that could have been asserted are hereby compromised and settled in accordance with the terms of this Settlement.

XI.

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.

