

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

NELSON INDUSTRIAL STEAM COMPANY

PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT

LA. R.S. 30:2001, ET SEQ.

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\* Enforcement Tracking No.

\* AE-CN-01-0305

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\* Agency Interest No. 9142

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SETTLEMENT

The following Settlement is hereby agreed to between Nelson Industrial Steam 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 owns and is the permittee of a cogeneration facility located at 3400 Houston River Road in Westlake, Calcasieu Parish, Louisiana ("the Facility").

II.

On July 18, 2002 the Department issued a Consolidated Compliance Order and Notice of Potential Penalty ("CCONOPP"), Enforcement Number AE-CN-01-0305 to Respondent.

III.

The allegations that form the basis of the CCONOPP are as follows:

On or about June 29, 2001, an inspection of the Units 1a and 2a was performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and Air Quality Regulations.

The following violation was noted during the course of the inspection:

The facility has not developed a preventative maintenance program for all dust collectors at the facility as required by Specific Condition 5 of Permit No. PSD-LA-557 and Specific Condition 4 of Permit No. 0520-00157-01. This is a violation of

specific Condition 5 of Permit No. PSD-LA-557, Specific Condition 4 of Permit No. 0520-00157-01, LAC 33:III.501.C.4 and Sections 2057(A)(1) and 2057(A)(2) of the Act.

#### IV.

In response to the CCONOPP, Respondent made a timely request for a hearing on August 23, 2002, in which Respondent disputed all findings of fact and alleged statutory, regulatory and permit violations as set forth in Findings of Fact, section II in the CCONOPP. Respondent also disputed Sections I and II of the Compliance Order section of the CCONOPP and stated that no action was necessary to comply with applicable regulations. On September 20, 2002, pursuant to La. R.S. 30:2050.4(J), Respondent and DEQ entered into an alternative dispute resolution (ADR) agreement in order to resolve any and all issues raised by the enforcement action and the request for hearing. ADR was extended multiple times while the Respondent and Department worked toward a mutual resolution of disputed issues.

#### V.

Respondent met with the Department on September 24, 2002 to discuss the alleged violations, its position on the issues, and resolution of the CCONOPP. Additionally, Respondent submitted to the Department correspondence regarding the alleged violations, its position on the issues, and resolution of the CCONOPP on August 7, 2002; October 7, 2002; December 6, 2002; December 30, 2002; March 12, 2003; and September 2, 2003.

#### VI.

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

#### VII.

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, a payment in the amount of FIVE

THOUSAND (\$5,000.00) DOLLARS, of which \$756.18 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).

#### VIII.

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

#### IX.

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.

#### X.

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.

#### XI.

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

XII.

Payment is to be made within ten (10) days from the receipt date by the Respondent of the Department's written notice of its signing of the Settlement Agreement pursuant to La. R.S. 30:2050.7. If payment is not received within that time, this Agreement is voidable at the option of the Department. Penalties are 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, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

XIII.

In consideration of the above, any and all claims for penalties arising out of the alleged violations addressed in the CCONOPP are hereby fully and finally compromised and settled in accordance with the terms of this Settlement.

XIV.

The provisions of this Settlement Agreement shall apply to and be binding upon the State of Louisiana and upon Respondent and the officers, agents, employees, successors, and assigns of both parties.

XV.

The Settlement Agreement is effective upon the last date signed by either party to the Agreement. The last signatory shall promptly mail a signed copy to the other party after executing the Agreement.

XVI.

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.

WITNESSES:

Walt Dault

Annette McClellan

RESPONDENT

BY: Troyce F. Thompson  
(Signature)

TROYCE F. THOMPSON  
(Printed)

TITLE: Operations Manager

THUS DONE AND SIGNED in duplicate original before me this 31st day of March, 2004, in Westlake LA.

Debbie C Bowers Debbie C Bowers  
NOTARY PUBLIC (ID# 1631) (Print Name)

WITNESSES:

El Wood

Linda J. Housewright

STATE OF LOUISIANA

Mike D. McDaniel, Ph.D., Secretary  
Department of Environmental Quality

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

THUS DONE AND SIGNED in duplicate original before me this 11 day of May, 2004, in Baton Rouge, Louisiana.

Andrea Z. Jones Andrea Z. Jones  
NOTARY PUBLIC (ID# 25426) (Print Name)

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



CHARLES C. FOTI, JR.  
ATTORNEY GENERAL

State of Louisiana  
DEPARTMENT OF JUSTICE  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

April 29, 2004

**RECEIVED**

**MAY 10 2004**

**LA Dept. of Environmental Quality  
LEGAL DIVISION**

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;  
Nelson Industrial Steam Company (NISCO)  
AE-CN-01-0305

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