

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

OCCIDENTAL CHEMICAL CORPORATION

AI # 3400

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

* Settlement Tracking No.
* SA-HE-09-0070
*
* Enforcement Tracking No.
* HE-CN-08-0020
*
*
* Docket No. 2009-6955-EQ
*

SETTLEMENT

The following Settlement is hereby agreed to between Occidental Chemical Corporation (Respondent) and the Department of Environmental Quality (Department), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (Act).

I

Respondent is a corporation that owns and/or operates a large quantity generator and a treatment, storage and disposal facility (TSD) facility located in Geismar, Ascension Parish, Louisiana (Facility).

II

On April 22, 2008, the Department issued to Respondent a Consolidated Compliance Order and Notice of Potential Penalty (CONOPP), Enforcement No. HE-CN-08-0020, which was based upon the following findings of fact:

The Respondent owns and/or operates a chemical manufacturing facility located at 8318 Ashland Road in Geismar, Ascension Parish, Louisiana. The facility is a large quantity generator

and a permitted TSD facility, which operates under EPA facility identification number LAD 092681824.

On or about October 16-17, 2007, an inspection was conducted by a representative of the Department which revealed the following violations:

- A. The Respondent failed to conduct inspections at least once every operating day to detect corrosion or releases of waste, in violation of LAC 33:V.1911.B.1 and permit condition V.B.2.c.(1). Specifically, corrosion on the ancillary piping of permitted tank D-40 and the liner shell of tank D-2009 was not noted in inspections or corrected.
- B. Intentionally left blank.
- C. The Respondent failed to label waste batteries managed as universal waste with the words "Universal Waste – Batteries" or "Waste Batteries or Used Batteries", in violation of LAC 33:V.3823.A.1.
- D. The Respondent failed to label waste batteries managed as universal waste with an accumulation date, in violation of LAC 33:V.3825.C.
- E. The Respondent failed to inspect the facility for operator errors that may lead to a release of hazardous waste or a threat to human health, in violation of LAC 33:V.1509.A.1 and permit condition V.A.1.e. Specifically, the Respondent failed to note and correct deficiencies in the permitted container storage area as evidenced by the presence of two (2) undated containers and one (1) container that had excessive external contamination.
- F. The Respondent failed to stack containers in such a fashion that each container identification label may be read from the access aisle, in violation of LAC

33:V.2109.B and permit condition V.A.1.e. Specifically, three (3) container labels in the permitted container storage area were not facing the aisle.

- G. The Respondent failed to label containers of used oil with the words "Used Oil," in violation of LAC 33:V.4013.D.1. Specifically, four (4) 5-gallon containers and one (1) 55-gallon drum of used oil in the Used Oil Storage Facility were unlabelled.
- H. The Respondent failed to conduct weekly inspections in areas where hazardous waste containers are stored, in violation of LAC 33:V.2109.A and permit condition V.A.1.e. Specifically, no weekly inspections were performed in the permitted container storage area from April 11, 2007, through April 17, 2007.
- I. The Respondent failed to perform daily inspections on permitted tank D-163, in violation of LAC 33:V.1911.B.1 and permit condition V.B.2.c.(1). Specifically inspections for tank D-163 were not conducted from August 20, 2006, through September 2, 2006, or on October 18-19, 2006.
- J. The Respondent failed to empty and clean tanks once per year to a level sufficient to allow visual inspection of all tank interior surfaces, in violation of LAC 33:V.1909.D.2. Specifically no annual inspection was conducted for the year 2005 for the <90 day Tank DR-0058. Also, < 90 day Tanks DR-73A and DR 73B were not cleaned and emptied on October 30, 2006, for their annual inspection in that year.
- K. The Respondent failed to immediately remove a tank for service that was unfit for use as required by LAC 33:V.4441, in violation of LAC 33:V.1109.E.1.a.ii. Specifically, the Respondent continued to operate Tank DR-0058 after the March 15, 2007, annual inspection which recommended that it be replaced due to corrosion.

- L. The Respondent failed to list the EPA hazardous waste codes applicable to waste sent offsite for disposal in the 2005 Hazardous Waste Annual Report, in violation of LAC 33:V.1111.B.1.e. Specifically, EPA Waste Codes K028, K096, U226, U227, and U228 were omitted from the 2005 Annual Report.

III

In response to the Consolidated Compliance Order and Notice of Potential Penalty, Respondent made a timely request for a hearing.

IV

Findings of Fact section II.B of CONOPP No. HE-CN-08-0020 is not part of this settlement agreement. This matter will be resolved separately.

V

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

VI

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 SEVEN THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$7,400.00), of which Four Thousand Four Hundred Forty-One and 27/100 Dollars (\$4,441.27) represents the Department'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 the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

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.

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 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 Ascension 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.

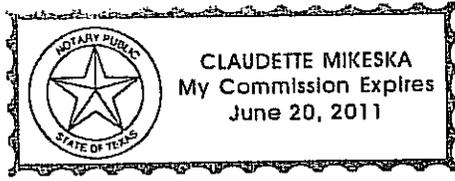
OCCIDENTAL CHEMICAL CORPORATION

BY: [Signature]
(Signature)

Scott A. King
(Print)

TITLE: V.P. General Counsel

THUS DONE AND SIGNED in duplicate original before me this 19th day of October, 20 10, at Dallas, TX 75244



Claudette Mikeska
NOTARY PUBLIC (ID # _____)

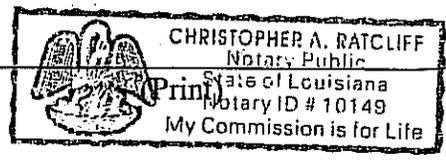
CLAUDETTE MIKESKA
(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch, Secretary

BY: [Signature]
Cheryl Somnier Nolan, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 10th day of March, 20 11, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # _____)



Approved: [Signature]
Beau James Brock, Assistant Secretary