

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

PIONEER AMERICAS LLC
IBERVILLE PARISH

AI# 2644

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

* Settlement Tracking No.
* SA-AE-08-0045
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* Enforcement Tracking No.
* AE-P-05-0064
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* Docket No. 2007-1712-EQ
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SETTLEMENT

The following Settlement is hereby agreed to between Pioneer Americas, LLC (d/b/a Olin Chlor Alkali Products) ("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 company that owns and/or operates a chlorine and sodium hydroxide manufacturing plant known as the St. Gabriel Facility located at 4205 Louisiana Highway 75 in St. Gabriel, Iberville Parish, Louisiana ("the Facility").

II

On December 28, 2005, the Department issued to Respondent Penalty Assessment AE-P-05-0064, in the amount of \$402,742.35 which was based upon the following findings of fact:

The Respondent owns and/or operates a chlorine and sodium hydroxide manufacturing plant known as the St. Gabriel Facility located at 4205 Louisiana Highway 75 in St. Gabriel, Iberville Parish, Louisiana. At the time of the event, the facility operated under Air Permit No. 1280-00011-

02 issued on October 12, 1998.

On or about January 5, 2005, a file review of the Respondent's facility was performed to determine the degree of compliance with the Act and Air Quality Regulations. The following violation was noted during the course of the review:

In a letter dated October 18, 2004, the Respondent reported that the carbon media in the control device for the Hydrogen Vent Stack (Emission Point No. 2-78), was not performing as designed for an unspecified number of days. According to Air Permit No. 1280-00011-02, the Hydrogen Vent Stack (Emission Point No. 2-78) is permitted to emit 0.0014 lbs/hr (annual average) and 0.0194 lbs/hr (maximum hourly) of mercury. The Respondent estimates that the Hydrogen Vent Stack (Emission Point No. 2-78) emitted between 0.1467 lbs/hr (3.52 lbs/day) and 0.2206 lbs/hr (5.29 lbs/day) of mercury over the duration of noncompliance. Also, a portion of the same hydrogen stream is routed as fuel to two (2) boilers (Emission Point Nos. 5-78 and 6-78). Each boiler is permitted to emit 0.003 lbs/hr (annual average and maximum hourly) of mercury. The Respondent estimates that these two sources emitted between 0.0795 lbs/hr (1.91 lbs/day) and 0.1025 lbs/hr (2.46 lbs/day) of mercury throughout the period that the Respondent's facility exceeded permitted emission limits for mercury. Each day the permitted emissions limitations for mercury were exceeded, is a violation of General Condition II of Air Permit No. 1280-00011-02, LAC 33:III.501.C.4, and Sections 2057(A)(1) and 2057(A)(2) of the Act.

On January 31, 2005, a Compliance Order & Notice of Potential Penalty (CONOPP), Enforcement Tracking No. AE-CN-04-0335, was issued to the Respondent.

On March 10, 2005, an enforcement conference was held with Respondent and representatives of the Department. During the enforcement meeting, the Respondent provided explanations concerning the circumstances for the violations cited and described actions to be taken to correct and prevent future occurrence of the violations. Also, the Respondent submitted the report required by the Order portion of the CONOPP, analysis of stack tests performed at the facility, the 2003 annual report to stockholders, and a statement of monetary benefits of noncompliance.

III

In response to the Penalty Assessment, 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, federal or local statute or regulation, and in order to resolve the appeal of the Penalty Assessment, agrees to pay, and the Department agrees to accept, a payment in the amount of TWO HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$230,000.00), of which Two Thousand Three Hundred Fourteen and 27/100 Dollars (\$2,314.27) 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 and the Beneficial Environmental Project ("BEP") as described herein, shall be considered a civil penalty for tax purposes as required by La.R.S. 30:2050.7(E)(1).

VI

Respondent, in addition to the penalty amount specified in Paragraph V above and as part of this Settlement, agrees to expend the amount of FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) to implement and/or perform the following beneficial environmental project:

- A. Within thirty (30) days of notice to Respondent of the finality of the Settlement, Respondent will enter a contract with Franklin Industries, L.L.C. to create and implement an environmental outreach program to assist local school science programs in promoting environmental education and responsibility. The program will educate students on the State's environmental permitting and enforcement processes that protect the State's air,

water and land and the importance of environmental compliance. The program, as part of the explanation of the State's environmental permitting and enforcement processes, will explain and demonstrate the chemical manufacturing process at the St. Gabriel facility. The program will be conducted during the 2009-2010 school year and will be completed on or before December 31, 2009.

- B. The program will include a "speaker's bureau" that will conduct environmental education presentations. The speaker's bureau will be comprised of Franklin Industries, L.L.C. and Olin Chlor Alkali employees.
- C. Respondent will conduct presentations at no less than eleven (11) elementary, middle or high schools in the St. Gabriel area (Ascension or Iberville Parish) At least one presentation will be conducted each month.
- D. Within thirty (30) days of the finality of this Settlement, Respondent will provide to the Department a tentative date and location of each presentation to be conducted in the 2009-2010 school year.
- E. The BEP will include the production and distribution of color pamphlets that are consistent with the Louisiana Board of Elementary and Secondary Education's minimum standards for inclusion in the yearly teaching curriculum.
- F. Respondent shall submit quarterly reports regarding its progress on the program. The first shall be due on the 5th day of the month following the end of the corresponding quarter of the date the Department signs this Settlement. Quarterly reports shall be submitted on the 5th of the month following the end of every corresponding quarter thereafter until the BEP is completed. Each such quarterly report shall include a description of the project, name of the school or schools at which presentations were

conducted, the date(s) of the presentation, the number of presentations remaining to be conducted, the percentage completed, and money expended on the project through the date of the report. Upon completion of all presentations required under this Settlement, Respondent shall submit a final report to include a summary of all the information previously submitted and a total amount spent on the projects listed above. It shall also contain a certification that the projects were completed as described.

- G. Respondent will expend no less than FIFTY THOUSAND (\$50,000) DOLLARS to complete the education BEP. The costs of printing and materials are not included in the program's cost and will be paid by Respondent separately. If Respondent does not spend the amount of \$50,000, then it shall, in its final report, propose additional projects for the Department's approval or pay to the Department in an amount equal to the difference between the amount of money agreed to be spent and the amount of money actually spent for the BEP.

VII

Respondent further agrees that the Department may consider the inspection report(s), the 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.

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 and the rules relating to beneficial environmental projects set forth in LAC 33:I.Chapter 25.

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

The payment set forth in Paragraph V is to be made within ten (10) days from notice of the Secretary's signature. If this payment is not received within that time, this Agreement is voidable at the option of the Department. The payment set forth in Paragraph V is 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.

XIV

The Respondent and DEQ acknowledge that in the event the Settlement is challenged, either during the public comment period or in any Court, and the Settlement is then rejected, this Settlement is null and void and the Respondent retains all rights related to its challenge to and appeal of the Penalty Assessment, including its right to a hearing as set forth in Paragraph III.

PIONEER AMERICAS LLC

BY: John McIntosh
(Signature)

John McIntosh
(Print)

TITLE: President + CEO

THUS DONE AND SIGNED in duplicate original before me this 27th day of March, 2009, at Cleveland, TN.



Commission expires 1/16/2013

Beth A. Baltimore
NOTARY PUBLIC (ID # N/A)

Beth A. Baltimore
(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch, Secretary

BY: Paul D. Miller
Paul D. Miller PE, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 19th day of May, 2010, at Baton Rouge, Louisiana.

Christopher A. Ratchiff
NOTARY PUBLIC (ID # 10149)

Christopher A. Ratchiff
(Print)

Approved: Peggy M. Hatch
Peggy M. Hatch, Assistant Secretary