

**STATE OF LOUISIANA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**PIONEER AMERICAS, L.L.C.**

**AI # 2644**

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

- \* **Settlement Tracking No.**
- \* **SA-HE-08-0042**
- \*
- \* **Enforcement Tracking No.**
- \* **HE-CN-05-0014**
- \*
- \*
- \* **Docket No. 2006-3155-EQ**
- \*

**SETTLEMENT**

The following Settlement is hereby agreed to between Pioneer Americas, L.L.C. ("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 mercury cell caustic plant facility located in St. Gabriel, Iberville Parish, Louisiana ("the Facility").

**II**

On May 3, 2005, the Department issued to Respondent a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. HE-CN-05-0014, which was based upon the following findings of fact:

The Respondent owns and/or operates a mercury cell caustic plant for the production of chlorine, sodium hydroxide (caustic), and hydrogen through the electrolysis of brine. The facility is located at 4205 Louisiana Highway 75 in St. Gabriel, Iberville Parish, Louisiana and bears the EPA identification number LAD 062 666 540.

The Respondent was issued Final Hazardous Waste Post-Closure Permit Number LAD 062 666 540 for the following seven (7) closed hazardous waste surface impoundments identified as; Sludge Ponds #1, #2, #3, and #4, Sulfide Pond, North Surge Pond and South Surge Pond. This permit was effective on November 4, 1991, and has been administratively continued by the Respondent's submittal of a permit renewal application dated May 4, 2001.

The Respondent reported in a letter to the Department on January 11, 1989, that groundwater contamination with concentrations above the groundwater protection standard of two hundred fifty (250) mg/L had been identified in the 20-foot zone beneath the closed North and South Surge Ponds. As required by LAC 33:V.3319, LAC 33:V.3321, and permit conditions VI.H, VI.I, and VI.J, the Respondent must continue uninterrupted corrective action until compliance with the groundwater protection standard is achieved for at least three (3) consecutive years. Due to the chloride contamination found in the 20-foot zone, the Respondent must continue to conduct compliance monitoring and implement a corrective action program.

The Respondent submitted a Permit Modification on July 11, 1989, to establish a Corrective Action Program. The Department approved an Interim Measure Groundwater Recovery Program for chloride recovery on September 23, 1991, that allowed the installation of four recovery wells at the facility. Included in the Interim Measure Groundwater Recovery Program was a condition that the program would continue until such time as, a final Corrective Action Plan (CAP) was submitted by the Respondent and approved by the Department.

The Respondent implemented the chloride recovery program on February 3, 1993. An evaluation of the chloride recovery program was conducted by the Respondent within five (5) years of the implementation date. On March 4, 1998, the Respondent reported to the Department that it was "ineffective and technically impracticable" to continue to pump groundwater from the 20-foot

zone. On July 9, 1998, the Department approved the proposal, and the Respondent discontinued the chloride recovery program at the facility by converting the four (4) recovery wells to monitoring wells. These monitoring wells were incorporated into the quarterly Chloride Assessment Monitoring Program to monitor the 20-foot zone. The Respondent is required to reinstate corrective actions at the facility to ensure compliance with the groundwater protection standard specified in their permit by LAC 33:V.3305, LAC 33:V.3319.A, and LAC 33:V.3321.F. Specifically, the Respondent is required to re-establish a corrective action program that would achieve compliance in the 20-foot zone to ensure that the area of chloride contamination does not adversely impact the deeper water-bearing zones, and that the area of contamination does not enlarge or migrate toward facility boundaries. The Respondent must submit in accordance with LAC 33:V.3321.H, a permit modification to the Office of Environmental Services, Permits Division that would make any appropriate changes to re-establish a corrective action program.

On or about November 5, 2003, an Operation and Maintenance (O & M) inspection was conducted at the facility by representatives of the Environmental Technology Division. The following violations were discovered as a result of this inspection:

- A. The Respondent failed to sample annually the 20-foot and 40-foot zone Point of Compliance monitoring wells for all constituents listed in LAC 33:V.3325. Table 4 as required by LAC 33:V.3319.G, in violation of LAC 33:V.309.A, LAC 33:V.3319.G, and Permit Condition VI.I of the Final Hazardous Waste Post-Closure Permit. Specifically, the Respondent failed to sample for the constituents from Table 4 once a year for the time period beginning November 1991 through June 2004. This violation was addressed by the Respondent's submittal of the 2004 Semi-Annual Groundwater Monitoring and Corrective Action Report dated

August 30, 2004. This report for the annual sampling event conducted on June 3, 2004, included the analytical results for the constituents from LAC 33:V.3325.Table 4.

- B. After discontinuation of the Chloride Recovery Program, the Respondent failed to re-establish and implement a corrective action program to remove or treat in place the chloride concentrations present in the groundwater beneath the closed surface impoundments and to submit to the Environmental Services, Permits Division an application for a permit modification to establish a corrective action program that would meet the requirements of LAC 33:V.3321.H, in violation of LAC 33:V.309.A, LAC 33:V.3319.H.2, and Permit Condition VI.J.1 of the Final Hazardous Waste Post-Closure Permit.
- C. The Respondent failed to adequately manage the plume of chloride contamination and to prevent the offsite migration from any area of the site within five (5) years from the date of implementation of the corrective action program, in violation of LAC 33:V.309.A, LAC 33:V.3321.E.1, and Permit Condition VI.J.1.j of the Final Hazardous Waste Post-Closure Permit. Specifically, the chloride concentration in the 20-foot zone wells located along the northern property line of the facility near Sludge Ponds #1, #2, #3, and #4 exceeded the maximum allowable concentration of two hundred fifty (250) mg/L.

The Respondent is required by Permit Condition VI.I.1 to annually analyze samples from all monitoring wells at the compliance point for all constituents listed in LAC 33:V.3325.Table 4 to determine whether additional hazardous constituents are present in the monitoring aquifer(s). If the Respondent finds Table 4 constituents that are not already identified in the permit as monitoring

constituents, the Respondent may confirm the presence of these new constituents by re-sampling within one (1) month of the initial analysis, repeating the Table 4 analysis, reporting the concentrations of these additional constituents to the Department within seven (7) calendar days after completion of the second analysis and confirmation of their presence, and adding them to the quarterly monitoring list. The Respondent can choose not to resample within the one (1) month time period; however, if the Respondent chooses not to resample, then the concentrations of the new constituents must be reported to the Department within seven (7) calendar days after completion of the initial analysis, and the new constituents must be added to the Respondent's quarterly monitoring list.

On August 30, 2004, the Respondent submitted the 2004 Semi-Annual Groundwater Monitoring and Corrective Action Report which reported that the barium concentration exceeded the maximum concentration of constituents for groundwater protection in four (4) point of compliance wells identified as #32, #34, #37, and #54.

Based on the information in Findings of Fact Paragraphs VII and VIII of Enforcement Action No. HE-CN-05-0014 and the Environmental Technology Division's review of the 2004 Semi-Annual Groundwater Monitoring and Corrective Action Report, the following violations were determined:

- A. The Respondent chose not to resample within one (1) month and failed to report the concentration of barium to the administrative authority within seven (7) calendar days after completion of the initial analysis, in violation of LAC 33:V.309.A, LAC 33:V.3319.G, and Permit Condition VI.I.1 of the Final Hazardous Waste Post-Closure Permit. The Respondent addressed this violation on December 2, 2004, when a notification letter was submitted to the Office of Environmental Services, Permits Division notifying the Department of the

concentrations of barium found in the four (4) monitoring wells during the June 2004 annual sampling event.

- B. The Respondent failed to add barium to the quarterly monitoring list and sample for barium during the fourth quarter sampling event conducted during the week of November 5, 2004, in violation of LAC 33:V.309.A, LAC 33:V.3319.G, and Permit Condition VI.I.1 of the Final Hazardous Waste Post-Closure Permit. Department representatives observed the Respondent's next scheduled sampling event on February 9, 2005, and verified that barium was added to the parameters to be analyzed, thus addressing this violation.

### III

In response to the Consolidated Compliance Order & Notice of Potential Penalty, 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 THIRTY-SEVEN THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$37,750.00), of which Two Thousand Eight Hundred Five and 90/100 Dollars (\$2,805.90) 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 Consolidated Compliance Order & 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.

## 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 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.

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 or her respective party, and to legally bind such party to its terms and conditions.

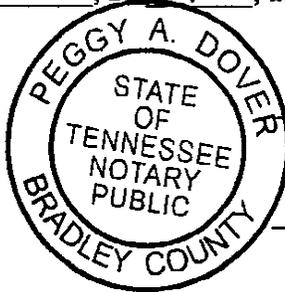
PIONEER AMERICAS, L.L.C.

BY: John McIntosh  
(Signature)

John L McIntosh  
(Print)

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 26<sup>th</sup> day of June, 2009, at Cleveland, Tennessee



Peggy A. Dover  
NOTARY PUBLIC (ID # \_\_\_\_\_)

Peggy A. DOVER  
(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Harold Leggett, Ph.D., Secretary

BY: Peggy M. Hatch

Peggy M. Hatch, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 5<sup>th</sup> day of November, 2009, at Baton Rouge, Louisiana.

Christopher A. Rateliff  
NOTARY PUBLIC (ID # 10149)

Christopher A. Rateliff  
(Print)

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