STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	**Settlement Tracking No.**
	*	**SA-MME-12-0071**
RAIN CII CARBON LLC	*	
	*	**Enforcement Tracking No.**
AI # 32804	*	**MM-CN-08-0004**
	*	
PROCEEDINGS UNDER THE LOUISIANA	*	
ENVIRONMENTAL QUALITY ACT	*	
LA. R.S. 30:2001, ET SEQ.	*	

SETTLEMENT

The following Settlement is hereby agreed to between Rain CII Carbon LLC ("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/or operates a calcined coke facility located in Gramercy, St. James Parish, Louisiana ("the Facility").

II

On March 10, 2009 the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. MM-CN-08-0004, which was based upon the following findings of fact:

The Respondent owns and/or operates a calcined petroleum coke facility known to the Department as Rain CII Carbon, LLC – Gramercy Coke Plant (the Site), located at 1140 Jefferson Highway in Gramercy, Saint James Parish, Louisiana. The facility operates under solid waste permit P-0014 and the solid waste generator number GD-093-2838. The Respondent is authorized to discharge certain qualities and quantities of coke barge rainwater and once through non-contact

cooling water into the Mississippi River and stormwater runoff, treated sanitary wastewater and utility wastewaters into the Blind River swamp, all waters of the state, under the terms and conditions of Louisiana Pollutant Discharge Elimination System (LDPES) permit LA0087777 effective on April 1, 2007, with an expiration date of March 31, 2012. LPDES permit LA0087777 was previously issued to CII Carbon LLC. The Respondent did request a name change to Rain CII Carbon, LLC, on or about April 7, 2008. This change was made effective on Departmental records on or about May 13, 2008.

On or about December 27, 2007, and January 28, 2008, the Department conducted inspections of the site that revealed the following violations:

A. The Respondent failed to submit the 2006-2007 annual report to the Office of Management and Finance by August 1, 2007, in violation of LAC 33:VII.713.C.1.c and solid waste permit P-0014. Specifically, the Respondent submitted the 2006-2007 Solid Waste Disposer Annual Report and the 2006-2007 Solid Waste Generator Annual Report to the Department on or about December 31, 2007.

B. The Respondent failed to have a protective casing installed on the groundwater monitoring wells with locking covers and a secure locking device in place, in violation of LAC 33:VII.805.A.3.c.i and solid waste permit P-0014. Specifically, wells B-72B and B-73B were not securely locked at the time of the inspection. However, on or about January 28, 2008, a follow-up inspection revealed both well covers were properly locked.

C. The Respondent failed to have guard posts firmly anchored outside the well slab but not in contact with the slab, in violation of LAC 33:VII.805.A.3.c.ii. Specifically, well B-72B had a guard post that was no longer firmly anchored outside the well

slab, and well B-73B was being protected by a bent guard post. However, on or about January 28, 2008, a follow-up inspection revealed both wells were properly protected by guard posts.

D. The Respondent caused and/or allowed an unauthorized discharge into waters of the state. Specifically, it was noted that a heavy rainfall the evening prior to the inspection caused green coke to discharge into the roadside ditch along Jefferson Highway via contaminated storm water. Each unauthorized discharge is in violation La. R.S. 30:2076 (A)(1)(a), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.

E. The Respondent failed to implement an adequate Storm Water Pollution Prevention Plan (SWP^3) by failing to provide pollution containment devices that under normal operating conditions will prevent unauthorized discharges as indicated in Findings of Fact II.D. Also noted during the inspection were numerous breeches in the green coke containment barrier which allows the discharge contaminated storm water runoff. The failure to implement an adequate SWP^3 is in violation of LPDES permit LA0087777 (Facility Specific Requirements Narrative Page 9 of 10 and Standard Conditions, Section A.2), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.

F. The Respondent submitted Discharge Monitoring Reports (DMRs) with inaccurate and/or incomplete data. Specifically, DMRs for the 2nd Quarter 2007 were labeled as March, April, and May; Fecal Coliform results were misreported as zero (0) colonies/100ml for the months of May and October 2007, when the laboratory results were >20,000 and >1,000 colonies/100ml, respectively. Each failure to submit an

accurate and complete DMR is in violation of LPDES permit LA0087777 (Standard Conditions, Sections A.2 and D.4), La. R.S. 30:2076 (A)(1)(b), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.

G. The Respondent was not following proper sampling protocol at outfall 001. Specifically, samples collected at outfall 001 have been mixed with waters of the state prior to sampling, in violation of LPDES permit LA0087777 (Facility Specific Requirements Page 2 of 10 and Standard Conditions, Section A.2), La. R.S. 30:2076 (A)(3), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.2701.A, and LAC 33:IX.2701.J.1.

A file review conducted by the Department on or about January 22, 2009, revealed that the Respondent submitted Discharge Monitoring Reports (DMRs) with inaccurate and/or incomplete data. Specifically, the Respondent misreported sampling results as zero (0) when the DMR states that the contractor could not sample due to muddy conditions. The failure to submit an accurate and complete DMR is in violation of LPDES permit LA0087777 (Standard Conditions, Sections A.2 and D.4), La. R.S. 30:2076 (A)(1)(b), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.

A file review conducted by the Department on or about January 22, 2009, also revealed an effluent violation reported on a Discharge Monitoring Report submitted by the Respondent as follows:

Date	Outfall	Parameter	Permit Limit	Sample Value
06/30/2008	101S	Fecal Coliform, Wkly Avg	400 col/100 ml	>1000 col/100 ml

The above-noted effluent excursions are in violation of LPDES permit LA0087777 (Standard Conditions, Sections A.2 and D.4), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.

III

Respondent denies 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 TEN THOUSAND TWO HUNDRED AND NO/100 DOLLARS ($10,200.00) of which Two Hundred Fifty-Three and 20/100 ($253.20) 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).

V

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

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 La. 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 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.

IX

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).

X

In consideration of the above, any claims for penalties 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 or her respective party, and to legally bind such party to its terms and conditions.

RAIN CII CARBON LLC

BY: _____
(Signature)

_____
(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20 _____, at _____.

_____
NOTARY PUBLIC (ID #_____)

_____
(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch Secretary

BY: _____
Cheryl Sonnier Nolan, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20_____, at Baton Rouge, Louisiana.

_____
NOTARY PUBLIC (ID # _____)

_____
(stamped or printed)

Approved: _____
Cheryl Sonnier Nolan, Assistant Secretary