

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

RUBICON LLC

AI # 1468

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

* Settlement Tracking No.
* SA-AE-09-0036
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* Enforcement Tracking No.
* AE-P-08-0066
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SETTLEMENT

The following Settlement is hereby agreed to between Rubicon 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 limited liability company that owns and/or operates a number of chemical manufacturing plants known as the Geismar Plant (the "facility") located off Louisiana Highway 75 one (1) mile southeast of Geismar on the East Bank of the Mississippi River, Ascension Parish, Louisiana.

II

On October 30, 2008, the Department issued to Respondent a Penalty Assessment, Enforcement No. AE-P-08-0066, in the amount of \$10,211.83, which was based upon the following findings of fact:

The Respondent owns and/or operates a number of chemical manufacturing plants known as the Geismar Plant (the "facility") located off Louisiana Highway 75 one (1) mile southeast of

Geismar on the East Bank of the Mississippi River, Ascension Parish, Louisiana. The Respondent operates the Polyols Plant under Title V Permit No. 2010-V0 issued on December 28, 2004 and administratively amended on April 18, 2005. The MDI Plant operated under Title V Permit No. 2391-V5 issued on July 12, 2004, Title V Permit 2391-V6 issued on March 9, 2005, and Title V Permit No. 2391-V7 issued on December 22, 2005. The MDI Plant operates under Title V Permit 2391-V8 issued on January 18, 2007 and administratively amended on June 22, 2007. The Aniline 2 Plant operated under Title V Permit No. 2261-V1 on August 20, 2004 and Title V Permit No. 2261-V2 on September 26, 2005, until issuance of Title V Permit No. 2261-V3 on July 9, 2008. The Offsites Area operates under Title V Permit No. 2420-V0 issued on June 23, 2004. The Reductions Plant operates under Title V Permit No. 2278-V0 issued on October 28, 2002 and administratively amended on February 6, 2004; April 5, 2004; October 27, 2004; June 2, 2005; February 25, 2005; July 11, 2005; January 23, 2006; April 23, 2006 and August 1, 2006. The Respondent operated the TDI Plant under Air Permit No. 2329-V0 issued on July 22, 1999; Title V Permit No. 2329-V1 issued on January 29, 2004; Title V Permit No. 2329-V2 issued on March 28, 2005 and Title V Permit No. 2329-V3 issued on December 21, 2005. After closure of the TDI Plant, Title V Permit No. 2329-V3 was rescinded on March 21, 2007 and Title V Permit No. 3037-V0 was issued on March 21, 2007 for the new Maleic Anhydride Plant. Title V Permit No. 3037-V1 was issued on August 13, 2008.

On or about May 16, 2006 through May 23, 2006, an inspection of the Respondent's facility was performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Air Quality Regulations.

The following violations were noted during the course of the inspection:

- A. In the Title V annual compliance certification dated March 30, 2006, the Respondent reported that the maximum hourly carbon monoxide (CO) limit listed on the Emissions Inventory Questionnaire for the MDI 2 Caustic Scrubber (Emission Point MA) was exceeded on February 18, 2005. The Respondent noted that the annual CO limit was not exceeded. The MDI 1, 2, and 3 Caustic Scrubbers (Emission Points KC, MA and ZE, respectively) exist under the MDI Plant CO Emission Cap (Emission Point MDI Cap 1) for which the Emission Inventory Questionnaire for that emission source lists the CO average hourly and annual (ton/year) limits. Each exceedance of the maximum pound per hour CO limit as listed on the Emission Inventory Questionnaire (EIQ) of Title V Permit No. 2391-V5 for Emission Point MA is a violation of General Condition III of Title V Permit No. 2391-V5, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and La. R.S. 30:2057(A)(2).

The Respondent submitted a letter dated March 22, 2005, requesting to revise the CO emissions for the Emission Cap 1 (Emission Point MDI Cap 1), which included the maximum hourly CO limits for the MDI 2 Caustic Scrubber (Emission Point MA). On December 22, 2005, Title V Permit No. 2391-V7 was issued which contained revised emissions limits.

- B. In the Title V annual compliance certification dated March 30, 2006, the Respondent reported that the maximum hourly carbon monoxide (CO) limit for the Aniline 2 Boiler (Emission Point QB) was exceeded on January 13, 2005. The Respondent noted that the annual CO limit was not exceeded. Each exceedance of the maximum pound per hour CO limit as listed on the Emission Inventory Questionnaire (EIQ) of Title V Permit No. 2261-V1 for Emission Point QB is a violation of General Condition III of Title V Permit No. 2261-V1, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and La. R.S. 30:2057(A)(2).

The Respondent submitted a variance request dated February 16, 2005, to increase the maximum pound per hour CO limit for the Aniline 2 Boiler (Emission Point QB). On March 7, 2005, a variance was issued to the Respondent to increase the maximum pound per hour CO limit listed in Title V Permit No. 2261-V1. The variance was to expire on August 31, 2005. The Respondent submitted a permit application under cover letter dated April 15, 2005, to modify the maximum hourly CO limit for the Aniline 2 Boiler (Emission Point QB) in Title V Permit No. 2261-

V1. On September 7, 2005, a second variance was issued to the Respondent for the increased CO emission limit for the Aniline 2 Boiler which was to expire on October 31, 2005. Title V Permit No. 2261-V2 was issued to the Respondent on September 26, 2005, which increased the CO emissions permit limits for the Aniline 2 Boiler (Emission Point QB).

- C. In the Title V annual compliance certification dated March 30, 2006, the Respondent reported that the opacity limit for the TA – Polyols Thermal Oxidizer GI-7000 (Emission Point No. EQT 89) was exceeded and unpermitted pollutants, specifically, chlorobenzene and hydrogen chloride were emitted. According to the Respondent, the cause of the opacity limit exceedances was the inadvertent introduction of diaminodiphenylmethane (DADPM) containing chlorobenzene into the Amine Polyols Reactor. The unpermitted emissions of chlorobenzene and hydrogen chloride from the TA – Polyols Thermal Oxidizer GI-7000 (Emission Point No. EQT 89) is a violation of LAC 33:III.501.C.2, La. R.S. 30:2057(A)(1) and La. R.S. 30:2057(A)(2). The failure to control emission of smoke so that the shade is not darker than 20 percent opacity for more than one (1), 6 (six) minute period in any consecutive 60 minute period is a violation of LAC 33:III.1101, Facility Specific Narrative Requirement No. 3 for the TA - Polyols Thermal Oxidizer GI-7000 (Emission Point No. EQT 89) of Title V Permit No. 2010-V0, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and La. R.S. 30:2057(A)(2). The Respondent's inadvertent introduction of DADPM containing chlorobenzene into the Amine Polyols Reactor caused the resulting release of unpermitted chlorobenzene and hydrogen chloride emissions. This is a violation of LAC 33:III.905 which states, "When facilities have been installed on a property, they shall be used and diligently maintained in proper working order whenever any emissions are being made which can be controlled by the facilities, even though the ambient air quality standards in affected areas are not exceeded." Control equipment as defined by LAC 33:III.111 is "any device or contrivance, operating procedure or abatement scheme used to prevent or reduce air pollution." This is also a violation of La. R.S. 30:2057(A)(1) and La. R.S. 30:2057(A)(2).

Due to the release event occurring on or about September 7, 2005, by letter dated September 9, 2005, the Respondent requested approval from the Department to emit less than one pound each of chlorobenzene and hydrogen chloride from the TA – Polyols Thermal Oxidizer GI-7000 (Emission Point No. EQT 89) to clear the residual chlorobenzene most likely contained in the reactor and

ancillary equipment. On September 12, 2005, the Department issued a letter of no objection.

On or about May 31, 2007, a file review of the Respondent's facility was performed to determine the degree of compliance with the Act and the Air Quality Regulations.

The following violations were noted during the course of the file review:

- A. The Department received the Respondent's semiannual monitoring report dated September 29, 2004, for the period encompassing January through June 2004. The Respondent's semiannual monitoring report included information and a certification by the responsible company official for Title V Permit Nos. 2261-V0, 2391-V4, 2329-V1, and 2278-V0, but failed to include Title V Permit No. 2420-V0 which was issued on June 23, 2004. The Department received the semiannual monitoring report dated May 27, 2005, for Title V Permit No. 2420-V0, for the period encompassing January through June 2004. The Respondent failed to submit the semiannual monitoring report for Title V Permit No. 2420-V0 to the Department no later than September 30, 2004. This is a violation of 40 CFR Part 70 General Condition K of Title V Permit No. 2420-V0, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).
- B. In the Title V annual compliance certification dated March 30, 2005, the Respondent reported that the annual General Condition XVII carbon monoxide (CO) emissions limit for the MDI 1 and MDI 3 Phosgene Plant Startups and Shutdowns (Emission Point No. 2) was exceeded on December 31, 2004. The exceedance of the annual CO emissions limit for the MDI 1 and MDI 3 Phosgene Plant Startups and Shutdowns (Emission Point No. 2) as listed in the Annual Emission Rates of Title V Permit No. 2391-V5 is a violation of General Condition III of Title V Permit No. 2391-V5, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and La. R.S. 30:2057(A)(2).

The annual General Condition XVII carbon monoxide (CO) emissions limit for the MDI 1 and MDI 3 Phosgene Plant Startup and Shutdowns (Emission Point No. 2) was increased to 4.71 tons per year of CO through the Department's approval of Rubicon's Notification of Case by Case Insignificant Activities request dated August 10, 2007.

- C. In the Hydrochloric Acid Production NESHAP (HCl MACT), 40 CFR 63 Subpart NNNNN reports dated July 31, 2006, and January 30, 2007; the

Title V Semiannual Monitoring Reports dated October 2, 2006 and March 28, 2007; and the Title V Annual Compliance Certification dated March 28, 2007, the Respondent reported that the continuous flow data was missing for June 27, 2006 through July 13, 2006, due to the Variants North Fume Scrubber (Emission Point IB) flow meter being inadvertently disabled. According to the Respondent, logged flow data indicated the scrubber was operating properly at the time the continuous monitoring data was missing. The failure to have the continuous monitoring system (CMS) operational to collect scrubber flow rate data at all times the process is operating for Emission Point IB is a violation of 40 CFR 63 Subpart 63.9025(a)(1) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Tables 1 and 2 of Title V Permit No. 2329-V3 as required by Part 70 Specific Condition No. 1, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(2). The failure to monitor continuously (or collect data at all required intervals) at all times the affected source is operating is a violation of 40 CFR 63.9035(d) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Tables 1 and 2 of Title V Permit No. 2329-V3 as required by Part 70 Specific Condition No. 1, LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(2).

According to the Respondent's Title V Annual Compliance Certification dated March 28, 2007, logged flow data and continuous pH monitoring data indicate the scrubber was operating properly at the time the continuous monitoring data was missing. The Respondent also noted that redundant continuous monitoring systems are now installed.

- D. In the Title V Annual Compliance Certification dated March 28, 2007, the Respondent reported that Storage Tanks MS-420 and MS-431 vented to the atmosphere for greater than 240 hours per year in 2006. Each occurrence of venting to the atmosphere greater than 240 hours per year is a violation of LAC 33:III.2103.E.3, Tables 1 and 2 of Title V Permit No. 2278-V0 as required by State Only Specific Condition No. 1, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

According to the Respondent's Title V Annual Compliance Certification dated March 28, 2007, submerged fill pipes were installed on these tanks in January 2007.

- E. In the Title V Annual Compliance Certification dated March 28, 2007, the Respondent reported that the minimum flow rate for the Variants North Boiler Quench Scrubber (Emission Point IA) was exceeded. According to the Respondent, the flow rate operated less than 3 percent

below the compliance flow rate on February 17, 2007 through February 18, 2007 and February 26 through February 27, 2007, due to the wrong flow meter being compared to the flow rate limit. According to the Notification of Compliance Status (NOCS) dated December 13, 2006, for the Hydrochloric Acid Production MACT (40 CFR 63 Subpart NNNNN) a minimum flow rate of 189 gallons per minute was established to maintain compliance with 40 CFR 63 Subpart NNNNN. The failure to maintain the minimum flow rate of 189 gallons per minute is a violation of 40 CFR 63.9000(b) as it refers to Table 2 (1.a) of 40 CFR 63 Subpart NNNNN which language has been adopted as a Louisiana regulation in LAC 33:III.5122 and La. R.S. 30:2057(A)(2).

According to the Respondent's Title V Annual Compliance Certification dated March 28, 2007, the correct flow meter is now being monitored.

- F. In the Title V Annual Compliance Certification dated March 28, 2007, the Respondent reported that the maximum pH established to demonstrate compliance with the Hydrochloric Acid Production MACT (40 CFR 63 Subpart NNNNN) was exceeded at the MDI 1 Fume Scrubber (Emission Point KB). According to the Respondent, during process operations involving hydrochloric acid (HCl) transfer, the scrubber pH set point was raised to prevent the release of HCl to the atmosphere. The maximum pH was exceeded on February 26, 2007, when the set point was not lowered after this activity. Specific Requirement 6 of Title V Permit No. 2391-V8 for the KB - MDI Fume Scrubber AS-4303A (Emission Point No. EQT 369) limits pH to a maximum of 12.75. Each exceedance of the pH maximum is a violation of Specific Requirement No. 6 of Title V Permit No. 2391-V8, LAC 33:III.501.C.4, 40 CFR 63.9000(b) as it refers to Table 2 (1.b) of 40 CFR 63 Subpart NNNNN which language has been adopted as a Louisiana regulation in LAC 33:III.5122, and La. R.S. 30:2057(A)(2).

According to the Respondent's Title V Annual Compliance Certification dated March 28, 2007, a request dated May 30, 2006, was sent to EPA, for removal of the maximum pH limit for the source due to safety/process-related issues; and the Respondent was awaiting a response. The Respondent also noted that a maximum pH alarm will also be installed to prevent recurrence.

The issues listed below are not the subject matter of an enforcement action issued by the Department, but are included as a part of this Settlement:

- A. In the Part 70 Quarterly Report dated December 15, 2008, the second 2008 Title V Semiannual Monitoring Report under cover letter dated March 27, 2009, and the 2008 Title V Annual Compliance Certification under cover letter dated March 27, 2009, the Respondent reported that the daily average temperature for the MDI 1 Methanol Fractionator Vent Condenser TT-4129 (Emission Point No. EQT 868) was exceeded. The daily average temperature was 69 degrees Fahrenheit on September 28, 2008. The compliance limit is 60 degrees Fahrenheit. The exceedance occurred when the documentation containing the incorrect compliance temperature was referenced by the operator. Training has been conducted to ensure the correct information is referenced. The outlet daily temperature is a monitored parameter included in the Notification of Compliance Status (NOCS) to ensure that the control device is being applied, operated and maintained properly. In accordance with 40 CFR 63.152(c)(2)(ii), for each excursion, the owner or operator shall be deemed to have failed to have applied the control in a manner that achieves the required operating conditions. Therefore, the Respondent failed to reduce emissions of total organic hazardous air pollutants by 98 weight percent or to a concentration of 20 parts per million by volume, whichever is less stringent. This is a violation of 40 CFR 63.113(a)(2), Specific Requirement 270 of Air Permit No. 2391-V8, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2) of the Act.
- B. In the Hydrochloric Acid Production MACT (40 CFR 63 Subpart NNNNN) Periodic Report dated January 29, 2009, the second 2008 Title V Semiannual Monitoring Report under cover letter dated March 27, 2009, and the 2008 Title V Annual Compliance Certification under cover letter dated March 27, 2009, the Respondent reported that on November 30, 2008, the MDI 1 Fume Scrubber (Emission Point KB) maximum pH daily average was exceeded. Specific Requirement 6 of Title V Permit No. 2391-V8 for the KB - MDI Fume Scrubber AS-4303A (Emission Point No. EQT 369) limits pH to a maximum of 12.75. Each exceedance of the pH maximum is a violation of Specific Requirement 6 of Title V Permit No. 2391-V8, LAC 33:III.501.C.4, 40 CFR 63.9000(b) as it refers to Table 2 (1.b) of 40 CFR 63 Subpart NNNNN which language has been adopted as a Louisiana regulation in LAC 33:III.5122, and La. R.S. 30:2057(A)(2).

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 SEVEN THOUSAND NINE HUNDRED ELEVEN AND 83/100 DOLLARS (\$7,911.83), of which One Thousand Nine Hundred Thirty-one and 83/100 Dollars (\$1,931.83) represents 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), 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.

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 LSA- 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 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.

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.

RUBICON LLC

BY: Mark K. Dearman
(Signature)

MARK K. DEARMAN
(Print)

TITLE: General Manager

THUS DONE AND SIGNED in duplicate original before me this 30th day of November, 20 09, at Gisborne, Louisiana.

Kathy M. Roy
NOTARY PUBLIC (ID # 18199)

KATHY M. ROY
(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Peggy M. Hatch, Secretary

BY: Paul D. Miller

Paul D. Miller, P.E., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 23^d day of March, 20 10, at Baton Rouge, Louisiana.

Christopher A. Ratcliff
NOTARY PUBLIC (ID # 10149)

Christopher A. Ratcliff
(Print)

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