

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

TEMBEC USA, LLC

AI # 2073

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

- * **Settlement Tracking No.**
- * **SA-AE-10-0001**
- *
- * **Enforcement Tracking No.**
- * **AE-CN-03-0219**
- * **AE-CN-03-0219A**
- * **AE-CN-03-0219B**
- * **AE-CN-03-0219C**
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SETTLEMENT

The following Settlement is hereby agreed to between Tembec USA, 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 had owned and/or operated a pulp and paper mill located in St. Francisville, West Feliciana Parish, Louisiana (“the Facility”). On or about April 15, 2009, the Respondent transferred ownership of the facility to West Feliciana Acquisition LLC.

II

On December 28, 2003, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-03-0219, which was based upon the following findings of fact:

The Respondent owned and/or operated a pulp and paper mill located at 2105 Louisiana Highway 964 in St. Francisville, West Feliciana Parish, Louisiana. The facility operated under PSD

Permit No. PSD-LA-540 (M-2) and Air Quality Permit No. 3160-00001-V0 issued on April 29, 2001.

On or about November 18-21, 2002, an inspection of the Respondent's St. Francisville Mill was performed to determine the degree of compliance with the Act and Air Quality Regulations.

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

- A. The Respondent failed to operate in accordance with all terms and conditions of Air Quality Permit No. 3160-00001-V0. Required documentation concerning the modification of the recovery furnace (RF-01) was not submitted to the Department. These include semiannual progress reports of construction and notification of the completion of construction and start-up. This is a violation of LAC 33:III.501.C.4 and Section 2057(A)(2) of the Act.
- B. The Respondent reported 12 occurrences of Total Reduced Sulfides (TRS) excess emissions for the October through December 2001 period; nine (9) 12-hour average deviations during October and three (3) in November 2001. The excess emissions of TRS were from the recovery furnace (RF-01) and occurred while a recovery furnace capacity increase project was ongoing. This is a violation of 40 CFR 60.284(e)(1)(i) which language has been adopted as a Louisiana regulation in LAC 33:III.3003, Air Quality Permit No. 3160-00001-V0, and Section 2057(A)(2) of the Act.

On or about July 31, 2003, the Department received a copy of the Respondent's semiannual National Emissions Standards for Hazardous Air Pollutants, Subpart S, Start-up, Shutdown or Malfunction report. A review of the report revealed the following violations:

- A. The Respondent failed to maintain the collection of methanol from process condensates above 11.1 pounds per oven dried ton of pulp. The pulp operator did not monitor the recovery control instrumentation to determine that the filter was starting to plug. This is a violation of 40 CFR 63.446(c)(3) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Air Permit No. 3160-00001-V0 and Section 2057(A)(2) of the Act.
- B. The Respondent failed to maintain the scrubbing medium pH above 9.3 in the bleach plant. The pH limit is set by a unit-specific performance test. The sampler recorded a pH of less than 9.3 nineteen times and did not function for 63 hourly recordings. This is a violation of 40 CFR 63.445(b) and (c) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Air Permit No. 3160-00001-V0, and Section 2057(A)(2) of the Act.

On July 29, 2004, the Department issued to Respondent an Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-03-0219A, amending Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-03-0219, as follows:

The Department hereby amends paragraph II.B. of the findings of fact to read:

“The Respondent reported 12 occurrences of Total Reduced Sulfur (TRS) excess emissions for the October through December 2001 period; nine (9) 12-hour average deviations during October and three (3) in November 2001. The excess emissions of TRS were from the recovery furnace (RF-01) and occurred while a recovery furnace capacity increase project was ongoing. Each exceedance of TRS emissions is a violation of 40 CFR 60.283(a)(2) which language has been adopted as a Louisiana regulation in LAC 33:III.3003, Part 70 Specific Condition 1 of Title V Permit No. 3160-00001-V0, and Sections 2057(A)(1) and 2057(A)(2) of the Act.”

The Department hereby adds the following section to paragraph II of the findings of fact:

“C. A review of the Respondent’s NCG and Condensate Monthly Repair List revealed that the Respondent failed to record the date the defect or leak was detected and the date of each attempt to repair the defect or leak was detected, the repair methods applied in each attempt to repair the defect or leak, and the reason for the delay if the defect or leak is not repaired within 15 days after discovery. This is a violation of 40 CFR 63.454(b)(6), (7), and (8), respectively, which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Part 70 Specific Condition 1 of Title V Permit No. 3160-00001-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act. According to the Respondent’s letter dated December 4, 2002, the inspection summaries have since been updated to include the required information.”

The Department hereby amends paragraph III.B. of the findings of fact to read as follows:

“B. The Respondent failed to maintain the scrubbing medium pH above 9.3 in the bleach plant on nineteen occasions. According to the Respondent’s letter dated January 20, 2004, sixteen of the nineteen occurrences were traced to the same cause; namely, the demand controller for the white liquor (the scrubbing media) had inadvertently been connected to an ORP meter instead of a pH meter. Failing to measure the pH of the gas scrubber effluent is a violation of 40 CFR 63.453(c)(1) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Part 70 Specific Condition 1 of Title V Permit No. 3160-00001-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.

The remaining three occurrences where the pH was less than 9.3 are violations of 40 CFR 63.445(b) and (c) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Part 70 Specific Condition 1 of Title V Permit No. 3160-00001-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.”

The Department hereby adds the following paragraph into the findings of fact:

“IV.

On or about March 22, 2004, a file review of the Respondent’s facility was performed to determine the degree of compliance with the Act and Air Quality Regulations.

While the Department’s investigation is not yet complete, the following violation was noted during the course of the review:

According to the Respondent’s July through December 2001 semiannual monitoring report dated March 27, 2002, there were 12 instances of opacity deviations from the standard. Eleven of the deviations were related to an error in the electrostatic precipitator computer rapping sequence program. The remaining deviation occurred when the east transformer tripped and the alarm failed. Each failure to control the emission of smoke from the recovery furnace (Emission Source RF-01) so that the shade or appearance of the emission is not darker than 40 percent average opacity is a violation of LAC 33:III.2301.D.4, Part 70 Specific Condition 1 of Title V Permit No. 3160-00001-V0, LAC 33:III.501.C.4, and Sections 2057(A)(1) and 2057(A)(2) of the Act.”

The Department hereby adds the following paragraph to the Compliance Order:

“III.

To submit to the Enforcement Division, within thirty (30) days after receipt of this Compliance Order, a written report that includes a detailed description of the circumstances surrounding the failure to record the information specified in 40 CFR 63.454(b)(6), (7), and (8) and for failing to comply with LAC 33:III.2301.D.4 and actions taken or to be taken to achieve compliance.”

The Department incorporated all of the remainder of the original Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-03-0219 and Agency Interest No. 2073 as if reiterated therein.

On August 31, 2005, the Department issued to Respondent an Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-03-0219B, amending paragraph III of the Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-03-0219A to read as follows:

“III.

The Department hereby amends paragraph III.B. of the Findings of Fact to read as follows:

- B. The Respondent failed to maintain the scrubbing medium pH above 9.3 in the bleach plant on sixteen occasions during the period encompassing January 1 through June 30, 2003. According to the Respondent’s letter dated January 20, 2004, the sixteen occurrences were traced to the same cause; namely, the demand controller for the white liquor (the scrubbing media) had inadvertently been connected to an ORP meter instead of a pH meter. However, the pH was below 9.3 on each of these occasions. Each occurrence where the pH was less than 9.3 is a violation of 40 CFR 63.445(b) and (c) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Part 70 Specific Condition 1 of Title V Permit No. 3160-00001-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.”

The Department hereby amends paragraph IV of the Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-03-0219A to read as follows:

“IV.

On or about July 12, 2005, a file review of the Respondent’s facility was performed to determine the degree of compliance with the Act and Air Quality Regulations.

While the Department's investigation is not yet complete, the following violations were noted during the course of the review:

- A. According to the Respondent's July through December 2001 semiannual monitoring report dated March 27, 2002, and additional information dated February 6, 2005, the bleach plant scrubber pH dropped below the minimum pH of 9.3 for three hours on December 6, 2001, as a result of an upset of the chlorine dioxide generator due to trace organic impurities in the feedstock causing periodic puffs of gas from the generator to enter the scrubber. This is a violation of 40 CFR 63.445(b) and (c) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Part 70 Specific Condition 1 of Title V Permit No. 3160-00001-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.
- B. According to the Respondent's January through June 2002 semiannual monitoring report dated September 26, 2002, and 2002 annual compliance certification dated March 27, 2003, the bleach plant scrubber pH dropped below the minimum on four occasions due to the white liquor pump to the bleach plant scrubber "kicking out" and on one occasion due to a plugged white liquor line. Each occurrence where the pH was less than the minimum is a violation of 40 CFR 63.445(b) and (c) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Part 70 Specific Condition 1 of Title V Permit No. 3160-00001-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.
- C. According to the Respondent's January through June 2003 semiannual monitoring report dated September 29, 2003, and 2003 annual compliance certification dated March 29, 2004, the Programmable Logic Controller, the Respondent's data collection and storage system, failed due to a weak battery from April 13 through April 15, 2003, resulting in one incident of no data collection for the recovery furnace (Emission Source RF-01) total reduced sulfur (TRS). According to the Respondent, the continuous emission monitoring system (CEMS) functioned correctly, but the data was not recorded. This is a violation of 40 CFR 60.284(a)(2), which language has been adopted as a Louisiana regulation in LAC 33:III.3003, the State Only Specific Condition and Part 70 Specific Condition No. 1 of Title V Permit No. 3160-00001-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.
- D. According to the Respondent's 2003 annual compliance certification dated March 29, 2004, on November 14, 2003, the pH probe went out for 6.75 hours. Additional information was received by the Department in correspondence dated February 16, 2005. According to this information, the pH was not monitored during this time period. Failing to measure the pH of the gas scrubber effluent is

a violation of 40 CFR 63.453(c)(1) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Part 70 Specific Condition 1 of Title V Permit No. 3160-00001-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.

- E. The Respondent is required to operate a continuous monitoring system (CMS) to measure the pH or oxidation reduction potential (ORP) of the gas scrubber effluent, the gas scrubber vent gas inlet flow rate, and the gas scrubber liquid influent flow rate for each gas scrubber used to comply with the bleaching system requirements of 40 CFR 63.445(c) and is required to operate the control device in a manner consistent with the minimum or maximum (as appropriate) operating parameter value or procedure required to be monitored. According to the Respondent's 2003 annual compliance certification dated March 29, 2004, the bleach plant scrubber (Emission Source BP-01) experienced low scrubber flow on December 7, 2003. This is a violation of 40 CFR 63.453(o) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, the State Only Specific Condition and Part 70 Specific Condition No. 1 of Title V Permit No. 3160-00001-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act."

The Department hereby amends paragraph V of the Amended Compliance Order to read as follows:

"V.

The Department hereby adds the following paragraph to the Compliance Order:

III.

To submit to the Enforcement Division, within thirty (30) days after receipt of this Compliance Order, a written report that includes a detailed description of the circumstances surrounding the cited violations and actions taken or to be taken to achieve compliance with the Order Portion of this Compliance Order. This report and all other reports or information required to be submitted to the Enforcement Division by this Compliance Order shall be submitted to:

Office of Environmental Compliance
Southeast Regional Office
201 Evans Road
Building 4, Suite 420
New Orleans, LA 70123-5230

Attention: Bridget Moody
Enforcement Tracking No. AE-CN-03-0219B
AI No. 2073”

The Department incorporated all of the remainder of the original Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-03-0219A and Agency Interest No. 2073, as if reiterated therein.

On October 16, 2008, the Department issued to Respondent an Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-03-0219C, amending paragraph III of the findings of fact portion of Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-03-0219B to remove paragraph III.B.

The Department also amended paragraph IV of the findings of fact portion of Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-03-0219B to remove IV.A and IV.D and amend IV.B to read as follows:

“B. According to the Respondent’s January through June 2002 semiannual monitoring report dated September 26, 2002, and 2002 annual compliance certification dated March 27, 2003, the bleach plant scrubber pH dropped below the minimum on one (1) occasion due to a plugged white liquor line. The occurrence in which the pH was less than the minimum is a violation of 40 CFR 63.445(b) and (c) which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Part 70 Specific Condition 1 of Title V Permit No. 3160-00001-V0, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act.”

The Department incorporated all of the remainder of the original Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-03-0219B and Agency Interest No. 2073 as if reiterated therein.

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 AND NO/100 DOLLARS (\$10,000.00), of which ONE THOUSAND SIX-HUNDRED EIGHT AND 73/100 DOLLARS (\$1,608.73) 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), the above referenced enforcement actions 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 West Feliciana 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.

TEMBEC USA, LLC

BY: _____
(Signature)

(Print)

TITLE: _____

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

NOTARY PUBLIC (ID # _____)

(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch, Secretary

BY: _____
Paul D. Miller P.E., 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 # _____)

(Print)

Approved: 
Paul D. Miller, P.E, Assistant Secretary