

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

TOTAL PETROCHEMICALS &
REFINING USA, INC.
AI # 5176

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

* Settlement Tracking No.
* SA-MM-15-001
*
* Enforcement Tracking No.
* MM-PP-11-00861
* MM-PP-11-00861A
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SETTLEMENT

The following Settlement is hereby agreed to between Total Petrochemicals USA, Inc., now owned and operated as Total Petrochemicals & Refining USA, Inc. ("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 Business Corporation that owns and/or operates a polystyrene production facility located in Carville, Iberville Parish, Louisiana ("the Facility").

II

On May 22, 2012, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. **MM-PP-11-00861**, which was based upon the following findings of fact:

"On or about February 8, 2011, an inspection of Total Petrochemicals USA, Inc., owned and/or operated by Total Petrochemicals USA, Inc. (RESPONDENT), was performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Hazardous Waste Regulations and Air Quality Regulations. The facility is located at 6225 La. Highway 75 in

Carville, Iberville Parish, Louisiana.

While the investigation by the Louisiana Department of Environmental Quality (the Department) is not yet complete, the following violations were noted during the course of the inspection:

- A. The Respondent failed to determine if solid wastes generated at its facility were hazardous wastes, in violation of LAC 33:V.1103.B. Specifically, the Respondent failed to determine whether the following solid wastes generated at the facility were a hazardous waste:
- 1) four (4) open containers containing waste polystyrene at Line #1 Oil Shed area on a containment pad. On or about February 9, 2011, a revisit to this area found these containers had been closed and labeled hazardous waste with a D001 waste code.
 - 2) three (3) open containers containing waste polystyrene and condensate oil mixture located at Line #1 Oil Shed area on a containment pad. On or about February 9, 2011, a revisit to this area found these containers had been closed and labeled Waste Mixed Hydrocarbons with a D001 waste code.
 - 3) spills of polystyrene and hydrocarbons on containment pad and steel grating at the Satellite Area #1, hydrocarbon/oil skimming device attached to Tank T21. Based on photographs submitted by the Respondent, on or about March 23, 2011, this violation was corrected.
- B. The Respondent allowed containers of hazardous waste materials that contain volatile organic compounds to be left open to evaporate. Specifically: four (4) open containers of uncured polystyrene were left open to air dry and three (3) open containers of polystyrene and condensate containing ethyl benzene, styrene, and mineral oil were left open to volatilize, in

violation of LAC 33:III.2113.A.3. On or about February 9, 2011, all seven (7) containers were closed and re-packed. This violation has been corrected.

- C. The Respondent failed to include all applicable waste codes on a hazardous waste manifest, in violation of LAC 33:V.1107.B.1. Specifically, EPA hazardous waste code DO40 was omitted on Manifest #000195709 VES, Manifest #003332146 FLE, and Manifest # 003775202 FLE. On or about March 10, 2011, these manifests were corrected and received by the Department. This violation has been corrected.”

On June 10, 2013, the Department issued to Respondent an Amended Notice of Potential Penalty, Enforcement No. **MM-PP-11-00861A**, which was based upon the following findings of fact:

“The Louisiana Department of Environmental Quality (the Department) hereby amends the Notice of Potential Penalty, Enforcement Tracking No. MM-PP-11-00861 issued to Total Petrochemicals USA, Inc. (Respondent) on May 22, 2012, in the above-captioned matter as follows:

I.

The Department hereby amends paragraph B of the violation list to read as follows:

- B. The Respondent allowed containers of volatile organic compounds to be left open to evaporate.
1. Failure to close the three (3) open containers of polystyrene is a violation of LAC 33:III.2112.A.2.
 2. Failure to close four (4) containers of uncured polystyrene and condensate containing ethyl benzene, styrene, and mineral oil is a violation of LAC 33:III.2113.A.3. On or about February 9, 2011, all seven (7) containers were closed and re-packed. These violations have been corrected.”

II.

The Department incorporates all of the remainder of the original Notice of Potential Penalty, Enforcement Tracking No. MM-PP-11-00861 and Agency Interest No. 5176 as if reiterated herein.”

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 EIGHT THOUSAND EIGHTY- FIVE AND 63/100 DOLLARS (\$8,085.63), of which Three Hundred Thirty-Five and 63/100 Dollars (\$335.63) 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), the Notice of Potential Penalty, the Amended 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

As required by law, the Department has submitted this Settlement Agreement to the Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

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 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.

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.

TOTAL PETROCHEMICALS & REFINING USA, INC.

BY: _____
(Signature)

(Printed)

TITLE: _____

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

NOTARY PUBLIC (ID # _____)

(stamped or printed)

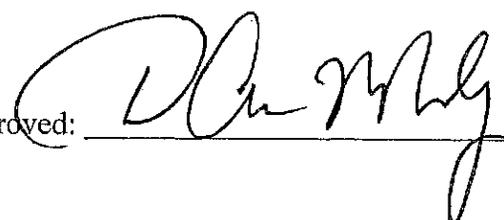
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch Secretary

BY: _____

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

NOTARY PUBLIC (ID # _____)

(stamped or printed)

Approved:  _____