

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

* Settlement Tracking No.
* SA-AE-09-0074

W. R. GRACE & CO.--CONN.

* Enforcement Tracking No.
* AE-CN-08-0270

AI # 1251

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

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SETTLEMENT

The following Settlement is hereby agreed to between W.R. Grace & Co.--Conn. ("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 fluid cracking catalysts manufacturing facility in Lake Charles, Calcasieu Parish, Louisiana ("the Facility").

II

On April 1, 2009, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-08-0270, which was based upon the following findings of fact:

The Respondent owns and/or operates Lake Charles Facility, a fluid cracking catalysts manufacturing facility, located at or near 1800 Davison Road in Lake Charles, Calcasieu Parish, Louisiana. The facility is currently permitted to operate under title V Permit No. 0520-00001-V11 issued on September 23, 2008, and PSD Permit No. PSD-LA-610 issued on April 3, 1997.

On or about March 5, 2009, 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 review:

- A. According to the Respondent's Unauthorized Discharge Report dated June 20, 2008, "On January 25, 2008, modifications were made to the spray dryer burner package that discharges into the 1633 stack at the XP unit (EIQ Source 28-90) . . . on May 9, 2008 a check of the emissions from Source 28-90 [1633 Stack on Scrubbers 6631 and 6644] revealed excessive CO emissions . . . After the CO discovery, W R Grace & Co began to adjust the burners discharging into Source 28-90 . . . Finally, on June 13, 2008, the burners were turned so that CO was again in compliance with the air permit [sic] From January 26, 2008, to June 13, 2008, W R Grace & Co estimates that 69,144 pounds of CO were emitted through Source 28-90 [sic] These emissions are 49,667 pounds above the air permit maximum of 19,477 pounds . . . On July 10, 2008, W R Grace & Co has planned a compliance stack test of Source 28-90 to confirm all emissions are in compliance". According to the Respondent, this incident was preventable. According to the Respondent's July 10, 2008 Stack Test Report dated August 4, 2008, "Source 28-90 was in compliance for tested parameters PM₁₀ [particulate matter], NH₃ [ammonia], NO_x [nitrogen oxide], and HCl [hydrogen chloride]. However, Source 28-90 was not in compliance for CO [carbon monoxide]. After the test, the unit rate was reduced to 90 tons per day, where CO is in compliance. W. R. Grace will now submit a new air permit application to increase the CO emissions, which will allow the 146 tons per day rate. After the new permit is obtained, there will be another stack test to confirm compliance at the 146 tons per day rate . . ." On or about August 4, 2008, the Department received the Respondent's request for a minor modification of Title V Permit No. 0520-00001-V10. The Department issued Title V Permit No. 0520-00001-V11 on September 23, 2008. According to the Respondent's correspondence dated January 21, 2009, the Respondent has scheduled the compliance stack test for March 3, 2009. Each exceedance of a permitted emission limit is a violation of Title V Permit No. 0520-00001-V9, Title V Permit No. 0520-00001-V10, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2). The Respondent also reported these deviations in its Title V Semiannual Monitoring Report dated September 17, 2008, and Unauthorized Discharge Report dated May 16, 2008.

- B. According to the Respondent's correspondence dated February 12, 2008, ". . . there were two other stacks (Source 2-91 & 5-91) that required Method 9 opacity readings [sic] Thus, for a period of seven (7) weeks there were no

Method 9 opacity readings taken for Sources 2-91 and 5-91 [sic] On February 5, 2008, Method 9 opacity readings were started on these two stacks [sic] A check of the operator log sheets on Sources 2-91 and 5-91 revealed that there was no observed opacity during the seven (7) weeks". According to the Respondent's Title V Semiannual Monitoring Report dated September 17, 2008, this deviation began on December 12, 2007. According to Specific Requirement No. 31 of Title V Permit No. 0520-00001-V9, the Respondent shall monitor and record opacity weekly using Method 9 for 6655 Ammonia Absorber on XP Flash Dryer Baghouse 6672 (Emission Source No. 5-91) and 6233 Z-14 Ammonia Absorber (Emission Source No. 2-91). Each failure to conduct monitor and record opacity weekly using Method 9 for Emission Source No. 5-91 and Emission Source No. 2-91 is a violation of Specific Requirement No. 31 of Title V Permit No. 0520-00001-V9, LAC 33:III.501.C.4, and La. R.S. 30:2057(2).

The following violations, although not cited in any enforcement action issued to the Respondent, are included herein and made a part of this settlement agreement.

In March 2009, the Respondent reported a deviation in the Part 70 Annual Certification of Compliance for 2008 and the Part 70 Monitoring Report for July through December 2008. The deviation occurred when source 28-90 spray dryer scrubber liquid flow rate was outside the range specified in the Respondent's Compliance Assurance Monitoring (CAM) plan from July 17, 2008 through September 8, 2008, and November 8, 2008 through November 9, 2008. However, daily visual observations were done for opacity during the deviation period with no opacity observed. Additionally, the Respondent experienced two hydrogen chloride releases on October 17, 2008 (67 pounds released) and November 10, 2008 (163 pounds released). These fugitive releases were reported as courtesy calls to the SPOC and both were well below the RQ for hydrogen chloride of 5,000 pounds.

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 TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00), of which Four Hundred Eighty-Four and 73/100 DOLLARS (\$484.73) 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 Consolidated Compliance Order and 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 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 Calcasieu 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.

W.R. GRACE & CO.—CONN.

BY: [Signature]
(Signature)

DAVID PENTROP
(Print)

TITLE: OPERATIONS DIRECTOR

THUS DONE AND SIGNED in duplicate original before me this 5th day of March, 20 10, at Lake Charles, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 64664)

Jennifer D. Couste
(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch, Secretary

BY: [Signature]
Paul D. Miller, P.E., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 14th day of June, 20 10, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 410539)

Jill K. Pringle, II
(Print)

Approved: [Signature]
Paul D. Miller, P.E., Assistant Secretary