

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

EXXONMOBIL CHEMICAL COMPANY
EAST BATON ROUGE PARISH

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

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* **Enforcement Tracking No.**
* **AE-CN-01-0348**
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* **Docket No. 2003-0379-EQ**
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* **Enforcement Tracking No.**
* **AE-C-02-0193**

SETTLEMENT AGREEMENT

The following Settlement is hereby agreed to between ExxonMobil Chemical Company (“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 who owns and/or operates the ExxonMobil Baton Rouge Chemical Plant, a synthetic organic chemical manufacturing facility located at 4999 Scenic Highway in Baton Rouge, East Baton Rouge Parish, Louisiana (“the Facility”). The Respondent’s facility operates under Louisiana Air Permit No. 0840-00014, issued May 27, 1993, and Louisiana Air Permit No. 2260, issued on May 23, 1994.

II.

On November 22, 2002, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-01-0348, which was based upon the following findings of fact:

On or about March 6, 2002, a file review of the Respondent’s facility was performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and Air

Quality Regulations.

The following alleged violation was noted during the course of the file review:

The Department received an unauthorized release report notification from the Respondent dated November 30, 2001, indicating a release of approximately 205 pounds of methyl chloride, 17 pounds of n-hexane, 8.5 pounds of isobutane, 17 pounds of isobutylene, 0.5 pounds of isoprene, and 29,485 pounds of hydrogen chloride. The release occurred on or about November 23, 2001, from 6:50 a.m. until 8:00 a.m., for a total duration of approximately 70 minutes. According to the Respondent's unauthorized release report notification, the release was due to the improper alignment of the Methyl Chloride dryer system during isolation of a dryer for regeneration. This inadvertently blocked two upstream towers within the Solvent Replacement Process section of the unit causing an increase in pressure. The two safety valves associated with the towers released the gas to the site flare system, resulting in the upset condition. 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 Sections 2057(A)(1) and (A)(2) of the Act.

On or about July 5, 2000, an enforcement meeting was held with representatives of Respondent to discuss areas of concern in the Leak Detection and Repair Program (LDAR) at the Baton Rouge Chemical Plant. The Respondent's internal compliance review identified untagged piping on lines outside of the operating unit's boundaries (i.e. offsite lines) that did not appear to be in the Respondent's fugitive emission monitoring program and reported this to the Department. The Respondent began an 18-month program to review all VOC/HAP containing offsite lines. At the end of the Respondent's review, a follow-up meeting was held on September 6, 2001, to discuss findings

of the Respondent's fugitive emissions component review. The Department received follow-up letters from the Respondent that documented the issues discussed during the enforcement meetings and provided clarity.

On or about July 16, 2002, 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 alleged violations were noted during the course of the review:

- A. The Respondent's 5LEU, ACLA, FWPS, IDLA1, IPACCTF, LION, and OXOHI units are subject to the LAC 33:III.2122 Fugitive Emission Control for Ozone Nonattainment Areas. The Respondent's monitoring frequency for accessible valves is quarterly and yearly for difficult to monitor valves. The Respondent identified 52 valves and 86 difficult to monitor valves that were not in the site's fugitive emission monitoring program. Each failure to monitor the 52 valves and 86 difficult to monitor valves are in violation of LAC 33:III.2121.C.1.b.(iv), LAC 33:III.2121.C.4.c., and Section 2057(A)(2) of the Act.

- B. The Respondent's RLA3 unit is subject to the Hazardous Organic NESHAP (HON), 40 CFR 63, Subpart H. The Respondent identified one (1) pump that was not in the site's fugitive emission monitoring program. The Respondent's monitoring frequency for pumps in the RLA1/RLA1TF unit is monthly. Each failure to monitor the one (1) pump twelve times per year (monthly) to detect leaks by the method specified in 40 CFR 63.180(b) are in violation of 40 CFR 63.163(b)(1) which language has been adopted as a Louisiana regulation in LAC 33:III.5122 and Section 2057(A)(2) of the Act.

- C. The Respondent's ACLARK, AROMATIC, WILA, MEKTF, BELAS, DIBLATF, BPLA, DARLA, PALA, RLA1/RLA1TF, AND RLA3 units are subject to the Hazardous Organic NESHAP (HON), 40 CFR 63, Subpart H. The Respondent identified 296 connectors and 284 difficult to monitor connectors that were not in the site's fugitive emission monitoring program. The Respondent's monitoring frequency for connectors is yearly. Each failure to monitor the 296 connectors and 284 difficult to monitor connectors by the method specified in 40 CFR 63.180(b) are in violation of 40 CFR 63.174(b)(1) which language has been adopted as a Louisiana regulation in LAC 33:III.5122 and Section 2057(A)(2) of the Act.

- D. The Respondent's ACLARK, AROMATIC, WILA, MEKTF, BELAS, DIBLATF, BPLA, DARLA, PALA, RLA1/RLA1TF, AND RLA3 units are subject to the Hazardous Organic NESHAP (HON), 40 CFR 63, Subpart H. The Respondent identified 206 valves and 566 difficult to monitor valves that were not in the site's fugitive emission monitoring program. The Respondent's monitoring frequency for accessible valves is quarterly and yearly for difficult to monitor valves. Each failure to monitor the 206 valves and 566 difficult to monitor valves by the method specified in 40 CFR 63.180(b) are in violation of 40 CFR 63.168(d)(2), 40 CFR 63.168(d)(3), 40 CFR 63.168(d)(4), which language has been adopted as a Louisiana regulation in LAC 33:III.5122 and Section 2057(A)(2) of the Act.
- E. The Respondent's CPLA, DILA, E1000, E5000, E5000TF, HCD, ECLAW, EPLAW, OLA2X, EPLAS, NEOACID, OXOTF, POX, RGR, SCOLA, and UTILITY units are subject to the Louisiana Refinery MACT Determination dated July 26, 1994. The Respondent identified 292 valves and 574 difficult to monitor valves that were not in the site's fugitive emission monitoring program. The Respondent's monitoring frequency for the valves in these units was quarterly in accordance with paragraph I.1 of the MACT Determination. Each failure to monitor the 292 valves and 574 difficult to monitor valves are in violation of paragraph I.1 of the Louisiana Refinery MACT Determination dated July 26, 1994, the Equipment Leak Monitoring Program in the facility's Compliance Schedule (Air Toxics Compliance Plan No. 92041), LAC 33:III.5109.A.1, and Section 2057(A)(2) of the Act.
- F. The Respondent's CPLA, DILA, E1000, E5000, E5000TF, HCD, ECLAW, EPLAW, OLA2X, EPLAS, NEOACID, OXOTF, POX, RGR, SCOLA, and UTILITY units are subject to the Louisiana Refinery MACT Determination dated July 26, 1994. The Respondent identified 14 connectors and 20 difficult to monitor connectors that were not in the site's fugitive emission monitoring program. The Respondent's monitoring frequency for connectors was yearly in accordance with paragraph I.1 of the MACT Determination. Each failure to monitor the 14 connectors and 20 difficult to monitor connectors are in violation of paragraph I.1 of the Louisiana Refinery MACT Determination dated July 26, 1994, the Equipment Leak Monitoring Program in the facility's Compliance Schedule (Air Toxics Compliance Plan No. 92041), LAC 33:III.5109.A.1, and Section 2057(A)(2) of the Act.
- G. The Respondent's CPLA, DILA, E1000, E5000, E5000TF, HCD, ECLAW, EPLAW, OLA2X, EPLAS, NEOACID, OXOTF, POX, RGR, SCOLA, and

UTILITY units are subject to the Louisiana Refinery MACT Determination dated July 26, 1994. The Respondent identified 11 pressure relief valves that were not in the site's fugitive emission monitoring program. Each failure to monitor the 11 pressure relief valves are in violation of paragraph I.1 of the Louisiana Refinery MACT Determination dated July 26, 1994, the Equipment Leak Monitoring Program in the facility's Compliance Schedule (Air Toxics Compliance Plan No. 92041), LAC 33:III.5109.A.1, and Section 2057(A)(2) of the Act.

III.

Respondent made a timely request for a hearing in response to the Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-01-0348, and was assigned Docket No. 2003-0379-EQ. In that request, Respondent articulated that there was/is insufficient basis in law for legal findings set forth in the consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-01-0348.

IV.

On or about December 13, 2002, the Department issued a Compliance Order, Enforcement No. AE-C-02-0193, which included, but was not limited to the following alleged findings of fact:

On or about December 12, 2002, a file review was performed to determine the degree of compliance with the Act and Air Quality Regulations. Based on the file review, the Respondent submitted letters to the Department on December 12, 2002, including a letter which served as a permit deviation notification of a permit exceedance on the facility's Spent Caustic Oxidation (SCOLA) Unit. The Respondent's December 12, 2002, letter stated that as a result of performance testing conducted on or about December 10 and 11, 2002, it was determined that a permit exceedance occurred during the operation of the SCOLA Unit earlier in 2002. The nitrogen oxide (NO_x) emissions from the Thermal Oxidizer Stack (Emission Point No. S-86) had exceeded the

permitted annual emission limit of 4.4 tons per year. The total NOx emissions to date for 2002 from Emission Point No. S-86 was 6.4 tons.

The Respondent allegedly failed to operate the SCOLA Unit (Emission Point No. S-86) within the permitted limits of Louisiana Air Permit No. 2260. This is a violation of Permit No. 2260, LAC 33:III.501.C.4 and 2057 (A)(1) and (A)(2) of the Act.

V.

The Respondent did not request a hearing or otherwise appeal the Compliance Order, Enforcement No. AE-C-02-0193.

VI.

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

VII.

The Respondent, without making any admission of facts or liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00), of which SEVEN HUNDRED FIFTY-FIVE AND 10/100 DOLLARS (\$755.10) represents DEQ's enforcement costs, in settlement of the claims set forth in this agreement.

VIII.

In addition to the amount specified in Paragraph VII and as part of this Settlement Agreement, the Respondent, without making any admission of facts or liability under state or federal statutes or regulations, agrees to expend the amount of TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00) to implement and/or perform the following beneficial

environmental projects:

- A. At a cost of ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00), Respondent will automate blowdown from three (3) cooling towers in the ExxonMobil refinery adjacent to the ExxonMobil chemical plant. Blowdown, which is necessary to prevent the buildup of chemicals and salts, is the discharge of a portion of cooling water from a cooling tower. The current practice is to regulate blowdown manually. The automation of this blowdown will ensure that only the minimum amount of water necessary to prevent the buildup of chemicals and salts is discharged. This will result in 90,000 gallons per day of well water being saved. This project shall be completed no later than one year from the effective date of this Settlement Agreement. The effective date of this Settlement Agreement shall be the date that the respondent receives notice of the signing of the Settlement Agreement by the Assistant Secretary. If Respondent spends less than ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00) on this BEP, then it shall, in its final report, propose additional projects for the Department's approval or pay to the Department an amount equal to the difference between the amount of money agreed to be spent and the amount of money actually spent.
- B. Respondent will pay ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) to a trust account established by the Department and dedicated solely to the development and implementation of a computer-based interface for importing Emission Inventory Questionnaire data submitted electronically by facilities into the TEMPO database. One single payment for the total amount shall be made to the

Department within ten (10) days of the effective date of this Settlement Agreement. This project will streamline Air permit issuance and facility invoicing and facilitate compliance data review. If the cost of this project does not equal the amount of ONE HUNDRED THOUSAND AND NO/100 Dollars (\$100,000.00), then the remaining unspent money shall be paid to the Department's Hazardous Waste Site Cleanup Fund within thirty (30) days of the project's completion.

Respondent shall submit monthly reports regarding its progress on the projects. The first report shall be due 30 days following the date the Department signs this Settlement Agreement. Monthly reports shall be submitted on the 5th of every month thereafter until the project is completed. Each such monthly report shall include a description of the project, tasks completed, tasks remaining, the percentage completed, and money expended on each project through the date of the report. Upon completion of all projects required under this Settlement, Respondent shall submit a final report to include a summary of all the information previously submitted and a total amount spent on the projects listed above. It shall also contain a certification that the projects were completed as described.

The total amount of money expended by Respondent on cash payments to DEQ and on beneficial environmental projects, as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30: 2050.7(E)(1).

IX.

Respondent further understands that the Department may consider the inspection report(s), the Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-01-0348, the Compliance Order, Enforcement No. AE-C-02-0193, and this Settlement for the purpose of

determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent. In any such action, the 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.

X.

Neither by entering into this Settlement Agreement nor by taking any action in accordance with it (including making the payments required by the agreement), shall Respondent be deemed to have admitted any liability for any purpose or any responsibility for, or wrongdoing relating to, the matters addressed in this Settlement Agreement or to have admitted any issues of law or fact related to or arising out of the matters addressed in the Settlement Agreement. It is the intent of the parties to this Settlement Agreement that the execution of this Agreement, the terms and conditions of the Agreement or any act of performance by the Respondent under the Agreement shall not be (i) admissible in any proceeding for the purpose of imputing, implying, or otherwise raising an inference of wrongdoing by the Respondent or (ii) used against the Respondent in any other proceeding with any third party not a signatory to this Settlement Agreement.

XI.

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. Respondent, however, expressly reserves the right to administrative or judicial review of the actions of the Department acting upon, interpreting and/or applying the terms of this Settlement Agreement. Respondent

further expressly reserves any and all rights, defenses, claims, demands and causes of action which it may have with respect to any matter, action, event, claim or proceeding relating in any way to the matters addressed in this Settlement Agreement against any person, firm or corporation except as expressly provided herein. Respondent does not admit, and retains the right to contest in any subsequent proceedings, other than proceedings for the purpose of enforcing this Agreement, the validity of the facts or the conclusions of law contained herein.

XII.

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 and the rules relating to beneficial environmental projects set forth in LAC 33:I. Chapter 25.

XIII.

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in East Baton Rouge Parish. The advertisement, which was approved by the Department in form, wording, and size, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted a proof-of-publication affidavit 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.

XIV.

Payment as specified in section VII 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. Penalties are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

XV.

In consideration of the above, any claims for penalties or other civil relief are hereby compromised and settled in accordance with the terms of this Settlement.

XVI.

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

WITNESSES:

WD Fellows

[Signature]

RESPONDENT

BY:

[Signature]
(Signature)

MATTHEW AGUIAR

(Printed)

TITLE: SITE MANAGER

THUS DONE AND SIGNED in duplicate original before me this 11 day of August, 20 03, in Baton Rouge La.

[Signature]
NOTARY PUBLIC

WITNESSES:

Holly Smith

Jerry M Hatch

STATE OF LOUISIANA

Hall Bohlinger, Secretary

Department of Environmental Quality

BY:

[Signature]

R. Bruce Hammatt, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 20th day of November, 20 03, in Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC

Approved:

[Signature]

R. Bruce Hammatt, Assistant Secretary

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

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EAST BATON ROUGE PARISH

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This Settlement Agreement has been reviewed, and is concurred in, by the Attorney General, under the provisions of La. R.S. 30:2050.7.

RICHARD P. IEYOUB
ATTORNEY GENERAL

DATED: 11-7-03

BY: 
ASSISTANT ATTORNEY GENERAL