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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Received
AUG 1 - 2011
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MAILED DATE
JUL 28 2011
OF THE ORDER

IN THE MATTER OF AN ENFORCEMENT ACTION CONCERNING FORMOSA UTILITY VENTURE, LTD. AND FORMOSA PLASTICS CORPORATION, TEXAS RN100218973	§ § § § § § §	**BEFORE THE** **TEXAS COMMISSION ON** **ENVIRONMENTAL QUALITY**

AGREED ORDER
DOCKET NO. 2010-1903-IWD-E

I. JURISDICTION AND STIPULATIONS

At its JUL 20 2011 agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding FORMOSA UTILITY VENTURE, LTD. and Formosa Plastics Corporation, Texas ("the Respondents") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondents appear before the Commission and together stipulate that:

1. The Respondents own and operate a plastics organic and inorganic chemicals manufacturing facility with an associated wastewater treatment plant at 201 Formosa Drive in Point Comfort, Calhoun County, Texas (the "Facility").

2. The Respondents have discharged industrial waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.

3. The Commission and the Respondents agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondents is subject to the Commission's jurisdiction.

4. The Respondents received notice of the violations alleged in Section II ("Allegations") on or about November 10, 2010.

5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondents of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Sixty-Eight Thousand Six Hundred Dollars ($68,600) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondents have paid Twenty-Seven Thousand Four Hundred Forty Dollars ($27,440) of the administrative penalty and Thirteen Thousand Seven Hundred Twenty Dollars ($13,720) is deferred contingent upon the Respondents' timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondents fail to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondents to pay all or part of the deferred penalty. Twenty-Seven Thousand Four Hundred Forty Dollars ($27,440) shall be conditionally offset by the Respondents' completion of a Supplemental Environmental Project ("SEP").

7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.

8. The Executive Director of the TCEQ and the Respondents have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.

9. The Executive Director recognizes that the Respondents have implemented the following corrective measures at the Facility:

   a. By September 7, 2010, repaired the motors for clarifiers A and B to maintain effluent parameters within permitted limits;

   b. By September 8, 2010, adopted a new preventive maintenance plan for the combined wastewater treatment plant; and

   c. By September 11, 2010, removed and disposed of the sludge in the B clarifier, began maintaining the clarifiers on a more stringent maintenance schedule to eliminate re-occurrence of unauthorized discharges, and pumped remaining wastewater from the combined wastewater treatment plant containment areas back into the wastewater system.

10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondents have not complied with one or more of the terms or conditions in this Agreed Order.

11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owners and operators of the Facility, the Respondents are alleged to have:

1. Failed to comply with daily maximum discharge permitted effluent limit for phenol, in violation of Texas Pollutant Discharge Elimination System ("TPDES") Permit No. WQ0002436000, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on September 7, 2010. Specifically, the composite sample collected during the 24-hour period from September 2, 2010 to September 3, 2010 documented a daily maximum loading of 1.902 pounds per day ("lbs/day") for Outfall 001 (limit of 0.74 lbs/day).

2. Failed to comply with daily maximum discharge permited effluent limit for phenol, in violation of TPDES Permit No. WQ0002436000, Effluent Limitations and Monitoring Requirements No. 1, 30 TEX. ADMIN. CODE § 305.125(1), and TEX. WATER CODE § 26.121(a)(1), as documented during an investigation conducted on September 7, 2010. Specifically, the composite sample collected during the 24-hour period from September 2, 2010 to September 3, 2010 documented a daily maximum loading of 2.584 lbs/day for Outfall 101 (limit of 0.68 lbs/day).

3. Failed to prevent the unauthorized discharge of 284,764 gallons of wastewater through Outfalls 006 and 007, in violation of TPDES Permit No. WQ0002436000, Permit Conditions No. 2.d. and TEX. WATER CODE § 26.121(a), as documented during an investigation conducted on September 7, 2010. Specifically, untreated process wastewater overflowed from the containment areas around the centralized wastewater treatment plant and discharged through Outfalls 006 and 007, from September 7, 2010 through September 11, 2010, and into Cox Creek.

III. DENIALS

The Respondents generally deny each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondents pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondents' compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: FORMOSA UTILITY VENTURE, LTD. and Formosa Plastics Corporation, Texas, Docket No. 2010-1903-IWD-E" to:

   Financial Administration Division, Revenues Section
   Attention: Cashier's Office, MC 214
   Texas Commission on Environmental Quality
   P.O. Box 13088
   Austin, Texas 78711-3088

2. The Respondents shall implement and complete a SEP in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Twenty-Seven Thousand Four Hundred Forty Dollars ($27,440) of the assessed administrative penalty shall be offset with the condition that the Respondents implement the SEP defined in Attachment A, incorporated herein by reference. The Respondents' obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.

3. FORMOSA UTILITY VENTURE, LTD. and Formosa Plastics Corporation, Texas are jointly and severally liable for the violations documented in this Agreed Order, and are jointly and severally liable for timely and satisfactory compliance with all terms and conditions of this Agreed Order.

4. The provisions of this Agreed Order shall apply to and be binding upon the Respondents. The Respondents are ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.

5. If the Respondents fail to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondents' failure to comply is not a violation of this Agreed Order. The Respondents shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondents shall notify the Executive Director within seven days after the Respondents become aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondents shall be made in writing to the Executive Director. Extensions are not effective until the Respondents receive written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.

7. This Agreed Order, issued by the Commission, shall not be admissible against the Respondents in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

8. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving,

imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

9. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondents, or three days after the date on which the Commission mails notice of the Order to the Respondents, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Bryan W. Shaw
For the Commission

For the Executive Director

6/2/2011
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature

3/2/11
Date

R. P. Smith
Name (Printed or typed)
Authorized Representative of
FORMOSA UTILITY VENTURE, LTD.

Vice President/General Mgr.
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

For the Executive Director

6/2/2011
Date

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- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Signature

4/18/11
Date

R. P. Smith
Name (Printed or typed)
Authorized Representative of
Formosa Plastics Corporation, Texas

Vice President / General Mgr.
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.

Attachment A
Docket Number: 2010-1903-IWD-E

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Respondents:	**FORMOSA UTILITY VENTURE, LTD. and Formosa Plastics Corporation, Texas**
Penalty Amount:	**Fifty-Four Thousand Eight Hundred Eighty Dollars ($54,880)**
SEP Offset Amount:	**Twenty-Seven Thousand Four Hundred Forty Dollars ($27,440)**
Type of SEP:	**Pre-approved SEP**
Third-Party Recipient:	**National Audubon Society – *Sundown Island Sanctuary Anti-erosion, Re-vegetation and Pest Control Project***
Location of SEP:	**Calhoun County**

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion the administrative penalty amount assessed in this Agreed Order for the Respondents to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP offset amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

1. Project Description

A. Project

The Respondents shall contribute the SEP Offset Amount to the Third-Party Recipient named above. The contribution will be to **National Audubon Society** for the *Sundown Sanctuary Island Anti-erosion, Re-vegetation and Pest Control Project*. The Sundown Island and four other small coastal islands located off Port O'Connor are major sites for nesting colonial waterbirds. These islands are increasingly subject to erosion and consequent land loss due to an increasing number of vessels, storm winds and surges, etc. Texas coastal sanctuary islands in this area host one of the largest roseate spoonbill, reddish egret and Brown pelican colonies in the U.S. Colonial. The SEP offset amount will be used to restore the size of the islands utilizing dredge spoil, conduct revegetatation using native plants, and treat vegetation to control pest populations.

The SEP will be done in accordance with all federal, state and local environmental laws and regulations. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The Respondents shall not profit from this SEP in any manner. The Respondent certifies that it has no prior commitment to make this contribution and that it is being done solely in an effort to settle this enforcement action.

B. Environmental Benefit

This project will provide an environmental benefit by stabilizing the island, reducing erosion, and ensuring the maintenance of the natural ecosystem. Waterbirds can only nest successfully on islands of adequate size that have appropriate vegetation and the absence of pests to ensure stable populations. The loss of native vegetation results in an increased potential for erosion. Revegetation will also helps absorb pollutants and particulate matter and improve water quality. By restoring the natural vegetated areas, turbidity is reduced, and source water for recreation and human consumption is protected from further degradation

C. Minimum Expenditure

The Respondents shall contribute at least the SEP offset amount to the Third-Party Recipient and comply with all other provisions of this SEP.

2. Performance Schedule

Within 30 days after the effective date of this Agreed Order, the Respondents must contribute the SEP offset amount to the Third-Party Recipient. The Respondents shall mail a copy of the Agreed Order with the contribution to the addressee listed below:

National Audubon Society
Attention: Executive Director
Audubon Texas
2904 Swiss Avenue
Dallas, TX 75204

3. Records and Reporting

Concurrent with the payment of the SEP offset amount, the Respondents shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP offset amount to the Third-Party Recipient. The Respondents shall mail a copy of the check and transmittal letter to the addressee listed below:

Litigation Division
Attention: SEP Coordinator, MC 175
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

4. Failure to Fully Perform

If Respondents do not perform its obligations under this SEP in any way, including full expenditure of the SEP offset amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP offset amount.

In the event of incomplete performance, the Respondents shall include on the check the docket number of this Agreed Order and a note that it is for reimbursement of a SEP. The Respondent shall make the payment for the amount due to "Texas Commission on Environmental Quality" and mail it to:

Enforcement Division
Attention: SEP Coordinator, MC 219
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

5. Publicity

Any public statements concerning this SEP made by or on behalf of the Respondents must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

6. Clean Texas Program

The Respondents shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

7. Other SEPs by TCEQ or Other Agencies

The SEP identified in this Agreed Order has not been, and shall not be, included as a SEP for the Respondents under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

UNITED ST S ENVIRONMENTAL PROTEC AGENCY
REGION 6
1445 ROSS AVENUE
DALLAS, TEXAS 75202-2733

05/23/03

Skeleton File

MAY 23 2003

Mr. R.P. Smith
Vice President/General Manager
Formosa Plastics Corporation USA
P.O. Box 400
Point Comfort, TX 77978

Re: NPDES Permit No. TX0085570
Assumption of the NPDES Program by the State of Texas

Dear Permittee:

Effective September 14, 1998, the Texas Commission of Environmental Quality (TCEQ) officially assumed the NPDES program. The TCEQ now has lead responsibility for all compliance and enforcement issues for the above-mentioned facilities under the Clean Water Act (CWA) with EPA operating in an oversight capacity. Future reports and notifications required by these NPDES permits should be submitted to the TCEQ effective immediately. You will not be required to submit duplicate reports to EPA.

All correspondence related to your NPDES permit should be mailed to the following address:

Texas Commission of Environmental Quality
Enforcement Division
Water Quality Compliance Monitoring Team (MC 224)
P.O. Box 13087
Austin, TX 78711-3087

The TCEQ staff has requested that you submit an original and one copy of your Discharge Monitoring Reports to them in accordance with the monitoring and reporting requirements of your permit.

If you have any questions regarding your reporting requirements, please call Terry Lane of the EPA at (214)665-8177 or Cindy Stanislawski of the TCEQ at (512)239-4569.

Sincerely,

Samuel Coleman

Samuel Coleman, P.E.
Director
Compliance Assurance and
Enforcement Division (6EN)