

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

ALLENS, INC. OF ARKANSAS

AI # 2433

* Settlement Tracking No.
* SA-WE-11-0020
* Enforcement Tracking No.
* WE-CN-04-0676
* WE-PP-09-0005
*

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

* Docket No. 2006-0099-EQ
* (WE-CN-04-0676)
*

SETTLEMENT

The following Settlement is hereby agreed to between Allens Inc., formerly known as Allen Canning 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 that owns and/or operates a vegetable canning facility located near Hessmer, Avoyelles Parish, Louisiana (“the Facility”).

II

On October 7, 2004, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. WE-CN-04-0676, which was based upon the following findings of fact:

The Respondent owns and/or operates a vegetable canning facility located at 1581 La. Highway 114, near Hessmer, in Avoyelles Parish, Louisiana. The Respondent is authorized to discharge certain quantities and/or quantities of wastewater into German Bayou, thence to Choctaw

Bayou, both waters of the state, under the terms and conditions of Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0003344 issued on January 20, 2004, with an effective date of February 1, 2004, and an expiration date of January 31, 2009. Prior to the issuance of LPDES permit LA0003344, the Respondent sampled and reported analyses of discharges at its facility under the interim effluent limitations and monitoring requirements outlined in compliance order & Consent Agreement WE-COA-01-0552 issued on December 5, 2001.

The Respondent entered into a Settlement Agreement with the Department that became final on February 27, 2003. The Settlement Agreement addressed violations identified in Compliance Order WE-C-97-0109 issued on June 25, 1997, Amended Compliance Order WE-C-97-0109A issued on October 3, 1997, Notice of Potential Penalty WE-NP-98-0057 issued on April 6, 1998, Notice of Potential Penalty WE-PP-00-0038 issued on May 19, 2000, Cease and Desist Order WE-CD-01-0528 issued on September 13, 2001, and Compliance Order & Consent Agreement WE-CPA-01-0052 issued on December 5, 2001.

An inspection conducted by the Department on or about March 15, 2004, and a subsequent file review conducted on or about May 19, 2004, revealed the following permit violations for the period December 2001 through February 2004 as reported by the Respondent:

Date	Outfall	Parameter	Permit Limit	Reported Value
02/06/04	001 ^A	BOD ₅	272 lbs/day(daily max)	1,274 lbs./day
02/09/04	001 ^A	BOD ₅	272 lbs/day(daily max)	1,738 lbs./day
02/10/04	001 ^B	BOD ₅	272 lbs/day(daily max)	1,915 lbs./day
02/17/04	001 ^A	BOD ₅	272 lbs/day(daily max)	1,682 lbs./day
02/17/07	001 ^A	BOD ₅	272 lbs/day(daily max)	554 lbs./day
February 2004	001 ^B	BOD ₅	164 mg/L (mon. avg)	1,209 lbs./day
March 2004	001 ^B	BOD ₅	272 lbs/day(daily max)	2,389 lbs./day
March 2004	001 ^B	BOD ₅	164 mg/L (mon. avg)	932 lbs./day

A. These individual sample results were obtained from the Respondent's laboratory bench sheets during the Department's inspection on or about March 15, 2004. These individual Results were used by the Respondent to calculate the average and maximum values reported on the February 2004 Discharge Monitoring Report.

B. These average and maximum values were obtained from the Respondent's Discharge Monitoring Reports during the file review conducted on or about May 19, 2004.

Each effluent excursion is in violation of LPDES permit LA0003344 (Part I, and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

The Respondent was issued Warning Letter WE-L-04-0676 on or about May 12, 2004, for the effluent violations noted in the Department's inspection on or about March 15, 2004. Warning Letter WE-L-04-0676 stated that the Respondent could submit written comments to the Department regarding this potential civil enforcement action.

The Respondent met with the Department on or about August 3, 2004, to discuss the effluent violations noted in Findings of Fact, Paragraph III. During the meeting, the Respondent proposed possible treatment system improvements and production decreases to eliminate effluent violations. Although not required by order or regulation, Mr. Harold Leggett, Assistant Secretary of the Office of Environmental Compliance, asked representatives for the Respondent to submit written comments to Warning Letter WE-L-04-0676.

The Respondent has not submitted written comments to the Department regarding Warning Letter WE-L-04-0676.

On November 11, 2004, Respondent submitted a written Response to the October 7, 2004, Consolidated Compliance Order and Notice of Potential Penalty.

On March 4, 2009, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. WE-PP-09-0005, which was based upon the following findings of fact:

On or about February 3, 2009, a file review of the Hessmer Facility, owned and/or operated by Allens, Inc. of Arkansas (Respondent), was performed to determine the degree of compliance

with the Louisiana Environmental Quality Act (the Act) and the Water Quality Regulations. The facility is located at 1581 La. Highway 114 near Hessmer in Avoyelles Parish, Louisiana

The Respondent is authorized to discharge certain quantities and qualities of wastewater under the terms and conditions of Louisiana Pollutant Discharge Elimination System (LPDES) Permit Number LA0003344 issued on January 20, 2004, effective on February 1, 2004, and expired on January 31, 2009. The Respondent submitted a permit renewal application on or about September 22, 2008, and the permit was administratively continued. LA0003344 was modified effective December 9, 2008, to reflect the name change from Allen Canning Company to Allens, Inc. of Arkansas.

The following violations were noted during the course of the file review:

- A. The Respondent reported the following exceedances of its permit effluent limitations on Discharge Monitoring Reports (DMRs) and/or Noncompliance Reports (NCRs):

Date	Outfall	Parameter	Permit Limit	Reported Value
6/07	002Q	TOC(Daily Max)	50 mg/L	55.5 mg/L
12/07	002Q	TOC(Daily Max)	50 mg/L	106 mg/L
8/08	001	pH (Max)	9.0 S.U.	9.2 S.U.
11/28/08*	002	TOC(Daily Max)	50 mg/L	57.5 mg/L

*Reported on NCR

Each exceedance is a violation of LPDES permit LA0003344 (part I, page 3 & 4) and LAC 33:IX.501.A.

- B. The Respondent failed to monitor its effluent in accordance with approved test procedures in violation of LPDES permit LA0003344 (Part III, Section C.5) and LAC 33:IX.2701.J.4. Specifically, the holding times for BOD₅ and TSS were exceeded for Outfall 001 in August 2008.

In addition, the Respondent voluntarily disclosed the following potential violations:

- A. On May 29, 2009, Respondent voluntarily disclosed the following potential violations discovered through an internal environmental audit:

- The facility had a mix-up with the contract laboratory of a sample holding time that affected a single result for BOD and TSS;
 - Certain exceedances of Total Organic Carbon in sample results from storm water outfall; and
 - Other issues disclosed in the Internal Environmental Review (Attachment A).
 - Respondent took appropriate corrective actions for the issues discovered.
- B. On June 11, 2010, Respondent voluntarily disclosed the following potential violations discovered through an external environmental audit:
- The method of calculating the annual average loading for BOD and TSS did not follow the method prescribed in the permit;
 - The facility did not complete sampling events during the period of September 15 to 28, 2009, and during the period of December 22, 2009 to January 4, 2010, despite discharges occurring during these periods;
 - The facility's Storm Water Pollution Prevention Plan did not include a description of certain potential pollution sources including the type and quantity of material present;
 - The SPCC Plan was not reviewed every three years and was not certified by a Louisiana Professional Engineer;
 - Some containers of oil and equipment containing oil were not identified in the plan or depicted on the site map;
 - The facility had no records of inspections of oil containers from 2008;
 - Some chemicals with inventories in excess of 500 pounds were not included in the 2008 and 2009 Tier II reports; and
 - Other issues disclosed in the attached report on the Audit by Independent Environmental Consultant (Attachment B).
 - Respondent took appropriate corrective actions for the issues discovered.
- C. On June 14, 2011, Respondent voluntarily disclosed the following potential violations discovered through an internal environmental audit:
- The facility used limited VOC materials but had no written plan for housekeeping;

- Shipment of universal waste was just over one year since the last shipment; and
- Other issues disclosed in the attached report on the Internal Environmental Review (Attachment C).
- Respondent took appropriate corrective actions for the issues discovered.

The following violations although not cited in the foregoing enforcement actions, are included within the scope of the settlement herein:

A file review conducted by the Department on or about March 30, 2012, revealed the Respondent exceeded effluent limitations. These effluent exceedances, as reported by the Respondent on Discharge Monitoring Reports (DMRs), are summarized below:

Monitorin g Period	Parameter	Permit Limit	Reported Value
August 2011	BOD ₅ (mon avg)	184 lbs/day	331 lbs/day
	BOD ₅ (daily max)	262 lbs/day	331 lbs/day
	BOD ₅ (mon avg)	12 mg/L	38.3 mg/L
	BOD ₅ (daily max)	18 mg/L	38.3 mg/L

Each effluent exceedance is a violation of LPDES permit LA0003344 (Part I, and Part III Section A.2), La. R.S. 30:2076(A)(3) and LAC 33:IX.501.A.

III

In response to the Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. WE-CN-04-0676, Respondent made a timely request for a hearing.

IV

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

V

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 Four Hundred

Thirteen and 90/100 Dollars (\$1,413.90) 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).

VI

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order & 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.

VII

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.

VIII

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.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Avoyelles 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.

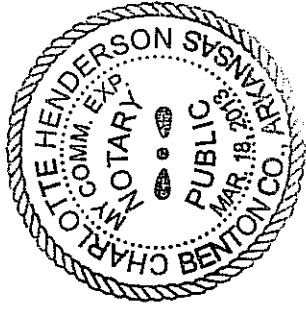
ALLENS, INC. OF ARKANSAS

BY: James W. Phillips
(Signature)

JAMES W. PHILLIPS
(Printed)

TITLE: V. A. Corporation

THIS DONE AND SIGNED in duplicate original before me this 14th day of August, 2012, at Silvan Springs, AR.



Charlotte Henderson
NOTARY PUBLIC (ID #6DD11334H)

(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Peggy M. Hatch, Secretary

BY: Cheryl
Cheryl Sonnier Nolan, Assistant Secretary
Office of Environmental Compliance

THIS DONE AND SIGNED in duplicate original before me this 14th day of Jan, 2013, at Baton Rouge, Louisiana.

Cheryl
NOTARY PUBLIC (ID # 19181)

Approved: Cheryl
Cheryl Sonnier Nolan, Assistant Secretary

Perry Theriot
(stamped or printed)