

Settlement Agreement Regarding Federal Lawsuit

THIS SETTLEMENT AGREEMENT ("Agreement") is made by and between Orion Refining Corporation ("Orion"), the Concerned Citizens of New Sarpy ("CCNS") and Dorothy Jenkins, is effective as to the date set forth below, and sets forth the mutually agreed to terms and conditions of the full settlement, compromise, and release of the claims by and between the parties in the U.S. District Court lawsuit captioned Concerned Citizens of New Sarpy v. Orion Refining Corporation, No. 01-3704 (E.D. La).

Recitals

WHEREAS, Orion maintains it is a Delaware Corporation authorized to do and doing business in the State of Louisiana; Orion operates a refinery referred to as the Orion Refinery located in New Sarpy, Louisiana;

WHEREAS, CCNS maintains it is an unincorporated association of individuals residing near the Orion Refinery;

WHEREAS, Dorothy Jenkins is a resident of St. Charles Street in the St. Charles Terrace neighborhood of New Sarpy, Louisiana, adjacent to the Orion Refinery;

WHEREAS, the St. Charles Terrace Neighborhood Association ("SCTNA") is a duly incorporated neighborhood association which maintains it is made up of residents of the St. Charles Terrace neighborhood of New Sarpy, Louisiana, adjacent to the Orion Refinery, principally made up of St. Charles Street, Terrace Street, Annex Street and Clement Street fronting on River Road; this Agreement is intended to benefit SCTNA in addition to the parties to the Agreement;

WHEREAS, CCNS has filed a lawsuit entitled "Concerned Citizens of New Sarpy vs. Orion Refining Corporation," Civil Action No. 01-3704, Section D, Mag. No. 5, in U.S. District Court for the Eastern District of Louisiana, which matter has been pending since December, 2001 ("Federal Lawsuit"). CCNS filed the Federal Lawsuit as a citizens' suit under the Federal Clean Air Act, alleging that Orion violated the Clean Air Act and implementing regulations;

WHEREAS, CCNS and Dorothy Jenkins filed a lawsuit entitled "*Concerned Citizens of New Sarpy and Dorothy Jenkins vs. Louisiana Department of Environmental Quality*" 19th Judicial District Court No. 492276, for the Parish of Baton Rouge, State of Louisiana, which matter has been pending since February, 2002 ("State Lawsuit"). The State lawsuit was filed against the Louisiana Department of Environmental Quality ("LDEQ"), challenging LDEQ's issuance to Orion on January 10, 2002, of a Clean Air Act Title V Air Operating Permit ("Permit"). Orion intervened in the State Lawsuit to protect its interests with respect to the Permit. By separate agreement, the parties have agreed to resolve the State

Lawsuit whereby CCNS and Dorothy Jenkins will move to dismiss the State Lawsuit with prejudice;

WHEREAS, on September 5, 2002, Orion and the LDEQ agreed preliminarily to a settlement agreement (the "Preliminary LDEQ Settlement Agreement") which addressed enforcement and compliance issues between Orion and LDEQ, and by which Orion has agreed to implement changes at the Orion Refinery, including installation of new pollution control technologies and to accomplish Beneficial Environmental Projects;

WHEREAS, among the Beneficial Environmental Projects that Orion agreed to fund in the Preliminary LDEQ Settlement Agreement is a commitment to adopt and support community-wide programs, to be approved by LDEQ, in the amount of one million dollars (\$1,000,000.00) over four years from the effective date of the Orion's Settlement Agreement with LDEQ;

WHEREAS, the Preliminary LDEQ Agreement is awaiting LDEQ's consideration of public comment and final signatures by the State of Louisiana and Orion before it becomes effective; Orion's Settlement Agreement with LDEQ, in the form it first becomes effective is referred to here as the "Final LDEQ Settlement Agreement";

WHEREAS, CCNS filed one or more sets of comments to the LDEQ objecting to the Preliminary LDEQ Agreement or portions thereof;

WHEREAS, to avoid the time and expense of litigation and to foster a cooperative spirit between them, and without Orion's acknowledging or admitting any fault or responsibility with respect to the Federal Lawsuit, the State Lawsuit, or the Preliminary or Final LDEQ Agreement, Orion, CCNS and Dorothy Jenkins now enter into this Agreement, and by doing so intend – subject to the terms of this Agreement – to resolve, terminate and settle, fully, completely and finally, all claims raised in the Federal Lawsuit that Orion violated the Clean Air Act and implementing regulations although CCNS reserves its right to petition the Court for an award of litigation costs including expert consultant fees within 30 days after entry of the Court's Order of dismissal of the Federal Lawsuit.

NOW THEREFORE, in consideration of the mutual promises, obligations, covenants, warranties and representations set forth below, Orion, CCNS, and Dorothy Jenkins agree as follows:

I. Obligations and Commitments of Orion

1. LDEQ Agreement.
 - a. Orion shall comply in full with the Final LDEQ Settlement Agreement.

b. Orion's agreement, set forth directly above, to comply with the Final LDEQ Settlement Agreement may be enforced by SCTNA, CCNS, and/or Dorothy Jenkins (referred to below individually or collectively as "the Enforcer") as an obligation of this Agreement. In any such enforcement, reasonable litigation costs and attorney fees shall be available to the same extent they would be available in an action under 42 U.S.C. § 7604(d). Before commencing such enforcement, however, the Enforcer shall provide Orion notice and at least a 60-day period for cooperative resolution of the dispute.

c. In any enforcement pursuant to this Agreement of Orion's agreement to comply with the Final LDEQ Settlement Agreement, if Orion's performance has occurred, the Enforcer shall have the burden to show that acceptance of such performance by LDEQ was or would be arbitrary and capricious or an abuse of discretion.

d. In any enforcement pursuant to this Agreement of Orion's agreement to comply with the Final LDEQ Settlement Agreement: If Orion and LDEQ have amended or modified the Final LDEQ Settlement Agreement after reasonable notice to at least SCTNA, CCNS, and Dorothy Jenkins and a reasonable opportunity for comment on all but trivial changes by at least SCTNA, CCNS, and Dorothy Jenkins, then Orion's obligation under this Agreement shall be to comply with the Final LDEQ Settlement Agreement as amended or modified unless the Enforcer shows that the amendment or modification was arbitrary and capricious or an abuse of discretion by LDEQ. For purposes of this Agreement a reasonable opportunity to comment shall be defined as a 30-day period, unless Louisiana law or regulation requires a longer period.

e. Orion agrees to promptly notify SCTNA, CCNS, and Dorothy Jenkins of any modifications or amendments to Orion's Settlement Agreement with LDEQ and provide them with a copy of such modifications or amendments. Orion agrees not to oppose any reasonable request by SCTNA, CCNS, and Dorothy Jenkins for a public hearing or meeting about such a modification or amendment. Orion agrees to meet with SCTNA, as may be requested on a reasonable frequency, to apprise the community of significant progress made or significant issues which may have arisen with respect to Orion's Settlement Agreement with LDEQ.

f. Orion agrees to establish a repository in the St. Charles Parish Library or other location to be agreed upon between Orion and SCTNA, CCNS, and Dorothy Jenkins, to receive copies of quarterly reports, copies of any certifications of Continuous Emission Monitors and copies of any termination certifications (such as the certification of compliance and completion contemplated by Section XVII.D. of the Preliminary LDEQ Settlement Agreement) required to be filed by the Final LDEQ Settlement Agreement, as that agreement may be modified or amended. Orion shall furnish such copies within five (5) business days of the date same are provided to LDEQ and shall be maintained for a minimum of three (3)

years. When copies of documents are added to the repository, Orion shall contemporaneously provide notice to CCNS.

2. Beneficial Environmental Project:

a) Orion understands that certain individuals who identified themselves as officers and members of CCNS have joined or have indicated their interest in joining SCTNA, and further that certain of these individuals have been named to the Board of Directors of SCTNA. Orion commits to consult with SCTNA with respect to identifying projects and funding levels for projects to be funded as Beneficial Environmental Projects pursuant to the Final LDEQ Settlement Agreement. Orion agrees to consult with SCTNA prior to making any proposals to LDEQ in satisfaction of the provisions of the Final LDEQ Settlement Agreement regarding Beneficial Environment Projects.

b) Orion agrees that one of the Beneficial Environmental Projects to be instituted by Orion pursuant to the Final LDEQ Settlement Agreement, as it may be amended or modified, shall include the installation, operation, and maintenance of at least one monitoring station located between the Refinery's perimeter and the New Sarpy residential community that includes at least one continuous monitoring device for S02.

II. Obligations of CCNS and Dorothy Jenkins

1. Dismissal of Lawsuit: Orion and CCNS agree that they shall – within five (5) working days of the execution of the Final LDEQ Agreement -- provided that such agreement, taken as a whole, is not substantially less stringent than the Preliminary LDEQ Agreement – file (1) a Joint Motion and (2) a Proposed Order with the Federal Court in the form of Exhibits A and B, respectively, to this Agreement. Further, within five (5) working days of the effective date of this Agreement, CCNS and Orion shall jointly file a Joint Motion to Stay with the Federal Court in the form of Exhibit C.

2. Comments to LDEQ Settlement Agreement: Within five (5) working days of the effective date of this Agreement, CCNS and Dorothy Jenkins will notify LDEQ that any and all comments or objections filed by or on their behalf with LDEQ with respect to the Preliminary LDEQ Settlement Agreement are withdrawn. Confirmation of this communication to LDEQ shall be presented to Orion within three (3) working days thereof.

3. Land Shark Signs: CCNS and Dorothy Jenkins will recommend the removal of any signs posted identifying or depicting Orion or any of its officers as "land sharks."

III. Additional Provisions

1. Scope: This Settlement Agreement is binding on Orion, its successors, assigns and transferees. If Orion sells or otherwise transfers the refinery, Orion warrants that all successors, assigns and transferees shall be bound and comply.

2. Notice:

a. Any notice to CCNS required under this Agreement shall, at minimum, be provided to the individual and at the address listed below unless and until CCNS provides written notice of a reasonable alternative name and/or address for the provision of notice, in which case such notice shall be provided to such reasonable alternative name and/or address:

Don Winston
P. O. Box 425
New Sarpy, Louisiana 70078

b. Any notice to Orion required under this Agreement shall, at minimum, be provided to the individual and at the address listed below unless and until CCNS provides written notice of a reasonable alternative name and/or address for the provision of notice, in which case such notice shall be provided to such reasonable alternative name and/or address:

Eric Bluth
Orion Refining Corporation
P.O. Box 537
Norco, Louisiana 70079

3. Effective Date: This agreement shall be effective upon its execution by the parties.

4. Complete Agreement: This Settlement Agreement is intended by Orion, CCNS and Dorothy Jenkins to be a final and complete expression of their agreement and understanding with respect to the subject matter of the Settlement Agreement. Any and all previous agreements and understandings between or among the parties regarding settlement of the Federal Lawsuit whether written or oral, including specifically, the Agreement between Orion and Concerned Citizens of New Sarpy and Dorothy Jenkins, dated December 9, 2002, are superseded and rendered null and void by this Agreement. The terms of this Agreement cannot be altered, changed or modified except in writing executed by each of the parties, and no provisions can be waived unless expressed in writing and signed by each of the parties.

5. Multiple Originals: The parties may execute this Agreement in multiple originals and/or counterparts. If so executed, this Agreement shall be valid and binding as if all parties executed the same original.

6. Enforcement: If any of the provision of the Agreement is found to be unenforceable, that finding shall not effect the enforceability of any other provision hereof.

IN WITNESS THEREOF, Orion, CCNS, by and through its designated president, Dorothy Jenkins, and Dorothy Jenkins in her individual capacity, have each executed this Agreement individually or through their duly authorized undersigned representatives as of the dates set forth below.

ORION REFINING CORPORATION

By: _____

Title: _____

Date: _____

CONCERNED CITIZENS OF NEW SARPY
By its President, Dorothy Jenkins

DOROTHY JENKINS

Date: _____

DOROTHY JENKINS

Date: _____

Approved as to form:
On behalf of Orion Refining Corp.

MICHAEL A. CHERNEKOFF Bar No. 1295
STANLEYA. MILLAN Bar No. 9658
TARA G. RICHARD Bar No. 26356
Jones, Walker, Waechter,
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201 St. Charles Avenue
New Orleans, Louisiana 70170
(504) 582-8000

Date: _____

Approved as to form:
On behalf of Concerned Citizens of New Sarpy and Dorothy Jenkins: Date: _____

ADAM BABICH, Bar No. 27177
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EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CONCERNED CITIZENS)	
OF NEW SARPY)	
)	
Plaintiff,)	
	)	File Number: 2:01CV3704
v.	)	Section: D
	)	Judge McNamara
ORION REFINING	)	Magistrate Judge Chasez
CORPORATION)	
)	
Defendant.)	

JOINT MOTION FOR DISMISSAL PURSUANT TO SETTLEMENT

Pursuant to a Settlement Agreement by and between Orion Refining Corporation ("Orion"), the Concerned Citizens of New Sarpy ("CCNS") and Dorothy Jenkins, Orion and CCNS move jointly for dismissal of this action with prejudice provided that this Court retains jurisdiction over this matter to enforce the terms of the Settlement Agreement and CCNS retains the right to petition the Court for an award of costs. As grounds for their Motion, the parties state:

1. The parties have agreed to and executed a Settlement Agreement embodying a cooperative resolution of this matter. The parties do not contemplate filing a copy of the Settlement Agreement in the record of this action unless (1) the Court requests that a copy be filed, or (2) one of the parties moves to enforce the terms of the Settlement Agreement. If it is necessary to file a copy of the Settlement Agreement in the record of this action, the parties request leave to file such Settlement Agreement under seal.
2. The Parties agree that the possibility of further disputes will be minimized if this Court retains jurisdiction to enforce the terms of the

Settlement Agreement. Further, CCNS reserves its right to petition the Court for an award of litigation costs including but not limited to expert consultant fees (but not including attorney fees) within 30 days after entry of the Court's Order of dismissal.

Wherefore: This Court should dismiss this action with prejudice, subject to CCNS's right to petition the Court for an award of litigation costs including but not limited to expert consultant fees (but not including attorney fees) within 30 days after entry of the Court's Order of dismissal. Also, this Court should retain jurisdiction for the limited purpose of enforcing the Parties' Settlement Agreement.

Respectfully submitted on December __, 2002.

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EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CONCERNED CITIZENS)	
OF NEW SARPY)	
)	
Plaintiff,)	
	)	File Number: 2:01CV3704
v.	)	Section: D
	)	Judge McNamara
ORION REFINING	)	Magistrate Judge Chasez
CORPORATION)	
)	
Defendant.)	
)	

[Proposed] ORDER OF DISMISSAL PURSUANT TO SETTLEMENT

Having considered the joint motion of the Parties and being fully advised, the Court hereby grants the Parties’ joint motion. Accordingly:

This matter is hereby dismissed with prejudice except that this Court retains jurisdiction over this matter to enforce the terms of the Settlement Agreement. Further, CCNS may petition the Court for an award of litigation costs including but not limited to expert consultant fees (but not including attorney fees) within 30 days after entry of this Order. If any of the Parties moves to enforce the terms of the Settlement Agreement or if it is otherwise necessary to file a copy of the Settlement Agreement, the parties are granted leave to file a copy of such Settlement Agreement under seal.

Judgment shall enter on this matter consistent with the terms of this Order.

Dated: _____

Judge A. J. McNamara, United
States District Court, Eastern
District, La.

EXHIBIT C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CONCERNED CITIZENS)	
OF NEW SARPY)	
)	
Plaintiff,)	
	)	File Number: 2:01CV3704
v.	)	Section: D
	)	Judge McNamara
ORION REFINING	)	Magistrate Judge Chasez
CORPORATION)	
)	
Defendant.)	

JOINT MOTION FOR STAY PURSUANT TO SETTLEMENT

Pursuant to a Settlement Agreement by and between Orion Refining Corporation ("Orion"), the Concerned Citizens of New Sarpy ("CCNS") and Dorothy Jenkins, Orion and CCNS move for a stay of this lawsuit pending settlement. As grounds for their Joint Motion, the Parties state:

1. The parties contemplate moving jointly for dismissal of this action pursuant to a settlement agreement after Orion and the Louisiana Department of Environmental Quality ("LDEQ") finalize a settlement agreement (the "LDEQ Settlement Agreement") consistent with an existing preliminary agreement between Orion and LDEQ.
2. The parties expect the LDEQ Settlement Agreement to be final soon. If, however, the LDEQ Settlement Agreement is not final within 180-

days, CCNS reserves the right – after an additional 60-day period for consultation with Orion – to Move to lift the stay of this lawsuit.

Wherefore: This Court should stay this action pending a joint motion to dismiss pursuant to a settlement agreement, reserving to CCNS the right to move – after a 60-day period for consultation with Orion – to lift the stay if the LDEQ Settlement is not final within 180 days.

Respectfully submitted on December __, 2002.

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