



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
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December 21, 2012

John Moritz, Plant Manager
Imerys Minerals California, Inc
P.O. Box 636
16419 Road 10.5 NW
Quincy, WA 98848-0636

Notice of Penalty and Agreed Order Docket #	Notice of Penalty # 9653
Site Location	Agreed Order # 9677
Penalty Amount	Quincy Operations
	\$120,000

Re: Notice of Penalty and Agreed Order

Dear Mr. Moritz:

The Department of Ecology (Ecology) has issued the enclosed Notice of Penalty to you for violating provisions of:

- Permit No. 10AQ-E339, as superseded by Order No. 11AQ-E433
- Chapter 173-400 Washington Administrative Code (WAC) – General Regulations for Air Pollution Sources
- Chapter 70.94 Revised Code of Washington (RCW) – Washington Clean Air Act

Also attached is the Settlement Agreement and Agreed Order, No. 9677, that settles the above described Notice of Penalty. This Settlement reflects a negotiated agreement with Imerys (formerly known as Celite).

Please read the following enclosure(s):

- **Notice of Penalty:** Describes the violations.
- **Settlement Agreement and Agreed Order:** Describes the innovative settlement, reached between Ecology and Imerys, of past violations recognized in NOP #9653. This settlement includes both a cash penalty and funding of a Supplemental Environmental Project that will benefit the community of Quincy.
- **News Release:** Ecology issues news releases for all major penalties and enforcement actions, including this one. A courtesy copy of the draft news release is included and was forwarded via e-mail at 9:30 am on December 20, 2012 to Imerys' representatives. If you have a comment or question, contact Ecology communication manager Brook Beeler at (509) 329-3478 or brook.beeler@ecy.wa.gov within one business day of when you first receive the draft news release.

If you have questions please contact Karen K. Wood at karen.wood@ecy.wa.gov or (509) 329-3452.

Sincerely,



Polly Zehm
Deputy Director

Enclosures: Notice of Penalty Docket # 9653
Draft News Release

By certified mail # 7009 0820 0001 9056 2599

cc: Penalty Desk – Fiscal Office, Ecology



DEPARTMENT OF ECOLOGY
THE STATE OF WASHINGTON

Imerys Minerals California, Inc.
Formerly known as Celite Corporation
Quincy Washington Plant) SETTLEMENT AGREEMENT
P.O. Box 636) AND
16419 Road 10.5 NW) AGREED ORDER NO. 9677
Quincy, WA 98848

Imerys Minerals California, Inc (Imerys), formerly known as Celite Corporation, and the State of Washington, Department of Ecology (Ecology), enter into the following Settlement to resolve violations captured in Notice of Violations (NOV) #8560 and #8999 and Ecology Penalty No. 9653, as they each wish to preserve resources and energy, avoid litigation, and maintain a positive working relationship.

I. BACKGROUND

- A. On June 1, 2011 Ecology issued NOV No. 8560. Notice of Violation No. 8560 was issued for releases of particulate matter and nitrogen oxide in excess of permit limits during testing conducted on July 18-19, 2010 and January 25, 2011.
- B. On February 8, 2012 Ecology also issued NOV No. 8999 for violation of 40 Code of Federal Regulations Part 60 Subpart UUU. The NOV stated that Celite/Imerys had been out of compliance with the federal regulation, cited above, since 1992.
- C. On October 23, 2012 Ecology met with Imerys representatives Tom Hawk, John Moritz, and Ryan Van Meter to discuss the violations and a potential path forward to resolution.
- D. On December 20, 2012, Ecology issued Notice of Penalty No. 9653 for \$120,000 for the violations outlined in NOV No. 8560 and NOV No. 8999.

II. AUTHORITY

Ecology's Air Quality Program has authority to enter into this Agreed Order under the Washington State Clean Air Act, RCW 70.94.331(1) and RCW 70.94.141(3), and the Washington State Administrative Procedures Act, RCW 34.05.060.

III. SETTLEMENT AND AGREED ORDER

A. SCOPE

This Settlement and Agreed Order constitutes the entire Settlement and Agreed Order between the parties and settles all issues raised by NOV No. 8560, NOV 8999 and Penalty No. 9653. Ecology agrees to deem Penalty No. 9653 satisfied upon Imerys' satisfactory and timely completion of obligations under this Agreed Order. This Agreed Order applies only to NOV No. 8560, NOV No. 8999, and Penalty No. 9653, and does not in any way limit Ecology's authority to issue other penalties or enforcement actions for violations that are not addressed in Penalty No. 9653.

B. IMERYS OBLIGATIONS

1. Cash Payment

Imerys shall pay a penalty in the amount of \$120,000 as follows: Imerys shall by January 20, 2013 pay to Ecology's Air Pollution Control Account \$60,000 payable to "Department of Ecology." Imerys shall make the payment by check or money order directly payable to "Department of Ecology" and make reference to Penalty No. 9653, and send the payment to:

Department of Ecology
Attn: Cashiering Unit
P.O. Box 47611
Olympia, WA 98504-7611

Imerys shall submit a photocopy of the payment described above to:

Karen Wood
Ecology Air Quality Program
4601 N. Monroe Street
Spokane Washington 99205

2. Supplemental Environmental Project

In order to satisfy the remainder of the penalty, Imerys shall perform the Ecology approved supplemental environmental project (SEP) described in Attachment A, which consists of providing funding for a local school bus anti-idle diesel emission reduction program for the Quincy School District. If Imerys fails to complete the requirements of the SEP as outlined in

Exhibit A, the balance of the \$120,000 penalty, not already paid to Ecology, will become immediately due and payable to Ecology without further right of administrative or judicial review, except as provided in paragraph E. of this Agreement. This immediate payment of the remaining penalty shall be the sole remedy for Imerys' failure to complete the SEP, and no additional enforcement action under Section E. of this Agreement may be taken unless Imerys fails to timely pay the remaining penalty following notice from Ecology.

C. WAIVER

By entering into this Settlement and Agreed Order, Imerys waives any right of administrative or judicial review or appeal on the underlying merits of the violations in NOV No. 8560 and NOV No. 8999 and agrees not to appeal this Settlement and Agreed Order.

D. ECOLOGY OBLIGATIONS

Ecology agrees not to take further enforcement action on the violations outlined in NOV No. 8560, NOV No. 8999, and Penalty No. 9653 if Imerys satisfactorily and timely completes the obligations required by this Settlement and Agreed Order.

E. REMEDIES

In the event that Imerys violates the terms of this Settlement and Agreed Order, Ecology may pursue all remedies available by law including enforcement action on the violations outlined in NOV No. 8560, NOV No. 8999 and Penalty No. 9653. However, Imerys does not waive the right to contest whether violations of this Settlement and Agreed Order have occurred.

Ecology shall be entitled to recover its costs, including attorney fees, in any action brought in Superior Court to enforce this Settlement and Agreed Order in which Ecology is a prevailing party.

F. VENUE

Imerys agrees that the venue for any judicial action to enforce this Settlement and Agreed Order shall be in Thurston County Superior Court.

G. PRESS RELEASES AND OTHER DOCUMENTS

Ecology Policy 20-03 requires that Ecology issue a press release publicizing any penalty or settlement exceeding \$10,000. Ecology will develop a draft press release and will allow Imerys an opportunity to review the release for factual accuracy prior to issuance. Any document prepared by Imerys related to this Settlement and Agreed Order, such as a press release, shall be identified as resulting from a settlement with Ecology.

H. TAX CREDIT DISALLOWED

Imerys shall not deduct or credit against taxes due or payable (a) any monies paid as cash payments; (b) monies utilized for implementation of supplemental environmental projects under this Agreement; or (c) in-kind contributions for supplemental environmental projects under this Agreement, nor otherwise receive any tax benefits from payment of monies as cash payments or for implementation of supplemental environmental projects under this Settlement and Agreed Order.

I. RELEASE OF LIABILITY

Imerys and its heirs, assigns, or other successors in interest, agree to release and discharge the Department of Ecology and its officers, agents, employees, agencies and departments from any damages and causes of action of any nature arising out of the incidents that gave rise to this Settlement and Agreed Order.

J. EFFECTIVE DATE

This Settlement and Agreed Order shall become effective when the final signature is affixed.

K. SIGNATORIES AUTHORIZED

The undersigned representatives for Ecology and Imerys certify that they are fully authorized by the party whom they represent to enter into the terms and conditions of this Settlement and Agreed Order and to legally bind such party thereto.

L. EXECUTION

This document may be executed in counterparts and may be executed by facsimile, and each executed counterpart shall have the same force and effect as the original instrument.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Polly Zehm
Polly Zehm
Deputy Director

Dated: 12/21/12

Imerys Minerals California, INC.

Douglas Smith
Douglas Smith
Printed Name of Representative

Dated: 12/21/12

SEP Project Plan

As part of a Settlement Agreement between the Washington Department of Ecology and Imerys (formerly known as Celite), Imerys agrees to pay \$60,000 to support purchases of small diesel engine heaters for Quincy School District school buses (the "Heaters"). Imerys and Ecology agree that this project will reduce air emissions during idle operation of the school buses, as well as provide heat to the vehicles for the comfort and safety of their occupants.

Within thirty (30) days of the execution of the Settlement Agreement, Imerys and the Quincy School District shall jointly establish an account with a local financial institution to fund the Supplemental Environmental Project (the "SEP Account"). Imerys will contribute the entire \$60,000 sum to the SEP Account and provide evidence of this deposit to Ecology within this 30 day period. The Quincy School District shall have authority to withdraw from and receive current information about the SEP Account.

Ecology will provide the Quincy School District a list of approved vendors for the sale and installation of the Heaters. Ecology has not selected any particular Heater technology for this SEP Project; however, Ecology retains the right to approve individual purchases and installations of Heaters, as set forth below.

Prior to the purchase or installation of any Heaters, the Quincy School District shall obtain a proposal from an approved vendor for the equipment or installation work and provide that proposal to John Poffenroth, Ecology, for prior approval. Upon receipt of written (including electronic) approval from Mr. Poffenroth for the proposal, the Quincy School District may withdraw such funds as are necessary to complete the purchase outlined in the proposal from the SEP Account and provide notice to Imerys and Ecology of the withdrawal. The SEP Account money can only be used for equipment and contracted installs and the Quincy School District, Ecology, nor Imerys can charge any overhead fees associated with administration of the project.

Purchases and installation of Heaters shall occur from time to time, as the equipment becomes available and the buses sought to be upgraded are available. Priority for Heater Installation should be given to higher-use vehicles and vehicles anticipated to have a longer useful life.

If the SEP Account has not been exhausted within one (1) year of its establishment, Ecology, Imerys, and the Quincy School District shall meet to discuss a plan for disbursement of the remaining funds, with the objective of providing school bus emission reduction within the Quincy community.

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I have read and agree with the outline of the project as described above, and Quincy School District will comply with these expectations as a condition of receiving the allotted funds.

Quincy School District

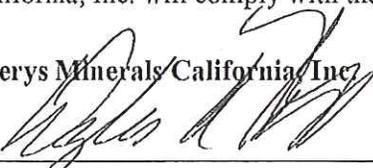
Authorized Signature

Date

Name and Title

I have read and agree with the outline of the project as described above, and Imerys Minerals California, Inc. will comply with the outlined requirements.

Imerys Minerals California, Inc.



Authorized Signature

Date

12/21/12

Douglas Smith, VP & General Manager
Name and Title

I have read and agree with the outline of the project as described above, and Quincy School District will comply with these expectations as a condition of receiving the allotted funds.

Quincy School District

Burton Dickerson
Authorized Signature

12-20-12
Date

Burton Dickerson, Superintendent
Name and Title

I have read and agree with the outline of the project as described above, and Imerys Minerals California, Inc. will comply with the outlined requirements.

Imerys Minerals California, Inc.

Authorized Signature

Date

Name and Title

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

IN THE MATTER OF THE ASSESSMENT OF
PENALTY AGAINST

) NOTICE OF PENALTY
) INCURRED AND DUE
) DOCKET #9653

John Moritz, Plant Manager
Imerys Minerals California, Inc
P.O. Box 636
16419 Road 10.5 NW
Quincy, WA 98848-0636

The Department of Ecology (Ecology) has assessed a penalty against you in the amount of \$120,000 for violating provisions of:

- Permit No. 10AQ-E339, as superseded by Order No. 11AQ-E433
- Chapter 173-400 Washington Administrative Code (WAC) – General Regulations for Air Pollution Sources
- Chapter 70.94 Revised Code of Washington (RCW) – Washington Clean Air Act

This Notice of Penalty is in reference to Notice of Violations, Docket Nos. 8560 and 8999, that Ecology issued on June 1, 2011 and February 8, 2012, respectively. Ecology has authority to issue this penalty under RCW 70.94.431.

I. FINDINGS OF FACT

1. The Ecology Air Quality Program has been working with Celite to reduce carbon monoxide (CO), nitrogen oxide (NOx), and particulate matter (PM) emissions from the wet scrubber stack since 2007.
2. The AQP determined that the wet scrubber had applicable Title 40, CFR Part 60, New Source Performance Standards (NSPS). This information of applicable federal requirements was shared with Celite during preparation of an emission limitation order in 2009.
3. In correspondence dated February 12, 2010, Celite acknowledged that the dryer was Title 40, CFR 60, Subpart UUU, applicable since 1992, based on the replacement of the In-Line Burner with a larger unit (9 mm Btu to 15 mm Btu). Celite requested time to come into compliance with the Subpart UUU particulate matter (PM) emission limit. NOV No. 8999 was issued for this violation.
4. Title 40, CFR 60, Subpart UUU, limits PM emissions from the wet scrubber to 0.040gr/dscf. Testing of the scrubber exhaust stack measured exceedances of the NSPS Subpart UUU PM emission limits on the following dates:
 - 4.1 May 15, 1992 testing measured 0.060 gr/dscf
 - 4.2 January 5, 1995 testing measured 0.050 gr/dscf
 - 4.3 November 2, 2007 testing measured 0.061 gr/dscf
 - 4.4 January 22, 2008 testing measured 0.087 gr/dscf
 - 4.5 July 19, 2010 testing measured 0.053 gr/dscf
 - 4.6 January 25, 2011 testing measured 0.055 gr/dscf

5. Ecology issued Order No. 10AQ-E339, on March 16, 2010, that included Approval Condition 24.1, which limited scrubber stack exhaust particulate matter emission concentrations to 0.040 grains per dry standard cubic foot (gr/dscf). Celite operated in violation of Approval Condition 24.1 from March 16, 2010 until May 18, 2011. NOV No. 8560 was issued for this violation.
6. Order No. DE 97AQ-E148, issued October 9, 1997, contained Approval Condition 2.1.1, that limited nitrogen oxide (NOx) emission concentrations to 100 ppm. This order was replaced by 10AQ-E339 included Approval Condition 24.3 that limited scrubber stack exhaust NOx emission concentrations to 100 ppm. Celite replaced the dryer burner in July 2008 and May 2012. The dryer burner is vented through the wet scrubber stack. Testing of the wet scrubber exhaust stack on January 25, 2011 measured 119 ppm NOx. Celite has operated in violation of Approval Condition 24.3 from January 25, 2011 until May 18, 2011. NOV No. 8560 was issued for this violation.
7. On May 18, 2011, Celite tested the scrubber exhaust stack. The test measured particulate matter emissions concentration at 0.026 gr/dscf. Celite has been considered to be in compliance with Order No. 10AQ-E339 Approval Condition 24.1 since May 18, 2011.
8. Ecology issued Order No. 11AQ-E433 on October 24, 2011 that replaced Order No. 10AQ-E339. Order No. 11AQ-E433 revised operating parameters for the wet scrubber, but contained all other conditions from Order No. 10AQ-E339. Celite appealed Order No. 11AQ-E433 to the PCHB, and that appeal is still pending. Order No. 11AQ-E433 has not been stayed, and is currently in effect.

II. DETERMINATION OF VIOLATIONS

Ecology has determined the following violation(s) have occurred.

Notice of Violation No. 8560:

Celite was issued NOC Approval Order No. 10AQ-E339 March 16, 2010. Celite has failed to verify compliance with permitted emissions limits from date of issuance and is found to be in violation of:

1. RCW 70.94, Washington Clean Air Act
2. WAC 173-400-111(10) states: "all persons who receive an order of approval must comply with all approval conditions contained in the order of approval."
3. NOC Approval Order No. 10AQ-E339:
 - a) Approval Condition 23.1 (Kiln By-pass exhaust stack). Celite exceeded permitted PM₁₀ emissions limits from July 18, 2010 until NOC Approval Order No. 11AQ-E433 was issued on October 24, 2011. This issue was resolved on October 24, 2011 with a revision of the kiln by-pass exhaust stack PM emission concentration limit (from 0.006 gr/dscf to 0.030 gr/dscf).
 - b) Approval Condition 24.1 (Wet Cyclone/Venturi exhaust stack). Celite exceeded permitted PM emissions limits from March 16, 2010 until May 18, 2012.
 - c) Approval Condition 24.3 (Wet Cyclone/Venturi exhaust stack Nitrogen Oxide limitation). Celite exceeded permitted NOx emissions limits from January 25, 2011 until May 18, 2011.

Notice of Violation No. 8999:

1. **70.94 RCW, Washington Clean Air Act**
2. **Chapter 173-400 WAC**
 - 2.1 WAC 173-400-115, Standards of performance for new sources, NSPS. Ecology adopted by reference Subpart UUU as of January 1, 1993.
3. **40 CFR 60.732, Standards for particulate matter**, which states in part "Each owner or operator of any affected facility that is subject to the requirements of this subpart shall comply with the emission limitations set forth in this section on and after the date on which the initial performance test required by 60.8 is completed, but not later than 180 days after the initial startup, whichever date comes first. No emissions shall be discharged into the atmosphere from any affected facility that: (a) Contains particulate matter in excess of 0.092 gram per dry standard cubic meter (g/dscm) [0.040 grain per dry standard cubic foot (gr/dscf)] for calciners and dryers installed in series and in excess of 0.57 g/dscm (0.25 gr/dscf) for dryers.
 - 3.1 Celite operates a calciner and dryers in series, the particulate matter emission concentration from the scrubber exhaust stack failed to comply with 40 CFR 60.732(a) limits during the following test dates:
 - 3.1.1 January 5, 1995
 - 3.1.2 November 2, 2007
 - 3.1.3 January 22, 2008
 - 3.1.4 July 19, 2010
 - 3.1.5 January 25, 2010
 - 3.2 Celite operates a calciner and dryer in series. Particulate matter emission concentrations from the scrubber exhaust stack have been in violation of 40 CFR 60.732(a) for a total of 2621 days:
 - 3.2.1 January 5, 1995 to August 25, 1999 (1693 days)
 - 3.2.2 November 2, 2007 to May 18, 2010 (928 days)
4. **40 CFR 60.734, Monitoring of emissions and operations, Subsection (d)** states in part that "any affected facility shall install, calibrate, maintain, and operate monitoring devices that continuously measure and record the pressure loss of the gas stream through the scrubber and the scrubbing liquor flow rate to the scrubber". Celite has not shown compliance with 40 CFR 60.734(d) since 1992.
5. **40 CFR 60.735, Recordkeeping and reporting requirements, Subsections (a), (b), and (c)** requires that any operator that uses a wet scrubber, used to control particulate emissions from an affected facility, maintain records of specific data contained in 60.735(a) and (b) and report information specific data contained in 60.735(c). Celite has not shown compliance with 40 CFR 60.735(a), (b), and (c) since 1992.

III. ELIGIBILITY FOR PAPERWORK VIOLATION WAIVER AND OPPORTUNITY TO CORRECT

Under RCW 34.05.110, small businesses are eligible for a waiver of a first-time paperwork violation and an opportunity to correct other violations.

Ecology has determined the requirements of RCW 34.05.110 do not apply to the violations described in this Notice of Penalty because you are not a small business as defined in RCW 34.05.110 (9).

Ecology has determined the violation(s) described in this Notice of Penalty are not paperwork violations under RCW 34.05.110 and therefore you are not eligible for a waiver for a first-time paperwork violation.

IV. OPTIONS FOR RESPONDING TO A NOTICE OF PENALTY

Option 1: Pay the penalty within 30 days after receiving the Notice of Penalty.

Make your payment payable to the *Department of Ecology*. Please include the penalty docket number on your payment.

Mail payment to:

Department of Ecology
Cashiering Unit
PO Box 47611
Olympia, WA 98504-7611

Note: Ecology may take legal action to collect the penalty if you have not paid 30 days after receiving the Notice of Penalty, and have not appealed.

Option 2: Appeal to the PCHB and serve Ecology within 30 days after the date of receipt of the Notice of Penalty.

The appeal process is governed by Chapter 43.21B RCW and Chapter 371-08 WAC. "Date of receipt" is defined in RCW 43.21B.001(2).

To appeal you must do both of the following within 30 days after the date of receipt of this Notice of Penalty:

- File your appeal and a copy of this Notice of Penalty with the Pollution Control Hearings Board (PCHB) during regular business hours.
- Serve a copy of your appeal and this Notice of Penalty on Ecology in paper form, by mail or in person. E-mail is not accepted.

You must also comply with other applicable requirements in Chapter 43.21B RCW and Chapter 371-08 WAC.

V. ADDRESS AND LOCATION INFORMATION

Street Addresses	Mailing Addresses
Department of Ecology Attn: Appeals Processing Desk 300 Desmond Drive SE Lacey, WA 98503	Department of Ecology Attn: Appeals Processing Desk PO Box 47608 Olympia, WA 98504-7608
Pollution Control Hearings Board 1111 Israel Road SW Suite # 301 Tumwater, WA 98501	Pollution Control Hearings Board PO Box 40903 Olympia, WA 98504-0903

VI. CONTACT INFORMATION

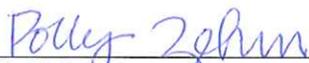
Please direct all questions about this Notice of Penalty to:

Gregory S. Flibbert, Unit manager
Department of Ecology
Ecology Eastern Regional Office
4601 N. Monroe Street
Spokane, WA 99205-1295
(509) 329-3452, gregory.flibbert@ecy.wa.gov

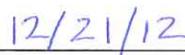
VII. MORE INFORMATION

- **Pollution Control Hearings Board**
www.eho.wa.gov/Boards_PCHB.aspx
- **Chapter 43.21B RCW, Environmental and Land Use Hearings Office – Pollution Control Hearings Board**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=43.21B>
- **Chapter 371-08 WAC – Practice and Procedure**
<http://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>
- **Chapter 34.05 RCW – Administrative Procedure Act**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=34.05>
- **Chapter 70.94 RCW, Washington Clean Air Act**
<http://apps.leg.wa.gov/RCW/default.aspx?cite=70.94>
- **Air Quality Rules**
www.ecy.wa.gov/laws-rules/ecywac.html#air

VIII. SIGNATURE



Polly Zehm, Deputy Director
Department of Ecology



Date