

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into between and among the Delaware Department of Natural Resources and Environmental Control (“DNREC”) and Kuehne Chemical Company, (“Kuehne”) (collectively the “Parties”) to resolve certain matters associated with hydrogen emissions in excess of Kuehne’s Coastal Zone Act permit conditions at Kuehne’s facility located at 1645 River Road, New Castle, Delaware 19720 (the “Facility”).

RECITALS

WHEREAS, DNREC is a state agency charged with the protection of public health and the environment, and is charged with enforcing the provisions of Chapter 70 of Title 7 of the Delaware Code; and

WHEREAS, Kuehne operates the Facility; and

WHEREAS, Kuehne produces sodium hypochlorite (a strong bleach product) at the Facility; and

WHEREAS, the Facility is subject to Coastal Zone Act permit 334P, issued by DNREC on October 25, 2002 (the “CZA Permit”); and

WHEREAS, in applying for the CZA Permit Kuehne sought to increase onsite production of chlorine, a raw material used in sodium hypochlorite production, from 50.4 tons per day to 133 tons per day; and

WHEREAS, the CZA requires the offset of negative environmental impacts involving the release of pollutants and the CZA Permit required the implementation of certain offset projects to offset such releases (*see* 7 DE Admin. C. §101-9.0); and

WHEREAS, the offset projects in the CZA Permit application, which were incorporated into the CZA Permit, were designed to reduce hydrogen emissions by up to 451 tons per year and thereby limit hydrogen emissions to 95 tons per year (the “Offset Requirements”) through the acquisition of a new hydrogen boiler and retrofitting a dual fired natural gas and hydrogen boiler to burn hydrogen as a fuel source for the Facility’s operations instead of No. 2 fuel oil; and

WHEREAS, the new hydrogen boiler and dual fired natural gas boiler did not become operational until 2009 and 2011, respectively; and

WHEREAS, the approval of the offset proposal was contingent upon submission of stack test results once the equipment was installed to measure actual nitrogen oxide emissions, which stack test results were not timely provided to DNREC’s Coastal Zone Program (the “Reporting Violations”); and

WHEREAS, DNREC has become aware that between 2002 and 2022, hydrogen emissions from the Facility have ranged between 418 and 797 tons annually, with ongoing emissions consistent with reporting from that time period, thereby failing to meet the Offset Requirements (the “Offset Violations” and collectively with the Reporting Violations the “Violations”); and

WHEREAS, Kuehne has agreed to pay a civil penalty and complete certain community projects (“Community Projects”) in resolution of the Violations; and

WHEREAS, Kuehne will submit a permit modification to DNREC that implements certain projects to reduce hydrogen emissions; and,

WHEREAS, the Parties have agreed that settlement of the matters addressed by this Agreement is in the best interest of the Parties, and that entry of this Agreement is the most

appropriate means of resolving the matters addressed herein.

AGREEMENT

NOW THEREFORE, in exchange for the mutual considerations set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties amicably agree to resolve the Violations under (i) Chapters 60 and 70 of Title 7 of the Delaware Code, (ii) 7 DE Admin. Code § 101 *et seq.*, and/or (iii) the CZA Permit, stipulating as follows:

I. EMISSIONS COMPLIANCE

1. Kuehne shall submit a written request to modify the CZA Permit (the “Permit Modification”) that includes one or more Hydrogen Emissions Reduction Projects (defined herein) for the control, capture and/or reduction of hydrogen emissions. Kuehne’s Permit Modification shall implement measures to achieve reductions in hydrogen emissions from the Facility to meet the greater of (i) the Offset Requirements (95 tons per year) in the CZA Permit or (ii) such alternative hydrogen emissions limit as may be determined by the Department during review of the Permit Modification, subject to the provisions contained in this Agreement. Within 180 days of the Effective Date of this Agreement, Kuehne will submit the Permit Modification for construction and operation of measures necessary to reduce hydrogen emissions as required to comply with this Agreement (the “Hydrogen Emissions Reduction Projects”). The requirements of this paragraph shall not be complete until after the Permit Modification is approved by DNREC, the Hydrogen Emissions Reduction Projects are completed, and hydrogen emissions are within the emissions limits established by DNREC in accordance with this

Agreement. The reductions in hydrogen emissions from the Facility resulting from the Permit Modification shall not be considered voluntary improvements in any future application by Kuehne to DNREC.

II. ADMINISTRATIVE PENALTY

1. Kuehne shall pay to DNREC civil penalties as follows (collectively the “Penalty”):

- a. Pay a one-time payment of \$170,000 within thirty (30) days of the Effective Date of this Agreement; and
- b. Pay \$10,000 on or before June 30, 2025, and \$10,000 on or before June 30, 2026.

If prior to either of the foregoing dates Kuehne receives approval for the Permit Modification and provides documentation acceptable to DNREC, in DNREC’s sole discretion, that hydrogen emissions have been reduced as required by this Agreement, Kuehne shall not be obligated to pay any amount set forth in the foregoing sentence that is due after the date Kuehne provides such documentation. Should Kuehne be unable to demonstrate to DNREC by the later of (i) June 30, 2026 or (ii) 24 months from receipt by Kuehne of all governmental approvals required for construction and operation of the Hydrogen Emissions Reduction Projects, including from New Castle County Department of Land Use and City of New Castle Building & Zoning, that hydrogen emissions from the Facility have been reduced as required by this Agreement, this Agreement shall terminate and DNREC shall be entitled to pursue any and all enforcement mechanisms available to it for continued or future violations.

2. In the event any Penalty payment is not timely paid, Kuehne agrees to pay interest on any

remaining balance at the statutory rate pursuant to 6 *Del. C.* § 2301.

3. Kuehne shall submit to DNREC all Penalty payments, along with any interest due, by corporate check, payable to the State of Delaware, and mailed to the following address:

**Leslie Reese, Office of the Secretary
Delaware Department of Natural Resources and Environmental
Control
89 Kings Highway,
Dover, DE 19901**

III. COMMUNITY PROJECTS

1. Kuehne shall fund the Community Projects (defined herein) as set forth in this Section.
2. Kuehne shall provide funding for community projects with environmental, environmental justice, public health, safety, recreation, or other similar benefits to the community in close proximity to the Facility (the "Community Projects"). Kuehne shall make each of the following one-time, nonrefundable payments (together, the "Community Project Payments") within thirty (30) days of the Effective Date of this Agreement to satisfy this obligation:

- a. Sixty-six thousand eight hundred fourteen dollars and fifty-seven cents (\$66,814.57) to the Delaware City Fire Company, to fund the purchase of an air compressor described in Exhibit A; and
- b. Two hundred thousand dollars and zero cents (\$200,000.00) to the city of Delaware City, Delaware, to fund flood resiliency and mitigation efforts, similar to that described in Exhibit B.

Kuehne shall submit to DNREC proof of payment for the Community Project Payments within sixty (60) days of the Effective Date of this Agreement.

3. The failure by Kuehne to make the Community Project Payments and provide proof of payment within the timeframes specified in Section III.2 shall be a violation of this Agreement and shall obligate Kuehne to pay to DNREC a one-time payment of \$630,000 within sixty (60) days of the estimated completion date. DNREC shall not unreasonably refuse extensions of time for reasons outside Kuehne's control.
4. To the extent that any of the Community Projects require DNREC permits, regulatory approvals, and/or review, nothing in this Agreement shall be construed to replace or modify any permit or approval process.

IV. EFFECT OF SETTLEMENT

1. Upon Kuehne's complete satisfaction of its obligations under this Agreement, including full payment of the Penalty under Section II, funding of the Community Projects under Section III, and compliance with this Agreement, DNREC releases from liability and covenants not to sue Kuehne, including its agents, employees, contractors, parent entities, affiliates, subsidiaries, shareholders, members, partners, trustees, officers, directors, predecessors, successors, assigns, and representatives for the Violations, including those under (i) Chapters 60 and 70 of Title 7 of the Delaware Code, (ii) 7 DE Admin. Code § 101 *et seq.*, and the (iii) CZA Permit.
2. Upon completion of its aforementioned obligations, Kuehne may request, via written notice to DNREC's address identified in Section V.9, that DNREC provide written acknowledgment that Kuehne has completed its obligations under this Agreement, and DNREC shall respond, with either a written acknowledgment of completion or a letter identifying any outstanding obligations, within thirty (30) days of Kuehne's request.

Kuehne shall respond to DNREC's letter within thirty (30) days, either submitting documentation that outstanding obligations have been completed, or outlining Kuehne's plan to complete any outstanding obligations by a date certain. DNREC shall not unreasonably withhold its acknowledgement that Kuehne has completed its obligations under this Agreement.

3. Nothing in this release or this Agreement shall be construed to limit or affect DNREC's right or ability to bring any action allowable by law against Kuehne or its owner(s), operator(s), employee(s), agent(s), or servant(s) for any violation(s) unrelated to the Violations for which liability has been specifically released by this Agreement. DNREC further retains and reserves the right(s) to consider all past, present, or future alleged violations in any future permitting or enforcement decisions.
4. Kuehne's liability under this Agreement regarding the Community Projects shall be limited to funding such projects as provided in this Agreement. Upon funding the Community Projects as provided in this Agreement, Kuehne shall have no further liability regarding or arising out of the Community Projects.

V. GENERAL PROVISIONS

1. No Admission of Liability: Kuehne enters into this Agreement to resolve a disputed matter, and does not admit any fact, liability or violation associated with the matters addressed in this Agreement.
2. Expenses, Costs, Attorney's Fees: The Parties shall bear their own costs, expenses, and attorney's fees incurred in connection with this Agreement.

3. Dispute Resolution: If either party believes the other party has not complied with the terms of this Agreement, it shall notify the other party in writing of the alleged breach of this Agreement. Within thirty (30) days of receipt by one party of the other party's writing notifying of the alleged breach, the Parties shall enter into negotiations to resolve the dispute. After thirty (30) days of the date of receipt by one party of the other party's written notice of the alleged breach, either party is free to seek any and all applicable relief concerning the alleged breach and this Agreement.
4. Binding on Successors: It is the intention of the Parties that this Agreement shall be binding upon and enforced against the Parties and their successors, heirs, executors, administrators and assigns.
5. Severability: In the event that any provision (section, paragraph, or portions thereof) of this Agreement shall be held invalid or unenforceable for any reason, it shall not in any way invalidate, affect or impair the remaining provision(s) (sections, paragraphs, or portions thereof) of this Agreement, and to this end, the provisions of this Agreement are hereby declared to be severable.
6. Authorship: No provision(s) or paragraph(s) of this Agreement shall be construed based on the authorship.
7. Executed in Counterparts: This Agreement may be executed in any number of counterparts, each of which, when executed, shall be deemed to be an original and all of which together shall constitute one and the same document.
8. Good Faith: The Parties agree to act in good faith and to cooperate fully with each other in carrying out the intent of this Agreement, provided that nothing in this Agreement

shall be construed to restrict DNREC's regulatory and permitting judgment and discretion, and nothing in this Agreement shall be construed to require DNREC to pay or appropriate any monies or expend any funds.

9. Notices: Any notices with regards to this Agreement shall be sent to:

a. DNREC:

Delaware Coastal Programs Administrator
100 W Water Street, Suite 7B
Dover, DE 19904

b. Kuehne:

Richard Wilkes (RWilkes@KuehneCompany.com)
Kuehne Company
Vice President & Chief Operating Officer
Operations Department
1645 River Road
New Castle, DE 19720

With a copy to:
Robert W. Whetzel (whetzel@rlf.com)
Philip K. Micha (micha@rlf.com)
Richards, Layton & Finger, P.A.
920 N. King Street
Wilmington, DE 19801

10. Governing Law and Venue: This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware. Any legal action brought by either party to enforce any provision of this Agreement shall be brought in the appropriate Delaware State Court located in New Castle County.

11. Authorization: The undersigned representative of each Party to this Agreement is authorized by the Party whom he or she represents to enter into the terms of this Agreement and bind that Party to them.

12. Effective Date: The effective date of this Agreement is the first date on which the Parties have all signed this Agreement.
13. Entire Understanding: This Agreement constitutes the entire agreement and settlement between the Parties. The Parties acknowledge that this Agreement may not be amended except in writing executed by both Parties.
14. No Third Party Rights: The Parties to this Agreement expressly intend that this Agreement shall create no right(s) in any person or entity not a party to this Agreement. This Agreement does not limit or affect the rights of either party to this Agreement against any person or entity not party to this Agreement.
15. Permitting: This Agreement is not a permit. Compliance with its terms does not guarantee compliance with any applicable federal, state, or local law or regulation. Nothing in this Agreement shall be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.
16. Compliance with Law: Nothing in this Agreement shall relieve Kuehne of its obligation to comply with all applicable federal, state, and local laws and regulations. Other than as expressly provided for in Section IV, nothing contained in this Agreement shall be construed to prevent, alter, or limit DNREC's ability to seek or obtain other remedies or sanctions available under federal, state, or local statutes or regulations in response to a violation by Kuehne of applicable statutes and regulations, nor to limit any defenses otherwise available to Kuehne including with respect to any such alleged violation.
17. Conflict: To the extent of any irreconcilable conflict between this Agreement and the requirements of federal and/or state law, the latter controls.

SIGNATURE PAGE FOLLOWS

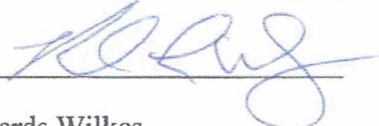
FOR THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL

By: 

Date: January 7, 2025

Lisa Borin Ogden, Secretary
Delaware Department of Natural Resources and Environmental Control

FOR Kuehne Chemical Company

By: 

Date: 12/26/24

Richards Wilkes
Vice President & Chief Operating Officer
Operations Department
Kuehne Chemical Company

Exhibit A

Delaware City Fire Company Air Compressor Information



(877) 637-3473

Quote

Quote # QT1844097
Date 08/05/2024
Expires 08/20/2024
Sales Rep Johnson, Shawn
Shipping Method FedEx Ground
Customer DELAWARE CITY FIRE CO. (DE)
Customer # C33184

Bill To

Barb Taylor
DELAWARE CITY FIRE CO.
815 5TH STREET
PO BOX 251
DELAWARE CITY DE 19706
United States

Ship To

Barb Taylor
DELAWARE CITY FIRE CO.
815 5TH STREET
PO BOX 251
DELAWARE CITY DE 19706
United States

Item	Alt. Item #	Units	Description	QTY	Unit Price	Amount
RSC-01020100			6000 psi 5 Stage Compressor 10 Horsepower, 208-230 Volt/ 1 Phase/ 60Hz, Basic, English	1	\$39,871.79	\$39,871.79
Compressor Install			Site survey, install, operate, leak test, train & perform air sample with written report.	1	\$3,500.00	\$3,500.00
RSF-22220401			Revolveair, StationaryWManualCascade, 4 bank manual cascade, CGA Adapter	1	\$19,541.16	\$19,541.16
8HP586C 6000			UN 6000 cylinder with CGA 702-25SE Valve installed Color Mapp Yellow Revolve Air Systems Custom Collar Ring with Fittings kit	1	\$2,274.62	\$2,274.62

Thank you for your business.

Subtotal \$65,187.57
Shipping Cost \$1,627.00
Tax Total \$0.00
Total \$66,814.57

This Quotation is subject to any applicable sales tax and shipping and handling charges that may apply. Tax and shipping charges are considered estimated and will be recalculated at the time of shipment to ensure they take into account the most current information.

All returns must be processed within 30 days of receipt and require a return authorization number and are subject to a restocking fee.

Custom orders are not returnable. Effective tax rate will be applicable at the time of invoice.



QT1844097

Exhibit B

City of Delaware City Flood Resiliency and Mitigation Project Information



Flood Mitigation and Wetland Restoration Project

September 13, 2024

Kuehne Chemical Company Inc. is proposing a Community Project to provide funding to Delaware City, DE to complete a Flood Mitigation and Wetland Restoration Project. The project will alleviate flooding in the north edge of the residential district within town limits.

Severe flooding in this area of Delaware City was experienced on October 29-30, 2021 due to impacts from a coastal storm. Jefferson Street, Madison Street, Monroe Street and Solomon Place were severely impacted by a tidal surge. Risk from future flooding events increases with the continuing rise in sea levels.

A study was conducted by Verdantas which revealed a vulnerability in the existing levee along Dragon Run. The flooding witnessed during the October 29/30 storm event appears to have been caused by high tidal levels in Dragon Run which exceed the height of the existing levee. During the October 29-30, 2021 storm event, the highest tide elevation was 6.1 feet whereas the levee elevation only protects up to approximate elevation of 4.0 feet. The study recommended the following corrective measures:

1. Raise the existing levee up to an elevation of 9 feet for approximately 500 lineal feet along Dragon Run
2. Construct a retaining wall in the vicinity of Solomon Place
3. Restore the wetlands north of the affected area

Delaware City has applied to FEMA/DEMA for a grant to complete the work. Funding has been approved for \$2,106,473 and Delaware City is responsible for a matching contribution of \$221,734 less \$62,100 which they have already paid pre-award costs for a balance of \$159,634. The Engineer's Opinion of Probable Project Cost is currently being updated for inflation in coordination with FEMA/DEMA. The City's contribution is estimated to increase by up to 20%, for a total matching contribution of approximately \$191,500.

Kuehne understands that, in the absence of additional funding, Delaware City will need to redirect a portion of Community Reinvestment Funds (CRF) provided through the State of Delaware Bond and Capital Improvements Act to cover the required grant match. The CRF grant is targeted to assessing and developing a resiliency plan for the City's Battery Park area along the Delaware River. This diversion of funds to cover the City's match for the FEMA/DEMA grant will impact the City's ability to fully execute the Battery Park project. Thus, Kuehne's contribution towards and support of the Flood Mitigation and Wetland Restoration Project will permit Delaware City to focus its limited resources on its Battery Park Project.

The Flood Mitigation and Wetland Restoration Project is being managed by Verdantas and it is currently entering the Design Phase.

On completion of the Design Phase, the project will enter the Permitting Phase to secure approval from Delaware Department of Natural Resources and Environmental Control's Division of Water. It is expected to require 12 months to secure permit approval.

When all permits have been approved, the project will be publicly advertised for bids and a Contractor will be secured and work completed. Completion of the project in its entirety is expected to require 30 months for an estimated completion date of March 31, 2027.

One Independence Mall
615 Chestnut Street, 6th floor
Philadelphia, PA 19106-4404



FEMA

July 5, 2024

A.J. Schall, Jr.
Governor's Authorized Representative
Delaware Emergency Management Agency (DEMA)
165 Brick Store Landing Road
Smyrna, DE 19977

**Re: Application Approval Letter
FEMA-4526-DR-DE-0009
Madison and Monroe Streets Flood Mitigation and Wetland Restoration
Hazard Mitigation Grant Program (HMGP)**

Governor's Authorized Representative Schall:

I am pleased to inform you that **Phase 1** of the **Madison and Monroe Streets Flood Mitigation and Wetland Restoration, submitted under FEMA-4526-DR-DC-0009**, has been approved. Funding will be utilized to complete engineering, design, survey, geotechnical and permitting work for the second phase of the project, which will raise the height of the levee along Dragon Run, construct a flood wall behind residences on Solomon Place, and restore 11 acres of wetland. The **first phase** of this project approves engineering, designs, surveys, geotechnical and permitting work only.

This approval is only for **Phase 1** activities which include design and engineering. No physical work or ground disturbance, other than the geotechnical studies, is to occur under this version of the project. A copy of the Record of Environmental Considerations (REC) is enclosed. The sub-recipient must adhere to all requirements and conditions outlined in the Record of Environmental Consideration (REC) document.

The Work Schedule Timeframe for Phase I of this project is 12 months from the date of this letter. All activities specified in the Scope of Work for Phase I deliverables must be submitted and reviewed by FEMA prior to the Award of Phase II funding.

Phase I deliverables expected include:

- Phase II Scope of Work
- Phase II Work Schedule
- Phase II Cost Estimate
- A finalized list of program participants;
- Final Benefit Cost Analysis;
- Supporting documentation for full Environmental Historic Preservation Review

The total approved project cost is \$2,217,340.00 with 90% federal share of \$1,995,606.00 and a 10% non-federal share of \$221,734.00. Requested sub-recipient management costs of \$110,897.00 are awarded at 100% federal share.

	Federal Share	Non-Federal Share	Total
Project Costs	\$1,995,606.00	\$221,734.00	\$2,217,340.00
Sub-Recipient Management Costs	\$110,867.00	\$0.00	\$110,867.00
Total	\$2,106,473.00	\$221,734.00	\$2,328,207.00

This project was reviewed and determined to meet the requirements outlined in the Strategic Funds Management (SFM) Initiative where funds will be provided according to the outlined schedule below for this project.

The total approved **Project Costs for Phase I** are \$343,800.00 with a 90% Federal Project Cost Share of \$309,420.00 and a 10% Non-Federal Project Cost Share of \$34,380.00. The City of Delaware City have requested Sub Recipient Management Cost in Phase I, in the amount of \$17,190.00 at 100% Federal Share which is included in this award. The total Federal Share obligated for this project is \$326,610.00 and is now available in the SMARTLINK system. A copy of the obligation report is enclosed for your files.

	Federal Share	Non-Federal Share	Total
Project Costs	\$309,420.00	\$34,380.00	\$343,800.00
Sub-Recipient Management Costs	\$17,190.00	\$0.00	\$17,190.00
Total	\$326,610.00	\$34,380.00	\$360,990.00

Strategic Funds Management Schedule	Project Costs Federal Share	Subrecipient Management Costs	Total Federal Share Obligation	Obligation Date
Obligation #1	\$309,420.00	\$17,190.00	\$326,610.00	July 2024
Obligation #2	\$1,266,664.50	\$70,370.25	\$1,337,034.75	TBD Phase II
Obligation #3	\$419,135.00	\$23,306.75	\$442,828.25	August 2025

Per the approved application, the City of Delaware City will contribute the 10% Non-Federal match requirements for 4526-DR-DE-0009. As the recipient of 4526-DR-DE, DEMA will adhere to all applicable FEMA-State Agreement Articles and all applicable laws, assurances, and guidance. The Recipient must also adhere to all requirements and conditions outlined in the enclosed Record of Environmental Considerations (REC) document.

The subrecipient must adhere to all requirements and conditions outlined in the Record of Environmental Consideration (REC) document enclosed. Special Conditions required on implementation of this project are:

Wetlands- Executive Order 11990 All equipment must be staged outside the wetland and no work with heavy equipment should occur within the wetland.

Approval is for geotechnical work, engineering, design and planning costs only. No ground disturbing activities other than the outlined geotechnical field studies are approved at this time.

Magnuson-Stevens Fishery Conservation and Management Act (MSA)- The project is located within Essential Fish Habitat. Appropriate erosion and sedimentation (E&S) control measures must be implemented during geotechnical field studies to prevent runoff of materials and soil into waterways. Work in water should not take place if these conditions cannot be met. The applicant must notify FEMA Environmental and Historic Preservation (EHP) prior to the start of work to allow for the appropriate coordination with NOAA.

NEPA Determination Approval is for geotechnical work, engineering, design and planning costs only. No physical work or ground disturbing activities other than the outlined geotechnical field studies are approved at this time. Failure to comply with this condition jeopardizes the receipt of federal funding.

The Period of Performance (POP) for this award ends on **August 5, 2025**. All changes to this award must be submitted to our office in writing for review and approval prior to commencement of any change-related work. Please provide our office with a quarterly report thirty (30) days after the end of each federal fiscal year quarter.

If you have any questions concerning this project, please contact Lauryl Lenox, Project Officer at lauryl.lenox@fema.dhs.gov.

Sincerely,

Dustin R. Brosius
Senior Advisor for Risk Reduction
Mitigation Division

Enclosure(s)

Record of Environmental Consideration (REC)
Obligation Report
Technical Services Branch Report

cc: Philip Cain, State Hazard Mitigation Officer
Jennifer Walls, Principal Planner, Mitigation and Recovery
Travis Tucson, Recovery Planner
Sarah Cobelli, HMGP Branch POC
Caleb Taylor, HMGP Section Supervisor
Lauryl Lenox, FEMA Project Office