

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	Settlement Tracking No.
	*	SA-RE-12-0030
BAYOU INSPECTION SERVICES, INC.	*	
	*	Enforcement Tracking No.
AI # 30587	*	RE-P-08-0005
	*	RE-CN-10-019
PROCEEDINGS UNDER THE LOUISIANA	*	
ENVIRONMENTAL QUALITY ACT	*	
LA. R.S. 30:2001, <u>ET SEQ.</u>	*	

SETTLEMENT

The following Settlement is hereby agreed to between Bayou Inspection Services, Inc. ("Respondent" or "Bayou") 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 an industrial radiography company located in Amelia, St. Mary Parish, Louisiana ("the Facility").

II

On April 8, 2008, the Department issued to Respondent a Penalty Assessment, Enforcement No. RE-P-08-0005, in the amount of \$50,826.47, which was based upon the following findings of fact:

The Respondent is in possession of sealed sources under the provisions of Radioactive Material License, LA-7112-L01, issued by the Department. The facility is located on DeGravelle Road in Amelia, St. Mary Parish, Louisiana.

On or about August 24, 2006, an inspection of the licensee's field crew working at Global Industries Offshore, LLC, was conducted by a representative of the Department. The temporary jobsite was located at 8000 Global Drive in Carlyss, Calcasieu Parish, Louisiana.

The following violations were noted:

- A. Brian Miller told the inspector his pocket ion chamber had not been reset to zero although he indicated otherwise on the daily radiation survey report, in violation of LAC 33:XV.302.A.2.
- B. The Branch Manager failed to assign at least two (2) qualified radiographers to each job site, in violation of LAC 33:XV.320.A.2 and Radioactive Material License, LA-7112-L01, Operating & Emergency Procedures, Revision 10, section 5.10.b.
- C. The Respondent failed to maintain sufficient calibrated and operable survey instruments at each location where radioactive material is present to make surveys required by LAC 33:XV.430, in violation of LAC 33:XV.543.A. Specifically, the two (2) ND 2000 survey meters (serial numbers 41748 and 40208) used by the radiographer trainees failed the battery self check test. The ND 2000 survey meter (serial number 20206) passed the battery self check test.
- D. The Respondent failed to perform visual and operability checks on the radiographic exposure device prior to each day's use or work shift, in violation of LAC 33:XV.547.A. Specifically, the SPEC 150 exposure device (serial number 183) failed a misconnect test.
- E. Jonathan Boudreaux and Zack Volkmann were not wearing pocket dosimeters while radiographic operations were being performed, in violation of LAC 33:XV.577.A.
- F. Joshua Coon lost his dosimetry badge and continued to work without a replacement, in violation of LAC 33:XV.577.G.
- G. Zack Volkmann, radiographer trainee, told the inspector he operated the SPEC 150 exposure device without the radiographer instructor's supervision, in violation of LAC 33:XV.590.D.
- H. Harold Balka, radiographer trainee, acted as a radiographer instructor although he was not certified as an instructor or named on the license, in violation of LAC 33:XV.590.E.3.

On or about November 27, 2006, an inspection of the licensee's field crew working at Southern Magic, Inc. was conducted by a representative of the Department. The temporary jobsite was located in Berwick, St. Mary Parish, Louisiana.

The following violations were noted:

- A. The licensee's telephone number was not legible on the SPEC 150 exposure device (serial number 0919) label, in violation of LAC 33:XV.550.A.2.a.v.
- B. DeAnthony Lewis was wearing a personal dosimeter that had been issued more than a month prior to the inspection date, in violation of LAC 33:XV.577.C.

On February 7, 2007, a Consolidated Compliance Order & Notice of Potential Penalty (CONOPP), Enforcement Tracking No. RE-CN-06-0034, was issued to the Respondent.

On or about October 25, 2007, an inspection of the licensee's field crew working at Global Industries was conducted by a representative of the Department. The temporary jobsite was located at 8000 Global Drive in Carlyss, Calcasieu Parish, Louisiana.

The following violations were noted:

- A. The exposure device and storage container were unlocked and not under the direct surveillance of a radiographer or a trainee, in violation of LAC 33:XV.541.A.
- B. The employee's personal dosimeter had been issued more than a month prior to the inspection date, in violation of LAC 33:XV.577.C. This is a repeat violation cited in the Consolidated Compliance Order & Notice of Potential Penalty (CONOPP), RE-CN-06-0034, issued on February 7, 2007.
- C. A copy of the applicable regulations was not available, in violation of LAC 33:XV.588.A.3. This is a repeat violation cited in the CONOPP, RE-CN-06-0034, issued on February 7, 2007.
- D. The employee's alarm ratemeter was inoperable, in violation of LAC 33:XV.590.A.4. This is a repeat violation cited in the CONOPP, RE-CN-06-0034, issued on February 7, 2007.

On December 21, 2007, a Notice of Potential Penalty (NOPP), Enforcement Tracking No. RE-PP-07-0035, was issued to the Respondent.

A civil penalty under Section 2025(E) and 2050.3 of the Act may be assessed for the violations described herein.

Having considered the factors set forth in Section 2025(E)(3) of the Act, and in light of all facts and circumstances presently known, a civil penalty would be appropriate, equitable, and justified.

A penalty in the amount of \$50,826.47 was assessed together with legal interest as allowed by law and all costs of bringing and prosecuting this enforcement action accruing after the date of issuance.

On October 26, 2010, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. RE-CN-10-019, which was based upon the following findings of fact:

The Respondent owns and/or operates an industrial radiography company located at 318 DeGravelle Road in Amelia, St. Mary Parish, Louisiana. The Respondent currently operates under Radioactive Material License LA-7112-L01 issued by the Department on June 7, 2010.

On or about May 11, 2010, an inspection was performed to determine the degree of compliance with the Radiation Protection Regulations and the Act.

The following violations were noted:

- A. During the course of the inspection, it was noted that the Respondent failed to have adequate background information available for two (2) employees. This is a violation of LAC 33:XV.320.A.2, Radioactive Material License No. LA-7112-L01 Condition No. 17.B, and the Nuclear Regulatory Commission Order Imposing Increased Controls Principle 7.

- B. During the course of the inspection, it was noted that the Respondent failed to maintain disposal record(s) for the sealed source QA2009 (46 milli-Curie Ir-192 source received by the licensee on August 12, 2009). This is a violation of LAC 33:XV.104.A.
- C. During the course of the inspection, the Respondent stated that a SPEC Model 150 exposure device with a new source was transported on the rear passenger side floorboard of the employee's personal vehicle. This is a violation of ALARA (As Low As Reasonably Achievable) as required by LAC 33:XV.406.B.
- D. During the course of the inspection, it was noted that the Respondent allowed individuals, not approved in writing, to have unescorted access to radioactive material of concern. This is a violation of LAC 33:XV.320.A.2, Radioactive Material License No. LA-7112-L01 Condition 17.B, and the Nuclear Regulatory Commission Order Imposing Increased Controls Principle 1.a. This is a repeat violation of the Penalty Assessment Enforcement Tracking No. RE-P-09-0014 Findings of Fact Paragraph II.A issued to the Respondent on September 3, 2009.
- E. During the course of the inspection, it was noted that the Respondent failed to obtain independent information to corroborate the information provided by an employee. This is a violation of LAC 33:XV.320.A.2, Radioactive Material License No. LA-7112-L01 Condition N0. 16.B, and the Nuclear Regulatory Commission Order Imposing Increased Controls Principle 1.b. This is a repeat violation of the Penalty Assessment Enforcement Tracking No. RE-P-09-0014 Findings of Fact Paragraph II.B issued to the Respondent on September 3, 2009.
- F. During the course of the inspection, it was noted that the Respondent failed to maintain a list of individuals approved for unescorted access to radioactive materials. This is a violation of LAC 33:XV.320.A.2, Radioactive Material License No. LA-7112-L01 Condition 17.B, and the Nuclear Regulatory Commission Order Imposing Increased Controls Principle 1.d. This violation was adequately addressed by the Respondent at the time of the inspection.
- G. During the course of the inspection, it was noted that the Respondent failed to maintain quarterly records of radioactive material inventories including the current activity of the source. This is a violation of LAC 33:XV.545.A.

- H. During the course of the inspection, it was noted that the Respondent failed to submit a Form DRC-20, documenting on the job training for one (1) employee, to the Office of Environmental Compliance Emergency and Radiological Services Division. This is a violation of LAC 33:XV.575.A.2.d.
- I. During the course of the inspection, it was noted that the Respondent failed to provide record(s) of company specific written examination(s) and field test(s) for Philip Latino who was re-hired in March 2010 after leaving employment with the Respondent in 2006. This is a violation of LAC 33:XV.575.A.5.

On or about July 7, 2010, an inspection was performed to determine the degree of compliance with the Radiation Protection Regulations and the Act.

The following violations were noted:

- A. During the course of the inspection, it was noted that the Respondent failed to ensure that all Landauer whole body Optically Stimulated Luminescence (OSL) badges were submitted in a timely manner for processing and reporting to the contracted badge processor (Landauer). Specifically, the inspection noted fourteen (14) instances of badges submitted to Landauer for processing past thirty (30) days. One of the employees whose OSL was turned in late for processing had previously received a reported exposure of more than 3000 milli-Roentgen (mR) in one month. The annual occupational exposure limit as defined by LAC 33:XV.410.A is 5000 milli-Roentgen Equivalent Man (mRem) per year. This is a violation of LAC 33:XV.320.A.2, Application for Radioactive Material License DRC #11, Item 5.a, and LAC 33:XV.577.C. This is a repeat violation of Findings of Fact Paragraph II.H of Penalty Assessment Enforcement Tracking No. RE-P-09-0014 issued to the Respondent on September 3, 2009, and Findings of Fact Paragraph III.B and V.B of Penalty Assessment Enforcement Tracking No. RE-P-08-0005 issued to the Respondent on April 8, 2008.
- B. During the course of the inspection, it was noted that the Respondent failed to ensure that all of the employees wear their personal OSL during the course of industrial radiographic operation(s). Specifically, it was noted that one (1) employee's OSL was processed by Landauer noting a 37,676 mR exposure for May 9, 2010, to June 9, 2010, with the resulting investigation by the Respondent determining the employee left his OSL in a backpack isolated from the operator in an active industrial radiographic area instead of wearing the OSL on his

body. This is a violation of LAC 33:XV.432.A.1 and LAC 33:XV.577.A. This is a repeat violation of Findings of Fact Paragraph II.E of Penalty Assessment Enforcement Tracking No. RE-P-08-0005 issued to the Respondent on April 8, 2008.

- C. During the course of the inspection, it was noted that the Respondent failed to take adequate precautions to prevent a deceptive exposure to the OSL by leaving the OSL in an active industrial radiographic area in a backpack isolated from the operator resulting in a recorded 37,676 mR exposure for the reporting period of May 10, 2010, through June 9, 2010. This is a violation of LAC 33:XV.430.D.

III

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

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 TWENTY-FIVE THOUSAND AND NO/100 DOLLARS (\$25,000.00), of which One Thousand Five Hundred Eighty-Two and 08/100 Dollars (\$1,582.08) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement.

V

Bayou Inspection Services, Inc., in addition to the penalty amount specified in Paragraph IV above and as part of this Settlement, agrees to expend the amount of \$5,000.00 to implement and/or perform the following beneficial environmental projects, carried out in compliance with LAC 33:I.2505A.5.b:

- A. Bayou will engage a third-party auditor approved by the Department, to perform an internal audit of its facility and operations for compliance with the provisions of LAC 33:XV, "Radiation Protection," and any permits issued thereunder. The audit will include a review of Bayou's policies and procedures related to compliance as well as the sufficiency of

record-keeping. The external audit is to begin within thirty (30) days of the date the final settlement is received by Respondent and is to be completed within three (3) months of the date the audit was begun.

- B. The auditor will prepare a report for submission to Bayou detailing the findings. Bayou hereby agrees to address any deficiencies in the report within sixty (60) days of receipt of the report. Upon addressing the deficiencies in the report, Bayou will submit a certification to the Department that it has addressed such deficiencies. The certification will include a statement, with appropriate documentation, of the amount spent by Bayou on the beneficial environmental project.
- C. Respondent shall submit monthly reports regarding its progress on the projects. The first shall be due on the 5th of the month following the date the Department signs this Settlement. Monthly reports shall be submitted on the 5th of every month thereafter until the project is completed. Each such monthly report shall include a description of the project, tasks completed, tasks remaining, the percentage completed, and money expended on each project through the date of the report. Upon completion of all projects required under this Settlement, Bayou shall submit a final report to include a summary of all the information previously submitted and a total amount spent on the projects listed above. It shall also contain a certification that the projects were completed as described.
- D. Bayou agrees to spend \$5,000.00 on the audit and report. If Bayou does not spend the amount of \$5,000.00, then it shall propose additional projects for the Department's approval (or pay to the Department) in an amount equal to the

difference between the amount of money agreed to be spent and the amount of money actually spent.

- E. The total amount of money expended by Bayou on cash payments to the Department or beneficial environmental projects, 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 Penalty Assessment, 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 and the rules relating to beneficial environmental projects set forth in LAC 33:I.Chapter 25.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in St. Mary Parish and Calcasieu 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 from the newspaper of each affected parish 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.

BAYOU INSPECTION SERVICES, INC.

BY:

Willie Tezend
(Signature)

WILLIE TEZEND
(Printed)

TITLE:

PRESIDENT

THUS DONE AND SIGNED in duplicate original before me this 8th day of JULY, 20 13, at AMELIA, LA.

Don Tallon

NOTARY PUBLIC (ID # 65603)

DAVID M. PATTERSON
(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch Secretary

BY:

CShl

Cheryl Sonnier Nolan, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 1st day of Oct, 20 13, at Baton Rouge, Louisiana.

Kit
NOTARY PUBLIC (ID # 19181)

Perry Theriot
(stamped or printed)

Approved:

CShl

Cheryl Sonnier Nolan, Assistant Secretary