STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	**Settlement Tracking No.**
	*	**SA-WE-11-0064**
BAYOU SAND & GRAVEL, L.L.C.	*	
	*	
AI # 162399	*	**21st JUDICIAL DISTRICT COURT**
	*	**DOCKET #2010-0003503-E**
PROCEEDINGS UNDER THE LOUISIANA	*	
ENVIRONMENTAL QUALITY ACT	*	
LA. R.S. 30:2001, ET SEQ.	*	

SETTLEMENT

The following Settlement is hereby agreed to between Bayou Sand & Gravel, L.L.C. ("Defendant") 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

Defendant is a limited liability company that owns and/or operates a sand and gravel pit mining facility located in Amite, Tangipahoa Parish, Louisiana ("the Facility").

II

On October 29, 2010, the Department and the Defendant filed a Stipulated Judgment Granting Permanent Injunction in the Twenty-First Judicial District Court, Tangipahoa Parish, which was based upon the following stipulated facts:

> At all times pertinent hereto, Defendant has engaged in the mining of sand and gravel in Amite, Tangipahoa Parish, Louisiana.
>
> In the course of its mining activities, Defendant regularly discharges waste water into Natalbany Creek, and thence to the Natalbany River. Defendant also discharges sanitary waste water from its office. These discharges are allowed under a permit (# LAG490100) issued by LDEQ, as long as all conditions and requirements set forth in the permit are satisfied. The permit conditions include limitations on certain characteristics of the wastewater to be discharged, including pH [(minimum of 6.0 standard units (SU)], turbidity [(daily maximum of 25 nephelometric turbidity units (NTU)], and total suspended solids (TSS) (maximum monthly average of 25

mg/liter). The permit requires Defendant to take representative samples of its effluent monthly, have those samples analyzed by a DEQ-certified laboratory, and report the analyses to DEQ on discharge monitoring reports (DMRs).

Since September 2009, Defendant has reported (on DMRs and/or Non-compliance Reports) numerous violations of its discharge permit, which are summarized below:

Date	Parameter	Permit Limit	Sample Value	Outfall
07/2009-12/2009	pH (Minimum)	6.0 SU	5.98 SU	004S
09/2009	pH (Minimum)	6.0 SU	3.96 SU	002A
10/2009	pH (Minimum)	6.0 SU	4.10 SU	002A
	TSS (Monthly Avg.)	25 mg/L	30 mg/L	002A
11/2009	pH (Minimum)	6.0 SU	4.01 SU	002A
12/2009	pH (Minimum)	6.0 SU	4.81 SU	002A
01/2010	Turbidity (Daily Max)	25 NTU	30 NTU	002A
	pH (Minimum)	6.0 SU	5.37 SU	002A
02/2010	pH (Minimum)	6.0 SU	5.46 SU	002A
03/2010	pH (Minimum)	6.0 SU	4.72 SU	002A
04/2010	pH (Minimum)	6.0 SU	3.89 SU	002A

Each of these violations of Defendant's discharge permit is also a violation of La. R.S. 30:2076 (A)(3) and La. Admin. Code 33:IX.501.A.

On July 28, 2010, an LDEQ environmental scientist inspected Defendant's mining operations in response to a citizen's complaint. The investigator found that the Defendant was discharging milky, light brown or tan waste water into Natalbany Creek, and thence to the Natalbany River. Defendant's waste water had significantly affected the color and clarity of both Natalbany Creek and the Natalbany River, in violation of La. R.S. 30:2075, La. R.S. 30:2076 (A)(1)(a), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, and LAC 33:IX.1113.B.1.

The LDEQ environmental scientist took samples of Defendant's waste water on July 28, 2010. Laboratory analysis of those samples showed that Defendant had once again violated its discharge permit. Specifically, the TSS level was 3080 mg/L, which exceeds the daily maximum limit of 45 mg/L; the turbidity level was 4240 NTU, which exceeds the daily maximum limit of 25 NTU; and the pH level was 4.43 SU, which is below the minimum allowable pH of 6.0 SU. The records of the Louisiana Office of State Climatology show the following rainfall totals for the day the samples were taken and the three preceding days: 7/25/10 – 1.10", 7/26/10 – 0.12", 7/27/10 – 0.62", and 7/28/10 – 0.05".

Defendant has submitted to LDEQ reports of laboratory analysis of samples of wastewater from Defendant's permitted outfall. These samples were taken by Defendant's contractor on July 29, August 6, September 28, and October 12, 2010, and analyzed by the same contractor. The reports show that all samples were within the effluent limitations set by Defendant's discharge permit.

Defendant has submitted to LDEQ documentation of expenditures totaling at least $125,000 for the improvement of wastewater treatment at Defendant's mining location, including:

a. installation of culverts to ditches to enhance flow;

b. construction of more than 5000' of new ditches and three new settlement ponds;
c. temporary installation of a flow meter to more accurately measure gallons of wastewater discharge;
d. purchased pH and turbidity meters to monitor discharge;
e. installed numerous tons of limestone and rock in flow ditches to help settlement and pH; and
f. purchased and installed caustic (TMB-13) tanks, pumps and monitors to raise pH to permit standards.

On November 3, 2010, the Court entered the stipulated judgment granting LDEQ's prayer for injunctive relief. It was further stipulated and agreed by the parties, and ordered by the Court, that the Court shall retain jurisdiction to adjudicate LDEQ's claim for civil penalties for the violations described above.

III

Defendant denies that it committed any violations other than those specifically described above, and denies that it is liable for any fines, forfeitures and/or penalties.

IV

Nonetheless, Defendant, 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 TWO THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS ($2,800.00), of which One Thousand One Hundred Ninety-three and 33/100 Dollars ($1,193.33) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Defendant 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).

V

Defendant further agrees that the Department may consider the Defendant's DMRs, the Stipulated Judgment Granting Permanent Injunction and this Settlement for the purpose of

determining compliance history in connection with any future enforcement or permitting action by the Department against Defendant, and in any such action Defendant shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Defendant's compliance history.

VI

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 Defendant 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.

VII

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.

VIII

Defendant has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Tangipahoa 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. Defendant 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.

IX

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).

X

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XI

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 SAND & GRAVEL, L.L.C.

BY: _____
(Signature)

_____
(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20 _____, at _____.

_____
NOTARY PUBLIC (ID #_____)

_____
(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch Secretary

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

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20_____, at Baton Rouge, Louisiana.

_____
NOTARY PUBLIC (ID # _____)

_____
(stamped or printed)

Approved: _____
Cheryl Sonnier Nolan, Assistant Secretary