

**STATE OF LOUISIANA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**BERRY CONTRACTING, LP**

**AI # 83236**

**PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT  
LA. R.S. 30:2001, ET SEQ.**

\* **Settlement Tracking No.**  
\* **SA-AE-07-0055**  
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\* **Enforcement Tracking No.**  
\* **AE-CN-07-0088**  
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**SETTLEMENT**

The following Settlement is hereby agreed to between Berry Contracting, LP ("Respondent") 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 partnership who owns and/or operates a fabricating, sandblasting, and painting facility located at 385 Degravelle Road in Amelia, St. Mary Parish, Louisiana ("the Facility").

**II**

On August 30, 2007, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-07-0088, to Respondent, which was based upon the following findings of fact:

The Respondent owns and/or operates Bay Offshore, Ltd., which owns and/or operates the Bay North Facility, a fabricating, sandblasting, and painting facility. The facility is currently located at 385 Degravelle Road in Amelia, St. Mary Parish, Louisiana. The facility currently operates under Air Permit No. 2660-00221-00, issued on September 2, 1999.

On or about January 13, 2003, the Department issued the Respondent a Compliance Order (CO), Enforcement Tracking No. AE-0C-02-0083, for failing to employ adequate containment methods during sandblasting operations to prevent particulate matter from becoming airborne. Paragraph I of the Order portion of the CO ordered the Respondent to immediately take any and all steps necessary to achieve and maintain compliance with LAC 33:III.1305.A.3. Compliance Order AE-C-2-0083 is a final action of the Department and not subject to further review.

On or about January 24, 2006, the Department issued the Respondent a Compliance Order and Notice of Potential Penalty (CONOPP), Enforcement Tracking No. AE-CN-04-0238, for failing to employ adequate containment methods during sandblasting operations to prevent particulate matter from becoming airborne. Paragraph I of the Order portion of the CONOPP ordered the Respondent to immediately take any and all steps necessary to achieve and maintain compliance with LAC 33:III.1305.A.3. Compliance Order and Notice of Potential Penalty AE-CN-04-0238 is a final action of the Department and not subject to further review.

On or about May 2, 2007, in response to a citizen's complaint of sandblasting and painting at the facility, an inspection and subsequent file review of the Respondent's facility were performed to determine the degree of compliance with the Act and the Air Quality Regulations. The following violation was noted during the course of the inspection and file review:

The Respondent failed to employ adequate shrouding during sandblasting operations to prevent particulate matter from becoming airborne. At the time

of the inspection, it was noted that although the shrouds were in place, the shrouds were sagging, loose on the stands, sections of shrouds were missing, and holes greater than one foot in length were present. Particulate matter was observed by the inspector becoming airborne and leaving the site. The failure to employ adequate shrouding during sandblasting operations to prevent particulate matter from becoming airborne is a violation of LAC 33:III.1305.A.3, LAC 33:III.905, Specific Condition No. 3 of Air Permit No. 2660-00221-00, LAC 33:III.501.C.4, Compliance Order AE-C-02-0083, Compliance Order and Notice of Potential Penalty AE-CN-04-0238, and La. R.S. 30:2057 (A)(2).

### 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 FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00), of which FOUR HUNDRED NINETY-NINE AND 76/100 DOLLARS (\$499.76) represents DEQ's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to DEQ as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

### V

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order and 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.

#### 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 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.

#### 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 LSA- R. S. 30:2025(E) of the Act.

#### VIII

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in St. Mary 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 a proof-of-publication affidavit 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).

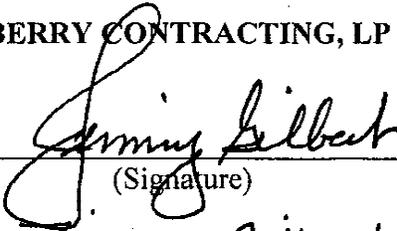
XI

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

XI

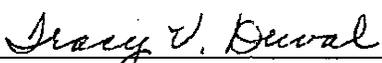
Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

BERRY CONTRACTING, LP

BY:   
(Signature)  
Jimmy Gilbert  
(Print)

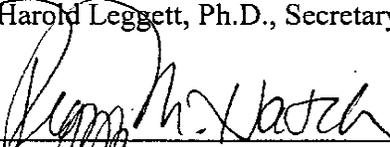
TITLE: Vice President

THUS DONE AND SIGNED in duplicate original before me this 11 day of June, 20 08, at Amelia, La.

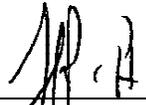
  
NOTARY PUBLIC (ID # JP51-9)  
TRACY V. DUVAL  
(Print)

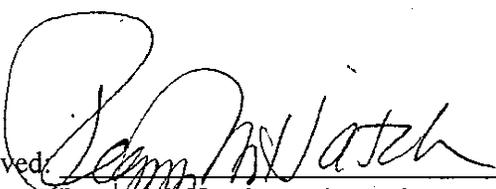
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Harold Leggett, Ph.D., Secretary

BY:   
Peggy M. Hatch, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 22<sup>nd</sup> day of September, 20 08, at Baton Rouge, Louisiana.

  
NOTARY PUBLIC (ID # 410539)  
Ted R. Boyle, II  
(Print)

Approved:   
Peggy M. Hatch, Assistant Secretary