

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

BOONE SERVICES, INC.

AI # 124963

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

- * **Settlement Tracking No.**
- * **SA-WE-08-0007**
- *
- * **Enforcement Tracking No.**
- * **WE-CN-05-0028**
- *
- * **Docket No. 2006-3158-EQ**
- *

SETTLEMENT

The following Settlement is hereby agreed to between Boone Services, Inc. ("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 corporation who operates a construction site development facility located a half-mile southwest of the intersection of Airline Highway and Pecue Lane in Baton Rouge, East Baton Rouge Parish, Louisiana ("the Facility").

II

On March 2, 2005, the Department issued to Respondent a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. WE-CN-05-0028, which was based upon the following findings of fact:

The Respondent owns and/or operates a construction site development company which is developing the third filing of Woodridge Subdivision located a half-mile southwest of the intersection of Airline Highway and Pecue Lane in Baton Rouge, East Baton Rouge Parish,

Louisiana. The Respondent was granted coverage under Louisiana Pollutant Discharge Elimination System (LPDES) Storm Water General Permit For Construction Activities LAR10C699 on October 11, 2004, authorizing the discharge of storm water from construction activities into Ward Creek, waters of the state.

In response to a complaint received by the Department on or about October 11, 2004, alleging that runoff from the Woodridge development site had a high silt content, an inspection was conducted by the Department on or about October 14, 2004. The inspection revealed the following violations:

- A. The Respondent failed to maintain erosion and sediment controls. Specifically, the inspector noted several areas of erosion on the side slopes of the dry detention pond. Also, soil being excavated from the exit pipe area was being placed on the top of the existing silt fence and on the back side of the pond levee and into the ditch that flows into Briarwood Lake. The Respondent's failure to maintain erosion and sediment controls is in violation of LPDES permit LAR10C699 (Part IV, Section D.2, and Part VI, Section A.1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.
- B. The Respondent failed to properly implement and maintain its Storm Water Pollution Prevention Plan (SWPPP). Specifically, the SWPPP stated that silt fencing would be installed at the road excavation site, however the inspector noted that there was no silt fencing installed in that area. Also, the weekly and/or biweekly inspections required by the permit as part of the SWPPP were not being conducted. The Respondent's failure to properly implement and maintain its SWPPP is in violation of LPDES Permit LAR10C699 (Part IV, Section D.4, and Part VI, Section A.1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.

In response to a complaint received by the Department on or about December 7, 2004, alleging that the runoff from the Woodridge development site was turning the neighboring pond brown, an inspection was conducted by the Department on or about December 10, 2004. The inspection revealed the following violations:

- A. The Respondent failed to maintain erosion and sediment controls. Specifically, the slopes around the newly installed inlet pipe into the detention pond were not stabilized and large amounts of soil had eroded into the detention pond and had been carried through the outflow pipe and into the Briarwood Lake. A single small silt fence with

some hay bales was present in this area, but was in poor condition. The Respondent's failure to maintain erosion and sediment controls is in violation of LPDES permit LAR10C699 (Part IV, Section D.2, and Part VI, Section A.1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.

- B. The Respondent failed to properly implement and maintain its SWPPP. Specifically, a review of the plan revealed that the inspections required by the permit as part of the SWPPP were not being conducted at the frequency required in the permit. The Respondent's failure to properly implement and maintain its SWPPP is in violation of LPDES Permit LAR10C699 (Part IV, Section D.4, and Part VI, Section A.1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.

A follow-up inspection conducted by the Department on or about January 20, 2005, revealed that the Respondent failed to maintain erosion and sediment controls. Specifically, large amounts of sediment were being discharged through the detention pond and into the Briarwood Lake. The silt fence installed in this area was not adequate to control the sediment leaving the site. Also, silt fencing around the detention pond was not properly installed or maintained. The inspector noted several areas where the silt fence was down, or was not properly trenched into the ground. Hay bales were also not maintained on the site. The Respondent's failure to maintain erosion and sediment controls is in violation of LPDES permit LAR10C699 (Part IV, Section D.2, and Part VI, Section A.1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.

An additional follow-up inspection conducted by the Department on or about February 9, 2005, revealed that the Respondent continued to fail to maintain erosion and sediment controls. Specifically, the streets in the third filing were laid out with asphalt and the storm drains were in place, however there were no erosion or sediment controls in place at or around the storm drains or along the curbs to control the runoff, and muddy water was observed entering the storm drains, which flows into the detention pond, and thence into Briarwood Lake. Water flowing through the outflow structure of the detention pond into Briarwood Lake was chocolate milk brown in color. Photos taken by the inspector indicated that the only silt fence in place at the time of the inspection

was at the division between the second and third filing, and along the top of the inflow drainage pipe into the detention pond. The Respondent's failure to maintain erosion and sediment controls is in violation of LPDES permit LAR10C699 (Part IV, Section D.2, and Part VI, Section A.1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.

III

In response to the Consolidated Compliance Order and Notice of Potential Penalty, Respondent made a timely request for a hearing.

IV

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

V

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 ELEVEN THOUSAND AND NO/100 DOLLARS (\$11,000.00) of which Two Thousand Two Hundred Ninety-five and No/100 Dollars (\$2,295.00) 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).

VI

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.

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

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in East Baton Rouge 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.

X

An initial payment of \$1,000.00 is to be made within ten (10) days from notice of the Secretary's signature followed by a monthly payment of \$1,000.00 each for a total of ten (10)

consecutive months. Each payment is due by the 10th day of each month following the initial payment until the agreed to settlement amount of \$11,000.00 has been paid in full. If payment is not received within the timeframe stipulated above, 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.

BOONE SERVICES, INC.

BY: _____
(Signature)

(Print)

TITLE: _____

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

NOTARY PUBLIC (ID # _____)

(Print)

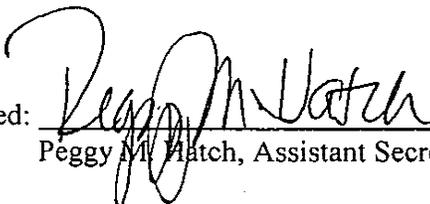
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Harold Leggett, Ph.D., Secretary

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

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

NOTARY PUBLIC (ID # _____)

(Print)

Approved: 
Peggy M. Hatch, Assistant Secretary