

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**COOPER/T. SMITH STEVEDORING
COMPANY, INC.**

AI # 43707

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

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**Settlement Tracking No.
SA-MM-06-0028**

**Enforcement Tracking No.
MM-CN-03-0022**

SETTLEMENT

The following Settlement is hereby agreed to between Cooper/T. Smith Stevedoring Company, 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 barge cleaning and barge repair facility at Louisiana Highway 18 at River Mile 127 on the west bank in Hahnville, St. Charles Parish, Louisiana ("the Facility").

II

On November 19, 2003, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. MM-CN-03-0022, to Respondent which was based upon the following findings of fact:

The Respondent owns and/or operates a barge cleaning and barge repair facility known as Upper St. Rose Fleeting, Inc. located on Louisiana Highway 18 at River Mile 127 on the west bank in Hahnville, St. Charles Parish, Louisiana. The facility has also been used as an unauthorized solid waste disposal site. The Respondent does not have a permit and/or other authority from the Department to dispose of solid waste at this facility. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0101788 effective November 4, 1997, and which expired November 3, 2002. LPDES permit LA0101788 authorized the Respondent to discharge into the Mississippi River, waters of the state. The Respondent submitted an application for a permit on January 8, 2003. Upper St. Rose Fleeting is a wholly owned subsidiary of Cooper/T. Smith, Inc. Cleaning and repair operations at the facility are subcontracted to St. Charles Cleaning and Repair, LLC, and Fleet Management is subcontracted to Marine Centre, Inc.

On December 11, 2002, an inspection was conducted by the Department that revealed the following violations:

- A. The Respondent failed to stop, contain, and properly manage released/used oil, in violation of LAC 33:V.4013.D.
- B. The Respondent caused and/or allowed the deposition of regulated solid waste without a permit and/or other authority from the Department, in violation of La. R.S. 30:2155, LAC 33:VII.315.A, and LAC 33:VII.315.E. Specifically, the Respondent allowed the disposal of paper, cans, plastic, tires, and scrap metal, which included an old welding machine and an air

conditioner housing. A follow-up inspection conducted on January 10, 2003, determined that the unauthorized disposal site had been cleaned up.

- C. The owner of St. Charles Cleaning and Repairs, LLC, George Keegan, has been signing the DMRs, and is not an employee of Upper St. Rose Fleeting. Therefore, George Keegan is not an authorized signatory as defined by the regulations of the Department. Each failure to submit DMRs signed by a duly authorized representative is in violation of LPDES permit LA0101788 (Part II, Section K, and Section A.2, La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 2333.B, and 2355.K.1.
- D. The Respondent did not send in monthly barge reports to the Department, specifically, the Water Pollution Control Division, with the quarterly DMRs as required by LPDES permit LA0101788. Each failure to send in monthly barge reports is in violation of LPDES permit LA0101788 (Part II, Section M, and Part III, Section A.2), La. R. S. 30:2076(A)(1), LAC 33:IX.501.A, and LAC 33:IX.2355.A.
- E. The Respondent did not submit a permit renewal application in a timely manner for an LPDES permit. Failure to submit an application is in violation of La R.S. 30:2076 (A) (3), LAC 33:IX.501. A, LAC 33:IX.2331.A.1, LAC 33:IX.2331.D.2 and LAC 33:IX.2405.A.1.
- F. The Respondent is operating without a permit. The Respondent's LPDES expired on November 3, 2002. Any and all discharges after November 3,

2002 are unauthorized discharges of wastewater to waters to the state in violation of La. R.S. 30:2075, La. R.S. 30:2076(A)(1), LAC 33:IX.501.A, LAC 33:IX.501.C, LAC 33:IX.2311.A.1, and LAC 33:IX.2355A.

- G. The Respondent was not sampling Oil and Grease, COD, or pH at Outfall 002 for the months of January, February, March, April, May, June, July, and August, 2000. Each failure to sample constitutes a violation of LPDES permit LA0101788 (Part III, Sections A.2 and C.2), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.J.1.
- H. The Respondent did not submit the DMRS for the first three quarters of 2000 until November 13, 2002. Specifically, monitoring results should have been submitted on April 28th for the first quarter, July 28th for the second quarter, and October 28th for the third quarter. Each failure to submit DMRs in a timely manner is in violation of LPDES permit 0101788 (Part II, Section K and Part III, Section A.2), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.4.

A file review was conducted by the Department on or about August 25, 2003, which revealed that the Respondent did not submit Discharge Monitoring Reports for January, 2001; February, 2001; March, 2001; April, 2001; May, 2001; June, 2001; and April, 2002. Each failure to submit a DMR is in violation of LPDES permit LA0101788 (Part III, Section A.2 and Section D.4), La. R.S. 30:2076(A)(3), La. R.S. 30:2076(D), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.4.a.

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 SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$7,500.00) of which Eight Hundred Fifty-Seven and 66/100 Dollars (\$857.66) 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. Charles 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 Darryl Serio, Office of Management and

Finance, 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/her respective party, and to legally bind such party to its terms and conditions.

**COOPERT. SMITH STEVEDORING
COMPANY, INC.**

BY: Clayton P Brunet
(Signature)

CLAYTON P BRUNET
(Print)

TITLE: Asst. Vice President

THUS DONE AND SIGNED in duplicate original before me this 7th day of February, 20 07, at Darwin, LA.

Cheryl K. Bueche
NOTARY PUBLIC (ID # 058362)

Cheryl K. Bueche
(Print)

**LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**
Mike D. McDaniel, Ph.D., Secretary

BY: Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 5th day of April, 20 07, at Baton Rouge, Louisiana.

Ted R. Boyle, II
NOTARY PUBLIC (ID # 20456)

Ted R. Boyle, II
(Print)

Approved: Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary