

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CRESCENT CITY PHYSICIANS, INC.

AI # 161381

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

\* Settlement Tracking No.  
\* SA-RE-10-0082  
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\* Enforcement Tracking No.  
\* RE-P-09-0032  
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SETTLEMENT

The following Settlement is hereby agreed to between Crescent City Physicians, 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 that owns and/or operates a nuclear medicine facility located in New Orleans, Orleans Parish, Louisiana (“the Facility”).

II

On February 10, 2010, the Department issued to Respondent a Penalty Assessment, Enforcement No. RE-P-09-0032, in the amount of \$24,942.58, which was based upon the following findings of fact:

The Respondent owns and/or operates a nuclear medicine facility under the provisions of the Radioactive Material License LA-7554-L01, issued by the Department on November 5, 2008. The facility is located at 3715 Prytania Street, Suite 300, in New Orleans, Orleans Parish, Louisiana.

On or about June 17, 2009, and June 26, 2009, inspection(s) were conducted at the Respondent's facility.

The following violations were noted:

- A. During the course of the inspection, it was noted that one (1) nuclear medical technologist, Wanda Gettridge, was wearing an extremity TLD but failed to wear her Luxel whole body badge. This is a violation of LAC 33:XV.320.A.2, Radiation Safety Manual Chapter 1 Section 3.B. and LAC 33:XV.431.A.1.
- B. During the course of the inspection, it was noted that the Respondent left the entrance door to the 'hot lab' unlocked, failing to secure the 'hot lab' against potential unauthorized access. This is a violation of LAC 33:XV.320.A.2, Radiation Safety Manual Chapter 2 Section 3.a and LAC 33:XV.445.A.
- C. During the course of the inspection, it was noted that the Respondent failed to certify the linearity test records for the Capintec CRC-15W dose calibrator conducted on January 14, 2009, and April 13, 2009, with the signature of the Radiation Safety Officer (R.S.O.). This is a violation of LAC 33:XV.715.E.3.
- D. During the course of the inspection, it was noted that the Respondent failed to certify the records for sealed source(s) and/or brachytherapy source(s) leak tests conducted on January 15, 2009, with the signature of the Radiation Safety Officer (R.S.O.). This is a violation of LAC 33:XV.719.D.
- E. During the course of the inspection, it was noted that the Respondent failed to certify the physical inventory records for the sealed source(s) and/or brachytherapy source(s) conducted on January 5, 2009, and April 5, 2009, with a signature of a Radiation Safety Officer (R.S.O.). This is a violation of LAC 33:XV.719.G.
- F. During the course of the inspection, it was noted that the Respondent failed to certify the survey of sealed source(s) and/or brachytherapy source(s) storage area(s) records on January 5, 2009, and April 5, 2009, with the signature of the Radiation Safety Officer (R.S.O.). This is a violation of LAC 33:XV.719.I.

- G. During the course of the inspection, it was noted that the Respondent stated that they failed to survey with a radiation detection survey instrument at the end of each day of use in all areas where radiopharmaceuticals are routinely prepared for use and administered. The Respondent stated that they surveyed all areas where radiopharmaceuticals are routinely prepared for use and administered once a week. This is a violation of LAC 33:XV.724.A.
- H. During the course of the inspection, it was noted that the Respondent failed to include a dose rate action level in the survey records of areas where radiopharmaceuticals are routinely prepared and administered and the technologist interviewed did not have a dose rate action level available to her. This is a violation of LAC 33:XV.724.D. This violation was corrected by the Respondent by the exit interview conducted by the Department on June 26, 2009.
- I. During the course of the inspection, it was noted that the Respondent failed to conduct removable radioactive contamination survey(s) from June 9, 2009 until June 12, 2009, during which time twelve (12) patients were administered radiopharmaceuticals. The Respondent conducted a removable radioactive contamination survey on June 12, 2009, however not all of the areas requiring a removable contamination survey including the 'hot lab' countertop and the 'hot lab' lab floor were surveyed for removable radioactive contamination activity because the Respondent did not have sufficient radioactive contamination sampling wipes. This is a violation of LAC 33:XV.724.E.
- J. During the course of the inspection, it was noted that the Respondent failed to establish a removable contamination action level for surveys required by LAC 33:XV.724.E. This is a violation of LAC 33:XV.724.G. This violation was corrected by the Respondent by the exit interview conducted by the Department on June 26, 2009.
- K. During the course of the inspection, it was noted that the Respondent failed to include a dose rate expressed in milliroentgens per hour in area survey records, or the dose rate expressed in disintegration per minute (becquerels) per 100 square centimeters in the removable contamination records. This is a violation of LAC 33:XV.724.H.
- L. During the course of the inspection, it was noted that the Respondent's technologist could not provide, and did not have knowledge of the location of the Radiation Safety Manual and operating procedures applicable to technologist job function. This is a violation of LAC 33:XV.1011.A.3.

On August 21, 2009, a Compliance Order and Notice of Potential Penalty (CONOPP), Enforcement Tracking No. RE-CN-09-0018, was issued to the Respondent.

III

In response to the subsequently issued Penalty Assessment, RE-P-09-0032, 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 TWO HUNDRED FORTY-TWO AND 58/100 DOLLARS (\$11,242.58) of which One Thousand Two Hundred Forty-Two and 58/100 Dollars (\$1,242.58) represents the Department'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 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).

VI

Respondent further agrees that the Department may consider the inspection report(s), the Penalty Assessment 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.

IX

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

CRESCENT CITY PHYSICIANS, INC.

BY: *Paul Merten*  
(Signature)

DALE F. MERTENS  
(Printed)

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 6<sup>th</sup> day of January, 20 11, at 200 Henry Clay Ave, New Orleans

*Ricardo M. Guevara*  
NOTARY PUBLIC (ID # 62480)

**Ricardo M. Guevara**  
Notary Public  
Louisiana Bar No. 06408  
My Commission is for Life

(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
Peggy M. Hatch Secretary

BY: *C. Nolan*

Cheryl Soñnier Nolan, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 5<sup>th</sup> day of May, 20 11, at Baton Rouge, Louisiana.

*Dutina King*  
NOTARY PUBLIC (ID # 33199)  
Bar No. 20590  
life commission

Dutina King  
(stamped or printed)

Approved: *Beau James Brock*  
Beau James Brock, Assistant Secretary