

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

ENVIRONMENTAL SAFETY & HEALTH
CONSULTING SERVICES, INC.

AI # 80689

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

* Settlement Tracking No.
* SA-RE-10-0027
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* Enforcement Tracking No.
* RE-PP-09-0005
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SETTLEMENT

The following Settlement is hereby agreed to between Environmental Safety & Health Consulting Services, Inc. (ES&H) (“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 an environmental safety & health consulting service located in Houma, Terrebonne Parish, Louisiana.

II

On May 15, 2009, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. RE-PP-09-0005, which was based upon the following findings of fact:

On or about March 2, 2009, the Department received a Request for Release of the Petroleum Rental Tool, Inc. site owned and/or operated by ES&H (Respondent). The facility is located at 315 Redmond Road in Houma, Terrebonne Parish. ES&H was hired by Ronald Bridges to conduct a NORM confirmatory survey of the site at 315 Redmond Road in Houma, La. Upon completion of

the survey it was determined remedial action was necessary to remove NORM contamination found. As a result of the remediation work performed, 14 roll off boxes of NORM contaminated soil was profiled as excavated soil and shipped to Colonial Landfill in Sorrento, La. which is not permitted by the Louisiana Department of Environmental Quality to accept such waste.

The following violations were noted during the course of the inspection:

- A. The Respondent failed to dispose of NORM waste by transfer of the waste to a land disposal facility licensed by the department, the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state, in violation of LAC 33:XV.1412.B.1.
- B. The Respondent failed to accompany NORM waste with a NORM manifest while transporting the NORM waste, in violation of LAC 33:XV.1418.A.
- C. The Respondent deliberately submitted to the department information that was inaccurate, in violation of LAC 33:XV.1506.B.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 One Thousand Six Hundred Eighty-Six and 85/100 Dollars (\$1,686.85) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement.

V

Respondent, in addition to the penalty amount specified in Paragraph IV above and as part of this Settlement, agrees to expend the amount of TWENTY ONE THOUSAND ONE HUNDRED

TWENTY AND NO/100 DOLLARS (\$21,120.00) to implement and/or perform the following beneficial environmental projects:

- A. Respondent will provide two (2) boats and two (2) boat operators for eight (8), eight-hour days at a total of \$21,120.00 to transport various agency personnel to specific barrier islands and headland beaches, dropping off teams of biologists on one end of the islands and waiting for them on the opposite end of the islands and/or beaches. The teams of biologists will conduct a ground survey of beach nesting birds in late April and through May of 2010. A similar effort was conducted in 2005 serving as the baseline for comparison to the 2010 data. An atlas document will be developed comparing the data.
- B. Respondent shall submit an initial report on the first day of the project to include the date and time of the startup of the project. Daily reports shall be submitted each day until the project is completed. Each such daily report shall include a description of the project, tasks completed, tasks remaining, the percentage completed, and money expended on each project through the date of the report. Upon completion of all projects required under this Settlement, Respondent shall submit a final report to include a summary of all the information previously submitted and a total amount spent on the projects listed above. It shall also contain a certification that the projects were completed as described.
- C. If Respondent does not spend the amount of \$ 21,120.00, then it shall, in its final report, propose additional projects for the Department's approval in an amount equal to the difference between the amount of money agreed to be spent and the amount of money actually spent.

D. The total amount of money expended by Respondent on cash payments to the Department and on beneficial environmental projects, 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 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 La. R.S. 30:2025(E) of the Act and the rules relating to beneficial environmental projects set forth in LAC 33:I.Chapter 25.

IX

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

ENVIRONMENTAL SAFETY & HEALTH
CONSULTING SERVICES, INC

BY: *Kevin J. Lormand*
(Signature)

KEVIN J. LORMAND
(Printed)

TITLE: VICE PRESIDENT

THUS DONE AND SIGNED in duplicate original before me this 17th day of August, 20 11, at Houma, Louisiana.

Darlene C. Coffman
NOTARY PUBLIC (ID # 47271)
Darlene C. Coffman
Notary Public #47271
Terrebonne Parish, LA

(stamped or printed)

LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY
Peggy M. Hatch Secretary

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

THUS DONE AND SIGNED in duplicate original before me this 9th day of December, 20 11, at Baton Rouge, Louisiana.

Diana King
NOTARY PUBLIC (ID # 20590)
bar Roll #
Life Commission

Diana King
(stamped or printed)

Approved: *CSN*
Cheryl Sonnier Nolan, Assistant Secretary