

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

EXPRESS FOOD MART, INC.

AI # 80758

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

\* Settlement Tracking No.  
\* SA-AE-05-0072  
\*  
\* Enforcement Tracking No.  
\* AE-P-99-0227  
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SETTLEMENT

The following Settlement is hereby agreed to between Express Food Mart, 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 gasoline dispensing facility at or near 3322 N. Foster Drive ("the Facility").

II

On February 12, 2001, the Department issued a Penalty Assessment, Enforcement No. AE-P-99-0227 in the amount of \$9,820.00 to Respondent, which was based upon the following findings of fact:

A.

The Respondent owns and/or operates a gasoline dispensing facility. The Respondent owns and/or operates the Express Mart gasoline station located at or near 3322 N. Foster Drive,

Baton Rouge, East Baton Rouge Parish, Louisiana. East Baton Rouge Parish is classified as marginal for ozone nonattainment.

B.

On or about December 17, 1998, a Representative of the Department conducted a compliance inspection of the Respondent's facility. At the time of the inspection, the following violations were revealed:

1. Neither a Stage II Vapor Recovery training certificate nor testing records were available for review. This is a violation of LAC 33:III.2132.G.3 and G.7.
2. Daily inspection records were current but not accurately recorded. This is a violation of LAC 33:III.2132.F.2.
3. Faceplates were damaged greater than one-fourth the circumference on the following pumps: Pump # 1 - super unleaded and unleaded plus, Pump #2 - super unleaded, Pump #3 - all three grades, Pump #4 - super unleaded and unleaded plus, Pump #5 - super unleaded and unleaded, Pump #6 - super unleaded. This is a violation of LAC 33:III.2132.F.1.d.
4. Vapor hoses were torn greater than one inch on the following pumps: Pump #1 - unleaded plus, Pump #3 - unleaded and unleaded plus, Pump #4 - unleaded, Pump #5 - unleaded. This is a violation of LAC 33:III.2132.F.1.i.
5. Whips were torn on the following pumps: Pump #3 - unleaded plus, Pump #5 - unleaded, Pump #6 - unleaded. This is a violation of LAC 33:III.2132.F.1.l.
6. A vapor hose was flattened on Pump #3, super unleaded. This is a violation of LAC 33:III.2132.F.1.b.

7. The dry break cap for the unleaded tank was damaged and needed replacing.

This is a violation of LAC 33:III.2132.F.1.1.

C.

On or about January 29, 1999, a Notice of Violation and Potential Penalty (NOVPP), Tracking # AE-NP-99-042 was issued to the Respondent for violations noted during the December 17, 1998 compliance inspection.

D.

On or about February 15, 1999, an enforcement conference was held between the Respondent and members of the Department to discuss the violation(s) referenced in the NOVPP issued on or about January 29, 1999. At the time of the meeting, the Respondent was requested to submit a written response. As requested, the Department received a written response on or about March 9, 1999.

E.

A civil penalty under Section 2025 (E) and 2050.3 of the Act may be assessed for the violation(s) described herein.

F.

Having considered the factors set forth in Section 2025 (E)(3) of the Act, and in light of all facts and circumstances presently known, a civil penalty would be appropriate, equitable, and justified.

III

In response to the Penalty Assessment, 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 ONE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$1,500.00), of which FOUR HUNDRED TWENTY AND NO/100 DOLLARS (\$420.00) 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 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 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

Payment is to be made in two payments, the first due thirty (30) days from notice of the Secretary's signature and the second payment due ninety (90) 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).

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

EXPRESS FOOD MART, INC.

BY: [Signature]  
(Signature)  
PAUL TRAN  
(Printed or Typed)

TITLE: MANAGER

THUS DONE AND SIGNED in duplicate original before me this 7<sup>th</sup> day of

April, 20 06, at 2451 W. Sycamore Forest  
East Baton Rouge Parish Baton Rouge, LA 70815

[Signature]  
NOTARY PUBLIC (ID # )

Wayne D. Swenson, Jr.  
Notary ID # 55555  
(Printed or Typed)

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

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

THUS DONE AND SIGNED in duplicate original before me this 11<sup>th</sup> day of  
July, 20 06, at Baton Rouge, Louisiana.

[Signature]  
NOTARY PUBLIC (ID # 20456)  
Carl R. Boyles, II  
(Printed or Typed)

Approved [Signature]  
Harold Leggett, Ph.D., Assistant Secretary