

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

GARY GUIDRY TRUCKING, LLC

AI # 129030

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

- * **Settlement Tracking No.**
- * **SA-AE-09-0018**
- *
- * **Enforcement Tracking No.**
- * **AE-C-05-0217, AE-CN-06-0096,**
- * **AE-CN-06-0147 & AE-P-07-0012**
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- *

SETTLEMENT

The following Settlement is hereby agreed to between Gary Guidry Trucking, LLC (“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

The Respondent owns and/or operates a facility involved in the storage and transfer of dirt. The facility is located at 107 Ira Street in Carencro, Lafayette Parish, Louisiana. The facility does not currently operate under an air permit.

II

On or about May 24, 2005, an inspection of the Respondent’s facility was performed to determine the degree of compliance with the Act and the Air Quality Regulations in response to a citizen complaint, received by the Department on or about May 24, 2005, regarding fugitive dust blowing off site. While the Department’s investigation is not yet complete, the following violation was noted during the course of the inspection:

The Respondent allowed dust from the facility to leave the premises. The Respondent’s failure to take all reasonable precautions to prevent particulate

matter from becoming airborne is a violation of LAC 33:III.1305 and La. R.S. 30:2057(A)(2). The Respondent reportedly implemented procedures to reduce fugitive dust from the facility.

III

On or about December 13, 2005, Compliance Order (CO), Enforcement Tracking No. AE-C-05-0217, was issued to the Respondent.

IV

On or about June 14, 2006, an inspection of the Respondent's facility was performed to determine the degree of compliance with the Act and the Air Quality Regulations in response to a citizen complaint, received by the Department on or about June 14, 2006, regarding fugitive dust blowing off site. While the Department's investigation is not yet complete, the following violations were noted during the course of the inspection:

- A. The Respondent allowed dust from the facility to leave the premises. The Respondent's failure to take all reasonable precautions to prevent particulate matter from becoming airborne is a violation of LAC 33:III.1305 and La. R.S. 30:2057(A)(2).
- B. The Department issued the Respondent a CO, Enforcement Tracking No. AE-C-05-0217, on December 13, 2005, for failing to take all reasonable precautions to prevent particulate matter from becoming airborne. Paragraph I of the Order portion of the CO ordered the Respondent to immediately take, upon receipt of the CO, any and all steps necessary to achieve and maintain compliance with the Act and the Air Quality Regulations including, but not limited to, LAC 33:III.1305. The failure to take corrective action as specified in CO, Enforcement Tracking No. AE-C-05-0217, is a violation of La. R.S. 30:2025(E)(2).

V

On or about July 5, 2006, Compliance Order & Notice of Potential Penalty (CONOPP), Enforcement Tracking No. AE-CN-06-0096, was issued to the Respondent.

VI

On or about September 8, 2006, an inspection of the Respondent's facility was performed to determine the degree of compliance with the Act and the Air Quality Regulations in response to a citizen complaint received by the Department on or about September 8, 2006, regarding fugitive dust blowing off site. While the Department's investigation is not yet complete, the following violations were noted during the course of the inspection:

- A. The Respondent allowed dust from the facility to leave the premises. The Respondent's failure to take all reasonable precautions to prevent particulate matter from becoming airborne is a violation of LAC 33:III.1305 and La. R.S. 30:2057(A)(2).
- B. The Department issued CONOPP, Enforcement Tracking No. AE-CN-06-0096, to the Respondent on July 5, 2006, for failure to take all reasonable precautions to prevent particulate matter from becoming airborne. Paragraph I of the Order portion of the CONOPP ordered the Respondent to immediately take, upon the receipt of the CONOPP, any and all steps necessary to achieve and maintain compliance with the Act and the Air Quality Regulations, including, but not limited to, LAC 33:III.1305. The failure to take corrective action as specified in CONOPP, Enforcement Tracking No. AE-CN-06-0096, is a violation of La. R.S. 30:2025(E)(2).

VII

On or about December 12, 2006, CONOPP, Enforcement Tracking No. AE-CN-06-0147, was issued to the Respondent.

VIII

In response to the Consolidated Compliance Orders and Notice of Potential Penalties, Respondent entered into an informal dispute resolution with the Department.

IX

On September 10, 2007, the Department issued a Penalty Assessment, Enforcement No. AE-P-07-0012, in the amount of \$3,522.56 in response to the two (2) previously issued Notices of

Potential Penalty. This Penalty Assessment captures all previously mentioned enforcement actions.

X

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

XI

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 TWO THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$2,800.00), of which ONE THOUSAND TWO HUNDRED SEVENTY-TWO AND 56/100 DOLLARS (\$1,272.56) represents 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).

XII

Respondent further agrees that the Department may consider the inspection report(s), Compliance Order, Consolidated Compliance Orders and Notice of Potential Penalties, 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.

XIII

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.

XIV

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.

XV

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

XVI

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).

XVII

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XVIII

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.

GARY GUIDRY TRUCKING, LLC

BY: *Gary Guidry*
(Signature)

GARY J. GUIDRY
(Print)

TITLE: OWNER

THUS DONE AND SIGNED in duplicate original before me this 5th day of MAY, 20 09, at LA FAYETTE, LA.

Vincent J. Saitta
NOTARY PUBLIC (ID # _____)

VINCENT J. SAITTA
~~Notary Public - Attorney at Law~~
Louisiana Roll #11655
Parish of Lafayette, State of Louisiana
My Commission Expires: At Death

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

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

THUS DONE AND SIGNED in duplicate original before me this 21st day of September, 20 09, at Baton Rouge, Louisiana.

Christopher A. Ratoliff
NOTARY PUBLIC (ID # 10149)

Christopher A. Ratoliff
(Print)

Approved: *Peggy M. Hatch*
Peggy M. Hatch, Assistant Secretary