STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	**Settlement Tracking No.**
	*	**SA-AE-10-0002**
H & S CONSTRUCTION CO., INC.	*	
	*	**Enforcement Tracking No.**
AI # 30482	*	**AE-PP-08-0157**
	*	
PROCEEDINGS UNDER THE LOUISIANA ENVIRONMENTAL QUALITY ACT LA. R.S. 30:2001, ET SEQ.	*	

SETTLEMENT

The following Settlement is hereby agreed to between H & S Construction Co., 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 at the time of the alleged violations owned and/or operated a Hot Mix Asphalt Facility located at 2511 Southeast Evangeline Thruway in Lafayette, Lafayette Parish, Louisiana (the "Facility").

II

On July 23, 2009, the Department issued to Respondent a Notice of Potential Penalty (NOPP), Enforcement Tracking No. AE-PP-08-0157, which was based upon the following findings of fact:

On or about July 18, 2008 and January 26, 2009, inspections were conducted as a result of citizen complaints of hot mix Asphalt Plant (the facility) owned and/or operated by H & S Construction Co., Inc. (Respondent). On or about February 20, 2009, a file review was

conducted to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Air Quality Regulations. The facility is located at 2511 Southeast Evangeline Thruway in Lafayette, Lafayette Parish, Louisiana. The facility currently operates under air Permit No. 805-M-1 issued November 27, 1984.

The following violations were noted during the course of the inspections and file review:

A. The Full Compliance Inspection conducted on July 18, 2008 revealed that three bags in the fabric filter baghouse (420 bags) had become disconnected, had fallen, or had failed. Visual emissions of particulate matter were observed at the time of the inspection. The failure to reduce emissions of particulate matter is a violation of LAC 33:III.905.A, LAC 33:III.501.C.4, and La. R. S. 30:2057(A)(1) and 30:2057(A)(2).

B. The Full Compliance Inspection conducted on January 26, 2009 revealed that two bags in the fabric filter baghouse (420 bags) had become disconnected, had fallen, or had failed. Visual emissions of particulate matter were observed at the time of the inspection. The failure to reduce emissions of particulate matter is a violation of LAC 33:III.905.A, LAC 33:III.501.C.4, and La. R. S. 30:2057(A)(1) and 30:2057(A)(2).

III

The following deviations, although not included in the foregoing enforcement action, are included within the scope of the settlement herein.

A. Partial Compliance Inspection of the facility was conducted on April 7, 2009, following an anonymous complaint. The inspector directly observed particulate matter leaving the facility stack, and leaving the facility site. The failure to reduce emissions of particulate matter is a violation of LAC 33:III.905.A, LAC 33:III.501.C.4, and La. R. S. 30:2057(A)(1) and 30:2057(A)(2).

B. Partial Compliance Inspection of the facility was conducted on November 19, 2009, following an anonymous complaint. The inspector directly observed particulate matter leaving the facility stack, crossing Louisiana Highway 90, crossing the DEQ Acadiana Regional Office parking lot and travelling at least one mile downwind. The ARO office is approximately one mile from the facility site. The failure to reduce emissions of particulate matter is a violation of LAC 33:III.905.A, LAC 33:III.501.C.4, and La. R. S. 30:2057(A)(1) and 30:2057(A)(2).

C. A Partial Compliance Inspection was conducted on September 14, 2010, following an anonymous complaint. The inspector directly observed particulate matter leaving the facility stack, crossing Louisiana Highway 90 and depositing in the DEQ Acadiana Regional Office (ARO) parking lot. The ARO office is approximately one mile from the facility site. The facility manager responded that the baghouse would be shut down, inspected, and a report of the inspection would be submitted to the DEQ Acadiana Regional Office. On or about September 15, 2010, the inspector observed a plume of particulate matter, measured length of 1.7 miles. The inspector did not enter the facility. The inspector video taped the plume leaving the facility. The failure to reduce emissions of particulate matter is a violation of LAC 33:III.905.A, LAC 33:III.501.C.4, and La. R. S. 30:2057(A)(1) and 30:2057(A)(2).

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 THREE THOUSAND AND NO/100 DOLLARS ($3,000.00) of which Four Hundred Twenty-Nine and 77/100 Dollars ($429.77) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement.

VI

Respondent further agrees that the Department may consider the inspection reports, the NOPP, 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 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 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.

H & S CONSTRUCTION CO., INC.

BY: _____
(Signature)

_____
(Print)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20 _____, at _____.

_____
NOTARY PUBLIC (ID #_____)

_____
(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch, Secretary

BY: _____
Cheryl Nolan, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20_____, at Baton Rouge, Louisiana.

_____
NOTARY PUBLIC (ID # _____)

_____
(Print)

Approved: _____
Cheryl Nolan, Assistant Secretary