

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

* **Settlement Tracking No.**

* **SA-WE-06-0044**

INDUSTRIAL PIPE, INC.

*

* **Enforcement Tracking No.**

AI # 14689

* **WE-CN-06-0173**

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**PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT**

*

* **Docket No. 2006-3156-EQ**

LA. R.S. 30:2001, ET SEQ.

*

SETTLEMENT

The following Settlement is hereby agreed to between Industrial Pipe, 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 Construction/Demolition Debris and Woodwaste Landfill facility located at 11266 La. Hwy. 23 in Belle Chasse, Plaquemines Parish, Louisiana ("the Facility").

II

On May 30, 2006, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. WE-CN-06-0173 to Respondent, which was based upon the following findings of fact:

The Respondent was granted coverage to operate the aforementioned facility under Louisiana Pollutant Discharge Elimination System (LPDES) general permit LAG780000 on

January 9, 2004, and specifically was assigned permit number LAG780013. This permit expired on August 31, 2006, and has been administratively continued. LPDES general permit LAG780013 authorizes the Respondent to discharge certain quantities and qualities of contact stormwater via an unnamed ditch into Hero Canal, waters of the state.

An inspection conducted by the Department on or about March 16, 2006, in response to a citizen's complaint, revealed that the Respondent caused or allowed an unauthorized discharge of fire suppression water from a location not authorized in LPDES general permit LAG780013. Specifically, the following violations were observed during the inspection:

- A. Water used to extinguish a fire of trees and other land clearing debris was discharging/flowing into an unnamed perimeter ditch, thence into Hero Canal, waters of the state. The water that was discharging from the Respondent's facility into the ditch, thence into Hero Canal, was black and cloudy in appearance with a very strong septic and burned odor. Hydrolab readings taken of the discharge at the time of the inspection revealed a Dissolved Oxygen (DO) concentration of 1.98 mg/L. Laboratory results indicated that the discharge contained a Biochemical Oxygen Demand (BOD₅) concentration of 541 mg/L, a Total Suspended Solids (TSS) concentration of 266 mg/L, and a Chemical Oxygen Demand (COD) concentration of 1,692 mg/L. The effluent limitations for BOD₅ and TSS for discharges from woodwaste areas as listed in LPDES general permit LAG780013 are 140 mg/L and 88 mg/L, respectively.

B. Additional Hydrolab readings taken in the center of Hero Canal adjacent to the discharge revealed a DO concentration of 1.37 mg/L at depths of 1.0 and 2.76 meter(s), respectively. The darkened-discolored water with the septic odor that was observed discharging from the Respondent's facility was also noted at this location. Hydrolab readings taken in the center of Hero Canal at the public boat launch off Walker Road (approximately 3.5 miles from the discharge location) revealed DO concentrations of 1.65 mg/L, 1.32 mg/L, and 1.40 mg/L at depths of 1.0, 1.68 and 2.75 meter(s), respectively. A background reading taken in the center of Hero Canal at its discharge into the Intracoastal Waterway (approximately 6.5 miles from the discharge location) revealed DO concentrations of 7.40 mg/L and 6.87 mg/L at depths of 1.0 and 2.06 meter(s), respectively. This discharge of unpermitted wastewater is in violation of LPDES general permit LG780013 (Part I, Schedule A, Pages 5 and 6 of 11 and Part III, Section A.2), La. R.S. 30:2076 (A)(1)(b), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, LAC 33:IX.2701.A, and LAC 33:IX.6507.A.5.

Respondent did cause or allow an adverse impact to aquatic biota in Hero Canal, waters of the state, as a result of the above-referenced unauthorized discharge. Specifically, observations during the course of the March 16, 2006, inspection revealed approximately five thousand three hundred and seventy (5,370) dead and/or dying fish and crustaceans in Hero Canal and at the

public boat launch off Walker Road (approximately 3.5 miles from the discharge location). This destruction of aquatic biota is in violation of LPDES general permit LAG780013 (Part III Section A.2), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX, 501.D, LAC 33:IX.1113.B.1.d, and LAC 33:IX.2701.A.

A file review conducted by the Department on or about May 15, 2006, revealed that the Respondent failed to report the unauthorized discharge that caused the fish kill as indicated above. The failure to report any noncompliance which may endanger human health or the environment in a timely manner is in violation of LPDES general permit LAG780013 (Part III, Sections A.2 and D.6.e), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, LAC 33:IX.2701.A, and LAC 33:IX.2701.L.6.a.

Further file review conducted by the Department on or about May 15, 2006, revealed that the Respondent failed to submit Discharge Monitoring Reports (DMRs) to the Department as required by LPDES general permit LAG780013 since the issuance of the permit. Each failure to submit a DMR constitutes a violation of LPDES general permit LAG780013 (Part I, Section C.8, and Part III, Sections A.2 and D.4), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, LAC 33:IX.2701.A, and LAC 33:IX.2701.L.4.a.

III

In response to the Consolidated Compliance Order and Notice of Potential Penalty, 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 NINETEEN THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$19,300.00) of which Three Thousand Three Hundred and No/100 Dollars (\$3,300.00) 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 Consolidated Compliance Order and 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 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 Plaquemines 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 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 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.

INDUSTRIAL PIPE, INC.

BY: Kennett F Stewart
(Signature)

Kennett Stewart
(Print)

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 16th day of November, 20 06, at Belle Chasse, La.

[Signature]
NOTARY PUBLIC (ID # 20662)

Francis J. Lobrano
(Print) my Commission Expires at Death

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

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

[Signature] THUS DONE AND SIGNED in duplicate original before me this 7th day of March, 20 07, at Baton Rouge, Louisiana

[Signature]
NOTARY PUBLIC (ID # 21673)

G. Allen Kingpatrick
(Print)

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