

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

* **Settlement Tracking No.**

LAVIGNE PLAZA, L.L.C.

* **SA-WE-09-0040**

AI # 84866

* **Enforcement Tracking No.**

* **WE-CN-06-0417**

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

* **Docket No. 2008-5463-EQ**

SETTLEMENT

The following Settlement is hereby agreed to between Lavigne Plaza, L.L.C. ("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 limited liability company that owns and/or operates a convenience store and car wash facility located at 2963 U.S. Highway 190 in Mandeville, St. Tammany Parish, Louisiana ("the Facility").

II

On February 1, 2007, the Department issued to Respondent a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. WE-CN-06-0417, which was based upon the following findings of fact:

The Respondent owns and/or operates Blue Harbor Pointe Convenience Store and Car Wash, which is located at 2963 U.S. Highway 190 in Mandeville, St. Tammany Parish, Louisiana. The Respondent was granted coverage under Louisiana Pollutant Discharge Elimination System (LPDES)

general permit LAG750000, on or about September 5, 2000 and was specifically assigned permit number LAG750328. LPDES permit LAG750328 expired on June 30, 2003 and was administratively continued. LPDES permit LAG750328 was reissued to the Respondent on May 7, 2004 and will expire on or about March 14, 2009. Under the terms and conditions of the LPDES permit LAG750328, the Respondent is authorized to discharge treated exterior vehicle wash wastewater into an unnamed ditch, thence into Bayou Chinchuba, thence to Lake Pontchartrain, waters of the state.

The Respondent was issued Compliance Order WE-C-04-0066 on or about August 16, 2004.

The relevant violations of the Findings of Fact were:

- A. Unauthorized discharge of exterior vehicle wash wastewater from a location not specified in LPDES permit LAG750328;
- B. Failure to submit quarterly Discharge Monitoring Reports (DMRs); and,
- C. Effluent violations.

The relevant requirements of the Compliance Order were:

- A. To immediately take, upon receipt of the Compliance Order, any and all steps necessary to achieve and maintain compliance with permit limitations and conditions contained in LPDES permit LAG750328.
- B. To submit to the Enforcement Division, within thirty (30) days after receipt of the Compliance Order, properly completed Discharge Monitoring Reports (DMRs) for the monitoring periods mentioned in Paragraph III of the Findings of Fact portion of WE-C-04-0066.
- C. To submit a written report that included a detailed description of the circumstances surrounding the cited violations and actions taken or to be taken to achieve compliance with the Order Portion of the Compliance Order.

On or about August 31, 2004, the Respondent submitted a written response to Compliance Order WE-C-04-0066. Compliance Order WE-C-04-0066 is a final action of the Department and is not subject to further review.

An inspection conducted by the Department on or about September 21, 2006, in response to a citizen's complaint, revealed an unauthorized discharge and an operation and maintenance deficiency. Specifically, the effluent which had discharged from the Respondent's facility into the ditch contained solids in greater than trace amounts. The wastewater was grayish in color with a detectable odor. The discharge in solids into waters of the state in greater than trace amounts is in violation of LPDES permit LAG750328 (Part I, Section B, page 7 of 16, and Part III, Section A.2), La. R.S. 33:2075, La. R.S. 30:2076 (A)(1), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, LAC 33:IX.2701.A. The failure to properly operate and maintain the treatment system to prevent the aforementioned unauthorized discharge and/or conditions of the wastewater is in violation of LPDES permit LAG750328 (Part III, Sections A.1 and B.3.a), La. R.S. 33:2075, La. R.S. 30:2076 (A)(1), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.

An inspection conducted by the Department on or about September 21, 2006, and a subsequent file review on or about December 5, 2006, revealed permit excursions for the following parameters from January 1, 2002 to September 30, 2006, as reported by the Respondent on DMRs:

Monitoring Period	Outfall	Parameter	Permit Limit	Sample Value
07/01/06 – 09/30/06	001A	COD	300 mg/L	906 mg/L
07/01/06 – 09/30/06	001A	TSS	45 mg/L	264 mg/L
07/01/06 – 09/30/06	001A	COD	300 mg/L	547 mg/L
07/01/06 – 09/30/06	001A	TSS	45 mg/L	116 mg/L
04/01/06 – 06/30/06	001A	COD	300 mg/L	1038 mg/L
04/01/06 – 06/30/06	001A	TSS	45 mg/L	132 mg/L
04/01/06 – 06/30/06	001A	Oil & Grease	15 mg/L	42 mg/L
01/01/06 – 03/30/06	001A	COD	300 mg/L	333 mg/L
01/01/06 – 03/30/06	001A	TSS	45 mg/L	130 mg/L
10/01/05 – 12/30/05	001A	TSS	45 mg/L	48 mg/L
07/01/05 – 09/30/05	001A	COD	300 mg/L	623 mg/L
07/01/05 – 09/30/05	001A	TSS	45 mg/L	123 mg/L
04/01/05 – 06/30/05	001A	TSS	45 mg/L	74 mg/L
10/01/04 -12/31/04	001A	COD	300 mg/L	514 mg/L
10/01/04 -12/31/04	001A	TSS	45 mg/L	236 mg/L
10/01/04 -12/31/04	001A	Oil & Grease	15 mg/L	25 mg/L

Monitoring Period	Outfall	Parameter	Permit Limit	Sample Value
07/01/04 – 09/31/04	001A	COD	300 mg/L	906 mg/L
07/01/04 – 09/31/04	001A	TSS	45 mg/L	264 mg/L
04/01/04 – 06/30/04	001A	COD	300 mg/L	590 mg/L
04/01/04 – 06/30/04	001A	TSS	45 mg/L	253 mg/L
04/01/04 – 06/30/04	001A	Oil & Grease	15 mg/L	21 mg/L
01/01/04 – 03/30/04	001A	COD	300 mg/L	579 mg/L
01/01/04 – 03/30/04	001A	pH	6.0 – 9.0 s.u.*	9.73 s.u.*
01/01/04 – 03/30/04	001A	TSS	45 mg/L	246 mg/L
01/01/04 – 03/30/04	001A	Oil & Grease	15 mg/L	243 mg/L
10/01/03 – 12/30/03	001A	COD	300 mg/L	419 mg/L
10/01/03 – 12/30/03	001A	TSS	45 mg/L	100 mg/L
07/01/03 – 09/30/03	001A	COD	300 mg/L	510 mg/L
07/01/03 – 09/30/03	001A	TSS	45 mg/L	537 mg/L
07/01/03 – 09/30/03	001A	Oil & Grease	15 mg/L	64 mg/L
04/01/03 – 06/31/03	001A	TSS	45 mg/L	87 mg/L
01/01/03 – 03/30/03	001A	COD	300 mg/L	326 mg/L
01/01/03 – 03/30/03	001A	TSS	45 mg/L	180 mg/L
01/01/03 – 03/30/03	001A	Oil & Grease	15 mg/L	33 mg/L
10/01/02 – 12/31/02	001A	TSS	45 mg/L	53 mg/L

*Standard Units

Each effluent exceedence is a violation of LPDES permit LAG750328 (Part I, Section B and Part III, Section A.2), La. R.S. 33:2075, La. R.S. 30:2076 (A)(1), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.501.D, LAC 33:IX.2701.A.

A file review on or about December 5, 2006 the Respondent failed to report for the following parameters from January 1, 2002 to September 30, 2006, as reported by the Respondent on DMRs:

Monitoring Period	Outfall	Parameter	Permit Limit	Sample Value
07/01/06 – 09/30/06	001A	Visible Sheen	Report	FTR***
04/01/06 – 06/30/06	001A	Visible Sheen	Report	FTR***
01/01/06 – 03/30/06	001A	Visible Sheen	Report	FTR***
10/01/05 – 12/30/05	001A	Visible Sheen	Report	FTR***
07/01/05 – 09/30/05	001A	Visible Sheen	Report	FTR***
04/01/05 – 06/30/05	001A	Visible Sheen	Report	FTR***
01/01/05 – 03/31/05	001A	Visible Sheen	Report	FTR***
10/01/04 – 12/31/04	001A	Visible Sheen	Report	FTR***
07/01/04 – 09/31/04	001A	Visible Sheen	Report	FTR***
01/01/04 – 03/30/04	001A	S & D**	Report	FTR***
01/01/03 – 03/31/03	001A	S & D**	Report	FTR***

Monitoring Period	Outfall	Parameter	Permit Limit	Sample Value
10/01/02 – 12/31/02	001A	Flow Estimate	Report	FTR***
10/01/02 – 12/30/02	001A	S& D**	Report	FTR***
01/01/02 – 03/30/02	001A	S& D**	Report	FTR***

Soaps & Detergents *Failed to Report

Each failure to report is in violation of LPDES permit LAG750328 (Part I, Section B and Part III, Section A.2), La. R.S. 33:2075, La. R.S. 30:2076 (A)(1), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.2701.A.

A file review conducted by the Department on or about December 5, 2006, revealed that the Respondent failed to submit Non-Compliance Reports (NCRs). Specifically, the Respondent failed to submit a NCR for each excursion listed in Paragraph V. Each failure to submit a NCR to the Department is in violation LPDES permit LAG750328 (Part III, Sections A.1 and D.7) of La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC33:IX.2701.A.1, and LAC 33:IX.2701.L.7.

A file review conducted by the Department on or about December 5, 2006, revealed that the Respondent failed to submit a signed and certified DMR. Specifically, the Respondent failed to submit a signed and certified DMR for the monitoring period October 2003 through December 2003. The failure to submit a signed and certified DMR is in violation of LPDES permit LAG750328 (Part I, Section C.7, and Part III, Sections A.2 and D.10.b), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2701.A and LAC 33:IX.2701.K.1.

A file review conducted by the Department on or about December 5, 2006, revealed that the Respondent failed to monitor its effluent in accordance with LPDES permit LAG750328. Specifically, the Respondent failed to monitor its effluent for the parameters required by LAG750328 on a quarterly basis from October 2000 to December 2001. Each failure to monitor is in violation of LPDES permit LAG750328 (Part I, Section B, and Part III, Section A.2), La. R. S. 30.7076 (A)(3), LAC 33:IX.501.A, and LAC33:IX.2701.A.

On or about January 9, 2007, a site visit conducted by the Department, revealed that the Respondent has an un-permitted outfall of contaminated stormwater runoff. Specifically, a contaminated stormwater runoff outfall is located southwest of Outfall 001A. This outfall drains the exit location of the carwash and wipe-down stations, and discharges during rain events into an unnamed ditch, thence to Bayou Chinchuba. The LPDES permit LAG750328 only authorizes the discharge of treated exterior vehicle and equipment wash wastewater. The unauthorized discharge of contaminated stormwater to waters of the State is in violation of La. R.S. 30:2075, La. R.S. 30:2076(A)(1)(a), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.501.C, LAC 33:IX.501.D, and LAC 33:IX.2311.A.

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

Monitoring Period	Outfall	Parameter	Permit Limit	Sample Value
10/01/06 – 12/31/06	001A	COD	300 mg/L	765 mg/L
10/01/06 – 12/31/06	001A	TSS	45 mg/L	125 mg/L

III

In response to the Consolidated Compliance Order and Notice of Potential, 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

TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00), of which Three Thousand One Hundred Three and 17/100 Dollars (\$3,103.17) 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).

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).

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in St. Tammany 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 on an installment basis as follows: 13 months at \$1,500.00 each month and \$500.00 due on the 14th month. The first installment payment is due within ten (10) days from notice of the Secretary's signature. Each subsequent payment will be due on the first day of each month until paid in full. If payment is not received according to the above installment schedule, 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.

LAVIGNE PLAZA, L.L.C.

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
Harold Leggett, Ph.D., Secretary

BY: _____
Peggy M. Hatch, 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:  _____
Peggy M. Hatch, Assistant Secretary