STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

| | | |
|---|---|---|
| **IN THE MATTER OF:** | * | **Settlement Tracking No. SA-AE-16-0014** |
| **LEBEOUF BROS. TOWING, L.L.C.** | * | |
| **AI # 12991** | * | **Enforcement Tracking No. AE-CN-13-00431** |
| **PROCEEDINGS UNDER THE LOUISIANA ENVIRONMENTAL QUALITY ACT LA. R.S. 30:2001, ET SEQ.** | * | **Docket No. 2014-10133-EQ** |

## SETTLEMENT

The following Settlement is hereby agreed to between LeBeouf Bros. Towing, 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 barge, shipbuilding and repair facility located in Lafourche Parish, Louisiana ("the Facility").

II

On July 3, 2013, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. **AE-CN-13-00431**, which was based upon the following findings of fact:

"The Respondent owns and/or operates a barge, shipbuilding, and repair facility located at 136 Dry Dock Road in Bourg, Lafourche Parish, Louisiana. The facility operated under Air Permit No. 1560-00066-00 from February 15, 1993, to August 20, 2009. The facility currently operates under Air Permit No. 1560-00066-01 issued on August 20, 2009. On or about May 9, 2013, the Department received the Respondent's Title V Air Permit Application (application) dated May 6, 2013. The application was determined to be Administratively Complete by the Department on or about May 9, 2013.

On or about April 24, 2009, the Department issued Consolidated Compliance Order and Notice of Potential Penalty (CONOPP), Enforcement Tracking No. AE-CN-08-0289 to the Respondent. On or about July 23, 2009, the Department issued Amended Consolidated Compliance Order and Notice of Potential Penalty (ACONOPP), Enforcement Tracking No. AE-CN-08-0289A to the Respondent. The violations cited in the CONOPP and ACONOPP addressed the Respondent's failure to maintain facility emissions within the emission limits defined in Air Permit No. 1560-00066-00 issued on February 15, 1993. During the period encompassing January 2004 to January 2009, the facility exceeded the emission limit for methyl isobutyl ketone, and emitted the following unpermitted pollutants: n-butyl alcohol, ethyl benzene, and methyl alcohol. The CONOPP and ACONOPP were finalized and administratively closed on or about November 14, 2011.

On or about May 7, 2013, a file review of the Respondent's facility was conducted to determine the degree of compliance with the Act and the Air Quality Regulations.

While the Department's investigation is not yet complete, the following violations were noted during the course of the file review:

A. On or about August 4, 2009, the Department received the Respondent's 2009 Second Quarter Toxic Air Pollutants (TAP) Report dated July 28, 2009. According to the report, the facility emitted the following unpermitted pollutants during the period encompassing April 1, 2009, to June 30, 2009:

| Pollutant | Quarterly Total (tons) | 12 Month Consecutive Total (tons) |
|---|---|---|
| N-Butyl Alcohol | 0.955 | 2.496 |
| Ethyl Benzene | 0.606 | 1.841 |
| Methyl Alcohol | 0.194 | 0.498 |

Emissions of each unpermitted pollutant is a violation of LAC 33:III.501.C.2, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

B. On or about February 4, 2013, the Department received a letter from the Respondent dated January 22, 2013. According to the letter, the facility exceeded the following permit limits during the period encompassing August 2009 to November 2012:

| Ethyl Benzene | |
|---|---|
| **Permit Limit: 2.4 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| December 2009 | 2.50 |
| January 2010 | 2.80 |
| February 2010 | 2.91 |
| March 2010 | 2.65 |
| April 2010 | 2.78 |
| May 2010 | 2.94 |
| June 2010 | 2.53 |
| August 2010 | 2.53 |
| May 2011 | 2.64 |
| June 2011 | 2.94 |
| July 2011 | 3.16 |
| August 2011 | 3.15 |
| September 2011 | 3.49 |
| October 2011 | 3.80 |
| November 2011 | 4.11 |
| December 2011 | 4.49 |
| January 2012 | 4.75 |
| February 2012 | 4.94 |
| March 2012 | 5.27 |
| April 2012 | 5.78 |
| May 2012 | 6.36 |
| June 2012 | 7.42 |
| July 2012 | 7.43 |
| August 2012 | 8.31 |
| September 2012 | 8.41 |
| October 2012 | 8.73 |
| November 2012 | 8.68 |

| Methanol | |
|---|---|
| **Permit Limit: 0.43 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| August 2009 | 0.87 |
| September 2009 | 0.86 |
| October 2009 | 1.00 |
| November 2009 | 1.03 |
| December 2009 | 1.09 |
| January 2010 | 1.18 |
| February 2010 | 1.19 |
| March 2010 | 1.12 |
| April 2010 | 1.16 |
| May 2010 | 1.23 |
| June 2010 | 1.01 |
| July 2010 | 0.92 |
| August 2010 | 0.98 |
| September 2010 | 0.89 |
| October 2010 | 0.83 |
| November 2010 | 0.89 |
| December 2010 | 0.78 |
| January 2011 | 0.72 |
| February 2011 | 0.74 |
| March 2011 | 0.66 |
| April 2011 | 0.61 |
| May 2011 | 0.55 |
| June 2011 | 0.53 |
| July 2011 | 0.49 |
| April 2012 | 0.49 |

| n-Butanol | |
|---|---|
| **Permit Limit: 2.44 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| June 2012 | 2.49 |
| July 2012 | 2.55 |
| August 2012 | 2.99 |
| September 2012 | 2.99 |
| October 2012 | 3.05 |
| November 2012 | 3.08 |

| Toluene | |
|---|---|
| **Permit Limit: 0.30 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| August 2009 | 0.55 |
| September 2009 | 0.68 |
| October 2009 | 0.72 |
| November 2009 | 0.74 |
| December 2009 | 0.88 |
| January 2010 | 0.95 |
| February 2010 | 0.99 |
| March 2010 | 1.04 |
| April 2010 | 1.08 |
| May 2010 | 1.14 |
| June 2010 | 0.93 |
| July 2010 | 0.92 |
| August 2010 | 0.96 |
| September 2010 | 0.80 |
| October 2010 | 0.90 |
| November 2010 | 0.94 |
| December 2010 | 0.64 |
| January 2011 | 0.79 |
| February 2011 | 0.90 |
| March 2011 | 0.89 |
| April 2011 | 0.85 |
| May 2011 | 0.90 |
| June 2011 | 1.02 |
| July 2011 | 1.02 |
| August 2011 | 0.98 |
| September 2011 | 1.07 |
| October 2011 | 1.06 |
| November 2011 | 1.06 |
| December 2011 | 1.30 |
| January 2012 | 1.22 |
| February 2012 | 1.19 |
| March 2012 | 1.32 |
| April 2012 | 1.42 |
| May 2012 | 1.64 |

| Toluene | |
|---|---|
| **Permit Limit: 0.30 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| June 2012 | 2.12 |
| July 2012 | 2.16 |
| August 2012 | 2.68 |
| September 2012 | 2.80 |
| October 2012 | 2.87 |
| November 2012 | 3.01 |

| Toxic Air Pollutants | |
|---|---|
| **Permit Limit: 14.67 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| December 2009 | 14.70 |
| January 2010 | 16.39 |
| February 2010 | 17.02 |
| March 2010 | 15.56 |
| April 2010 | 16.39 |
| May 2010 | 17.37 |
| June 2010 | 14.90 |
| August 2010 | 15.04 |
| May 2011 | 16.14 |
| June 2011 | 17.94 |
| July 2011 | 19.11 |
| August 2011 | 18.94 |
| September 2011 | 20.78 |
| October 2011 | 22.32 |
| November 2011 | 24.06 |
| December 2011 | 26.29 |
| January 2012 | 27.68 |
| February 2012 | 28.65 |
| March 2012 | 30.48 |
| April 2012 | 33.27 |
| May 2012 | 36.84 |
| June 2012 | 42.86 |

| Toxic Air Pollutants | |
|---|---|
| **Permit Limit: 14.67 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| July 2012 | 43.11 |
| August 2012 | 48.39 |
| September 2012 | 48.92 |
| October 2012 | 50.97 |
| November 2012 | 50.74 |

| Volatile Organic (sic) Compounds (VOC) | |
|---|---|
| **Permit Limit: 58.99** | |
| **Period Ending** | **Annual (tons)** |
| June 2012 | 59.28 |
| July 2012 | 60.00 |
| August 2012 | 67.90 |
| September 2012 | 68.57 |
| October 2012 | 71.15 |
| November 2012 | 70.96 |

| Xylene | |
|---|---|
| **Permit Limit: 8.92 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| October 2009 | 9.11 |
| November 2009 | 9.61 |
| December 2009 | 9.85 |
| January 2010 | 11.06 |
| February 2010 | 11.51 |
| March 2010 | 10.31 |
| April 2010 | 10.81 |
| May 2010 | 11.42 |
| June 2010 | 9.83 |
| July 2010 | 9.12 |
| August 2010 | 9.71 |
| September 2010 | 9.08 |

| Xylene | |
|---|---|
| **Permit Limit: 8.92 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| April 2011 | 9.15 |
| May 2011 | 10.50 |
| June 2011 | 11.63 |
| July 2011 | 12.55 |
| August 2011 | 12.59 |
| September 2011 | 13.95 |
| October 2011 | 15.16 |
| November 2011 | 16.50 |
| December 2011 | 17.89 |
| January 2012 | 18.95 |
| February 2012 | 19.68 |
| March 2012 | 20.86 |
| April 2012 | 22.90 |
| May 2012 | 25.20 |
| June 2012 | 29.43 |
| July 2012 | 29.54 |
| August 2012 | 32.87 |
| September 2012 | 33.12 |
| October 2012 | 34.61 |
| November 2012 | 34.29 |

Each event of exceedance of each permit limit for each pollutant is a violation of Air Permit No. 1560-00066-01, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

C. On or about February 4, 2013, the Department received a letter from the Respondent dated January 22, 2013, and electronic mail on April 9, 2013, reporting facility emissions during the 2010, 2011, 2012, and 2013 calendar years. According to the letter, facility emissions initially exceeded the minor source threshold during the 2010 calendar year. At that time, the facility became a major source as defined by LAC 33:III.502.A. Specifically, the facility

emitted more than ten (10) tons of a single TAP, xylene. The facility emitted more than 25 tons of a combination of TAP as illustrated in the tables below.

| Aggregate TAP: Xylene | |
|---|---|
| **Permit Limit: 8.92 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| January 2010 | 11.06 |
| February 2010 | 11.51 |
| March 2010 | 10.31 |
| April 2010 | 10.81 |
| May 2010 | 11.42 |
| May 2011 | 10.50 |
| June 2011 | 11.63 |
| July 2011 | 12.55 |
| August 2011 | 12.59 |
| September 2011 | 13.95 |
| October 2011 | 15.16 |
| November 2011 | 16.50 |
| December 2011 | 17.89 |
| January 2012 | 18.95 |
| February 2012 | 19.68 |
| March 2012 | 20.86 |
| April 2012 | 22.90 |
| May 2012 | 25.20 |
| June 2012 | 29.43 |
| July 2012 | 29.54 |
| August 2012 | 32.87 |
| September 2012 | 33.12 |
| October 2012 | 34.61 |
| November 2012 | 34.29 |
| March 2013 | 28.49 |

| Combination TAP Total | |
|---|---|
| **Permit Limit: 14.67 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| December 2011 | 26.29 |
| January 2012 | 27.68 |
| February 2012 | 28.65 |

| Combination TAP Total | |
|---|---|
| **Permit Limit: 14.67 tons per year** | |
| **Period Ending** | **12 Month Consecutive Total (tons)** |
| March 2012 | 30.48 |
| April 2012 | 33.27 |
| May 2012 | 36.84 |
| June 2012 | 42.86 |
| July 2012 | 43.11 |
| August 2012 | 48.39 |
| September 2012 | 48.92 |
| October 2012 | 50.97 |
| November 2012 | 50.74 |
| March 2013 | 45.01 |

The Respondent's failure to obtain a Part 70 permit prior to operating the facility as a major source is a violation of LAC 33:III.507.A.1 and La. R.S. 30:2057(A)(2).

D. On or about April 9, 2013, the Department received correspondence from the Respondent. According to the Respondent, the facility exceeded the following 12 month consecutive permitted emissions limit for the period ending in March 2013:

| Pollutant | Permit Limit (tons) | 12 Month Consecutive Total (tons) |
|---|---|---|
| Volatile Organic Compounds (VOC) | 58.99 | 63.48 |
| Toxic Air Pollutants (TAP) | 14.67 | 45.01 |
| Ethyl Benzene | 2.4 | 7.18 |
| n-Butanol | 2.44 | 2.84 |
| Toluene | 0.3 | 4.66 |
| Xylene | 8.92 | 28.49 |

Each exceedance of each permit limit for each pollutant is a violation of Air Permit No. 1560-00066-01, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

E. In correspondence from the Respondent dated April 30, 2013, the Respondent stated that a Power Flame G5-GO-30 (boiler burner) was installed at the facility on or about April 7, 2013. The boiler burner is not an authorized emission source as per Air Permit No. 1560-00066-01. The Respondent's failure to submit a timely and complete permit application prior to installing the burner is a violation of LAC 33:III.501.C.1 and La. R.S. 30:2057(A)(2).

F. In correspondence from the Respondent dated April 30, 2013, the Respondent stated that operation of a Power Flame G5-GO-30 (boiler burner) commenced on or about April 12, 2013. The boiler burner is not an authorized emission source as per Air Permit No. 1560-00066-01. The Respondent's failure to obtain authorization from the Department prior to operating the boiler burner is a violation of LAC 33:III.501.C.2, La. R.S. 30:2057(A)(1) and 30:2057(A)(2)."

III

In response to the Penalty Assessment (or CO or CO/NOPP), 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 EIGHT THOUSAND FIVE HUNDRED TWENTY-SIX AND 07/100 DOLLARS ($28,526.07), of which Eight Hundred Forty-One and 23/100 Dollars ($841.23) represents the 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)/permit record(s), Consolidated Compliance Order & 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 La. R. S. 30:2025(E) of the Act.

IX

As required by law, the Department has submitted this Settlement Agreement to the Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

X

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Lafourche Parish, Louisiana. The advertisement, in form and wording 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.

XI

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).

XII

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

XIII

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.

**LEBEOUF BROS. TOWING, L.L.C.**

BY: _____
(Signature)

_____
(Printed)

TITLE: _____

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

_____
NOTARY PUBLIC (ID #_____)

_____
(stamped or printed)

**LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY**
Chuck Carr Brown, Ph.D., Secretary

BY: _____
Lourdes Iturralde, 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 # _____)

_____
(stamped or printed)

Approved: _____
Lourdes Iturralde, Assistant Secretary