

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

LEBEOUF BROS. TOWING, L.L.C.

AI # 12991

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

\* Settlement Tracking No.  
\* SA-AE-11-0001  
\*  
\* Enforcement Tracking No.  
\* AE-CN-08-0289  
\* AE-CN-08-0289A  
\*  
\* Docket No. 2009-8275-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 Bourg, Lafourche Parish, Louisiana ("the Facility").

II

On April 24, 2009, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, ENFORCEMENT NO. AE-CN-08-0289, which was based upon the following findings of fact:

The Respondent owns and/or operates Bourg Dry Dock & Service Co., Inc., a barge, shipbuilding, and repair facility. The facility is located at 136 Dry Dock Road in Bourg, Lafourche Parish, Louisiana. The facility operates under Air Permit No. 1560-00066-00, issued on February 15, 1993.

On or about June 11, 2004, the Department issued Compliance Order & Notice of Potential Penalty (CONOPP), Enforcement Tracking No. AE-CN-03-0431, to the Respondent for emitting unpermitted toxic air pollutants (TAPS) into the air. The Compliance Order (CO) portion of the CONOPP ordered the Respondent to immediately take, upon receipt of the CO, any and all steps necessary to achieve and maintain compliance with Air Permit No. 1560-00066-00 and the Air Quality Regulations. The CONOPP ordered the Respondent to submit to the Permits Division, within sixty (60) days after receipt of the CO, an appropriate air permit application which reflects the current operations and emissions from each source at the facility. The CONOPP ordered the Respondent to submit to the Enforcement Division, within thirty (30) days after receipt of the CO, a written report that includes 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 CONOPP. Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-03-0431, is a final action of the Department and not subject to further review.

On or about June 3, 2005, an inspection of the Respondent's facility was performed to determine the degree of compliance with the Act and the Air Quality Regulations.

The following violation was noted during the course of the inspection:

At the time of the inspection, the inspector noted spray painting was being performed with no controls in place. The Respondent's failure to install and/or diligently maintain an air pollution control device is a violation of LAC 33:III.905.A, LAC 33:III.1305.A.3, Specific Condition No. 1 of Air Permit No. 1560-00066-00, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

On or about December 10, 2008, and March 4, 2009, file reviews of the Respondent's facility were performed to determine the degree of compliance with the Act and the Air Quality Regulations.

The following violations were noted during the course of the file reviews:

A. The Respondent reported the following emissions in Quarterly TAP

Emissions Reports encompassing the period of January of 2004 through January of 2009.

Report Date	Pollutants in Tons			
	Methyl Isobutyl ketone  (Permit Limit 0.06 tons per year)	n-Butyl Alcohol  (Not Permitted)	Ethyl Benzene  (Not Permitted)	Methyl Alcohol  (Not Permitted)
01/30/04	5.737 *	1.129	2.964	0.000
04/30/04	4.878 *	1.048	1.595	0.000
07/28/04	4.130 *	0.911	1.179	0.000
10/22/04	3.560 *	1.115	1.144	0.000
01/28/05	2.580 *	0.875	0.792	0.000
04/28/05	2.592 *	0.959	0.648	0.000
07/28/05	2.754 *	1.081	0.409	0.000
10/28/05	1.962 *	0.703	0.263	0.000
01/28/06	1.846 *	0.666	0.263	0.000
04/28/06	1.235 *	2.429	1.100	0.000
07/21/06	0.512 *	2.421	1.201	0.000
10/28/06	0.246 *	2.522	1.185	0.000
01/28/07	0.000	2.429	1.334	0.242
04/27/07	0.000	0.722	0.747	0.242
07/27/07	0.000	1.255	1.232	0.242
10/28/07	0.054	1.346	1.554	0.242
01/25/08	0.201 *	1.372	1.787	0.121
04/28/08	0.233 *	1.652	1.953	0.121
07/28/08	0.246 *	1.697	1.972	0.242
10/24/08	0.195 *	2.206	1.943	0.303
01/28/09	0.048	2.555	1.887	0.292

\* Denotes an exceedance of a permit limit.

Each exceedance of the permitted emission limit of methyl isobutyl ketone is a violation of Air Permit No. 1560-00066-00, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2). Emissions of each of the unpermitted pollutants is a violation of AE-CN-03-0431, LAC 33:III.501.C.2, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- B. The file review conducted on March 4, 2009, revealed that the Respondent failed to submit a permit application, as required by Compliance Order & Notice of Potential Penalty (CONOPP),

Enforcement Tracking No. AE-CN-03-0431. The Respondent's failure to comply with the CONOPP is a violation of La. R.S. 30:2025(E)(2); however, Respondent produced during the enforcement process a copy of a permit application that it alleges was sent to the Department in 2004. The Department has no record of receipt. After receipt of the July 23, 2009 notice, Respondent submitted a new permit modification request, which the Department approved on August 20, 2009 under Permit No. 1560-00066.01.

On July 23, 2009, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-08-0289A, amending paragraph III of the Findings of Fact portion of Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-09-0289 to read as follows:

“III.

On or about June 3, 2005, and June 15, 2005, inspections of the Respondent's facility were performed to determine the degree of compliance with the Act and the Air Quality Regulations in response to citizen complaints regarding sandblasting emissions.

The following violations were noted during the course of the inspections:

- A. On or about June 2, 2005, the Department received a complaint that the facility was sandblasting with no controls in place. On or about June 2, 2005, the complainant submitted to the Department two (2) photographs of the facility sandblasting with no controls in place. Based on the photographs submitted to the Department, the Respondent's failure to install and/or diligently maintain an air pollution control device is a violation of LAC 33:III.905.A, LAC 33:III.1305.A.3, Specific Condition No. 1 of Air Permit No. 1560-00066-00, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).
- B. On or about June 3, 2005, the Department performed an incident investigation at the Respondent's facility. During the course of the inspection, the inspector noted spray-painting was being performed with no controls in place. The Respondent's failure to install and/or diligently maintain an air pollution control device is a violation of LAC 33:III.905.A, LAC 33:III.1305.A.3, General Condition No. 1 of Air Permit No. 1560-00066-00, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- C. On or about June 14, 2005, the Department received a complaint that the facility was sandblasting with no controls in place. On or about June 14, 2005, the complainant submitted to the Department four (4) photographs of the facility sandblasting with no controls in place. Based on the photographs submitted to the Department, the Respondent's failure to install and/or diligently maintain an air pollution control device is a violation of LAC 33:III.905.A, LAC 33:III.1305.A.3, Specific Condition No. 1 of Air Permit No. 1560-00066-00, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2)."

The Department also amended paragraph IV.A of the Findings of Fact portion of Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-09-0289 to read as follows:

"IV.A

On or about December 10, 2008, March 4, 2009, and May 15, 2009, file reviews of the Respondent's facility were performed to determine the degree of compliance with the Act and the Air Quality Regulations.

The following violations were noted during the course of the file reviews:

- A. The Respondent reported the following emissions in Quarterly TAP Emissions Reports encompassing the period of January of 2004 through April of 2009.

Report Date	Pollutants in Tons			
	Methyl Isobutyl ketone  (Permit Limit 0.06 tons per year)	n-Butyl Alcohol  (Not Permitted)	Ethyl Benzene  (Not Permitted)	Methyl Alcohol  (Not Permitted)
01/30/04	5.737 *	1.129	2.964	0.000
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07/28/04	4.130 *	0.911	1.179	0.000
10/22/04	3.560 *	1.115	1.144	0.000
01/28/05	2.580 *	0.875	0.792	0.000
04/28/05	2.592 *	0.959	0.648	0.000
07/28/05	2.754 *	1.081	0.409	0.000

10/28/05	1.962 *	0.703	0.263	0.000
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07/21/06	0.512 *	2.421	1.201	0.000
10/28/06	0.246 *	2.522	1.185	0.000
01/28/07	0.000	2.429	1.334	0.242
04/27/07	0.000	0.722	0.747	0.242
07/27/07	0.000	1.255	1.232	0.242
10/28/07	0.054	1.346	1.554	0.242
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04/28/08	0.233 *	1.652	1.953	0.121
07/28/08	0.246 *	1.697	1.972	0.242
10/24/08	0.195 *	2.206	1.943	0.303
01/28/09	0.048	2.555	1.887	0.292
4/28/09	0.050	2.245	1.892	0.425

\* Denotes an exceedance of a permit limit.

Each exceedance of the permitted emission limit of methyl isobutyl ketone is a violation of Air Permit No. 1560-00066-00, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2). Emissions of each of the unpermitted pollutants is a violation of AE-CN-03-0431, LAC 33:III.501.C.2, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).”

The Department incorporated all of the remainder of the original Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. AE-CN-08-0289, and Agency Interest No. 12991.

The Amended Consolidated Compliance Order & Notice of Potential Penalty was effective upon receipt.

### III

In response to the Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-09-0289A, 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 FIFTEEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$15,500.00), of which Six Hundred Ninety-Seven and 11/100 Dollars (\$697.11) 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), the Consolidated Compliance Order & Notice of Potential Penalty, the Amended 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

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, 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.

**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**  
Peggy M. Hatch Secretary

BY: \_\_\_\_\_  
Cheryl Sonnier 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 # \_\_\_\_\_)

\_\_\_\_\_  
(stamped or printed)

Approved:   
Cheryl Sonnier Nolan, Assistant Secretary