STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	**Settlement Tracking No.**
	*	**SA-AE-11-0059**
MIDSHIP MARINE, INC.	*	
	*	**Enforcement Tracking No.**
AI # 117371	*	**AE-CN-09-0137**
	*	
PROCEEDINGS UNDER THE LOUISIANA ENVIRONMENTAL QUALITY ACT LA. R.S. 30:2001, ET SEQ.	* * *	

SETTLEMENT

The following Settlement is hereby agreed to between Midship Marine, 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 owns and/or operates a marine shipyard facility located in Harvey, Jefferson Parish, Louisiana ("the Facility").

II

On August 10, 2009, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-09-0137, which was based upon the following findings of fact:

The Respondent owns and/or operates Midship Marine (the facility), a marine shipyard engaged in construction of aluminum watercraft, including sandblasting, painting, and sealing operations. The facility is located at 1029 Destrehan Avenue in Harvey, Jefferson Parish, Louisiana. The facility currently operates without a valid Air Permit.

On or about February 3, 2009, an Air Quality inspection was performed to determine the degree of compliance with the Act and the Air Quality Regulations. On or about May 12, 2009, a file review of the facility was 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 inspection and file review

A. The Air Quality Inspection was conducted as a result of a citizen complaint concerning sandblasting and painting. The Respondent operated this facility under Agency Interest No. 32215 at the former address of 1901 Destrehan Avenue. At that location, the facility operated under Air Permit No. 1340-00213-00, issued May 11, 1998. In a telephone conversation, a facility representative verified that the facility moved to the current address of 1029 Destrehan Avenue in September 2005. The Respondent has not applied for a permit for the new location. The failure to submit a timely and complete permit application to the Department prior to any construction, reconstruction, or modification of a facility which ultimately may result in an initiation or increase in emission of air contaminants is a violation of LAC 33:III.501.C.1, and La. R.S. 30:2057(A)(2).

B. The facility moved to the current location in September 2005. The facility operated from September 2005 until the February 3, 2009 inspection, a period of three years and nine months, without a permit, and continues to operate without a permit. The failure to obtain prior approval for any construction, modification, or operation of a facility which ultimately may result in an initiation or increase in emission of air contaminants is a violation of LAC 33:III.501.C.2, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

C. Although no active sandblasting was underway at the time of the inspection, the area designated for use while sandblasting is an open, uncovered area, with no observable provision for completely enclosing the area during operations. The facility owner verified that sandblasting is conducted in the unenclosed area. The failure to fully enclose an item prior to abrasive blasting is a violation of LAC 33:III.1329.A.1, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

D. The facility did not have a Best Management Practices (BMP) plan available as an alternative to completely enclosing the sandblasting area. The failure to prepare and implement a BMP plan in place of completely enclosing items prior to abrasive blasting is a violation of LAC 33:III.1331.A, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

E. Although no active painting was underway at the time of the inspection, the area designated for use while spray painting is a covered area that was partially enclosed by tarpaulins. The facility owner verified that spray painting is conducted in that partially enclosed area. The area was not fully enclosed; there were gaps between the seams of the hanging tarpaulins. The failure to completely enclose the spray painting area to prevent particulate matter from becoming airborne is a violation of LAC 33:III.1305.A, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

III

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

IV

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 TWO THOUSAND FOUR HUNDRED AND NO/100 DOLLARS ($2,400.00) of which Four Hundred Eighty-Nine and 54/100 Dollars ($459.54) 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).

V

Respondent further agrees that the Department may consider the inspection report(s), the 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.

VI

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.

VII

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.

VIII

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Jefferson 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.

IX

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).

X

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

XI

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.

MIDSHIP MARINE, INC.

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