

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

MURPHY BROS. TRUCKING  
& CONSTRUCTION, LLC

AI # 122904

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

\* Settlement Tracking No.

\* SA-WE-09-0055

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\* Enforcement Tracking No

\* WE-P-06-0180

\* WE-C-06-0181

\* WE-CN-07-0126

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\* Docket No. 2007-5581-EQ

\* 2007-5582-EQ

\* 2007-5583-EQ

SETTLEMENT

The following Settlement is hereby agreed to between Murphy Bros. Trucking & Construction, LLC (“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 owned and/or operated a dirt pit operation in Haughton, Bossier Parish, Louisiana (“the Facility”).

II

On May 18, 2006, the Department issued to Respondent a Penalty Assessment, Enforcement No. WE-P-06-0180, in the amount of \$9,015.87, which was based upon the following findings of fact:

The Respondent owns and/or operates a dirt pit operation known as the Red Chute Dirt Pit located on Arkla Road at Bellevue Road in Haughton, Bossier Parish, Louisiana. The

Respondent was granted coverage under Louisiana Pollutant Discharge Elimination System (LPDES) General Permit for Discharges related to Extraction, Mining or Dredging of Dirt, Sand, Gravel, Shell and Similar Materials LAG490000 on February 28, 2005, and specifically was assigned Permit Number LAG490049. The permit expires on September 30, 2009. Under the terms and conditions of LPDES permit LAG490049, the Respondent is authorized to discharge process wastewater and process area storm water from its dirt pit operation to Red Chute Bayou, waters of the state.

On or about December 27, 2005, the Respondent was issued Expedited Penalty XP-WE-05-0330 for the following violations:

- A. The Respondent failed to submit Discharge Monitoring Reports (DMRs) for the months of March, May, June, July, August, and September 2005, in violation of LPDES permit LAG490049 (Part I, Section C); La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2701.A, and LAC 33:IX.2701.L.4.a.
- B. The Respondent exceeded its daily maximum permit limitation of 45 mg/L for TSS when a sample collected by the Department during an inspection conducted on or about November 1, 2005, revealed a TSS value of 288 mg/L, in violation of LPDES permit LAG490049 (Part I, Section B, and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.
- C. The Respondent exceeded its monthly average permit limitation of 25 mg/L for TSS with a result of 37 mg/L on its April 2005 DMR, and a result of 288 mg/L in the sample collected by the Department during the inspection conducted on or about November 1, 2005, in violation of LPDES permit LAG490049 (Part I, Section B, and Part III, Section A.2), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.
- D. The Respondent failed to sample and/or report a flow measurement on its April 2005 DMR, in violation of LPDES permit LAG490049 (Part I, Section C, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.

The Respondent failed to sign, certify compliance, and make payment on Expedited Penalty XP-WE-05-0330 issued by the Department on or about December 27, 2005, within thirty

(30) days of receipt, as stipulated in the Expedited Penalty Agreement Form. Therefore, Expedited Penalty XP-WE-05-0330 became a Notice of Potential Penalty with an effective date of February 2, 2006.

A penalty in the amount of \$9,015.87 was assessed together with legal interest as allowed by law and all costs of bringing and prosecuting this enforcement action accruing after the date of issuance.

On July 6, 2006, the Department issued to Respondent a Compliance Order, Enforcement No. WE-C-06-0181, which was based upon the following findings of fact:

The Respondent owns and/or operates a sand and gravel mining operation known as the Red Chute dirt pit located at Arkla Road at Bellevue Road, in Haughton, Bossier Parish, Louisiana. The Respondent was granted coverage under Louisiana Pollutant Discharge Elimination System (LPDES) general permit LAG490000 on February 28, 2005, and specifically was assigned permit number LAG490049. This permit expires on September 30, 2009.

An inspection conducted by the Department on or about November 1, 2005, revealed the Respondent did cause or allow the discharge of inadequately treated process area stormwater runoff into waters of the state. Specifically, laboratory results of a sample taken during the inspection revealed a Turbidity concentration of 2,100 NTU. The maximum effluent limitation for this parameter as authorized in LPDES general permit LAG490049 is 25 NTU. The discharge of inadequately treated process area stormwater is in violation of LPDES general permit LAG490049 (Part I, Schedule A, Page 7 of 16 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, and LAC 33:IX.2701.A.

The inspection conducted by the Department on or about November 1, 2005, also revealed the Respondent's unauthorized discharge did cause or allow an adverse impact to waters of the state and a pond located approximately 300 yards downstream from the Respondent's outfall. Specifically, observations by the Department representatives and pictures taken at the time of the inspection revealed that the Respondent's discharge of inadequately treated wastewater adversely impacted the receiving stream and the pond by causing a reduction in the aesthetically attractive condition of the waterbodies and by significantly increasing the color over natural background levels. This is in violation of LPDES general permit LAG490049 (Part II, Section K 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.1113.B.1 and B.2.a, and LAC 33:IX.2701.A.

A file review conducted by the Department on or about May 18, 2006, revealed that the Respondent failed to submit Discharge Monitoring Reports (DMRs) for the periods of October 2005 through March 2006. Each failure to submit monthly DMRs is in violation of LPDES general permit LAG490049 (Part I, Section C and Part III, Sections A.2 and D.4), La. R.S. 30:2076 (A)(1)(b), La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.2701.A, and LAC 33:IX.2701.L.4.a.

On March 7, 2007, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. WE-CN-07-0126, which was based upon the following findings of fact:

The Respondent owns and/or operates a sand and gravel mining operation known as the Red Chute dirt pit located at Arkla Road at Bellevue Road, in Haughton, Bossier Parish, Louisiana. The Respondent was granted coverage under Louisiana Pollutant Discharge Elimination System (LPDES) general permit LAG490110 on February 28, 2005, and specifically

was assigned permit number LAG 490049. The Respondent did submit a Request for Termination for LAG490049 on or about January 26, 2007. LAG490049 was subsequently terminated on or about February 20, 2007; therefore, the Respondent no longer has any authorization to discharge wastewater, including but not limited to, process area contaminated stormwater runoff, into waters of the state.

The Respondent was issued Expedited Penalty Agreement & Notice of Potential Penalty XP-WE-05-0330 on or about December 27, 2005 for failure to submit monthly Discharge Monitoring Reports on a quarterly basis in 2005, for effluent excursions, and for failure to measure flow. The Respondent chose not to participate in Expedited Penalty Agreement XP-WE-05-0330; therefore, the Respondent was adequately notified that a civil penalty was being considered for the above-referenced violations.

The Respondent was issued Penalty Assessment WE-P-06-0180 on or about May 18, 2006, in the amount of \$9,015.87 for the violations noted in Notice of Potential Penalty XP-WE-05-0330. The Respondent did timely request an adjudicatory hearing on the above-referenced penalty assessment; therefore, the action is currently under adjudicatory review.

The Respondent was issued Compliance Order WE-C-06-0181 on or about July 6, 2006, for the unauthorized discharge of inadequately treated process area stormwater and for unauthorized discharges that did cause or allow an adverse impact to waters of the state and a pond located approximately 300 yards downstream from the Respondent's outfall. This action mandated the Respondent to take any and all steps necessary to meet and maintain compliance with LPDES permit LAG490049, including but not limited to, ceasing any and all unauthorized discharges of inadequately treated wastewater into waters of the state and to submit a written remediation plan to address any adverse impacts caused by the Respondent's discharges. The

Respondent did timely request an adjudicatory hearing on the above-referenced Compliance Order; therefore, the action is currently under adjudicatory review.

Inspections conducted by the Department on or about January 9, 2007, February 7, 2007, and February 12, 2007, revealed evidence of continued discharges of inadequately treated stormwater into the natural drainage that traverses the Respondent's facility, which drains into a 12-acre manmade waterbody known as Shadow Lake, all waters of the state. Noted during these inspections were several areas at the facility where the stormwater pollution control devices were either inadequate or were no long functioning. The failure to properly install and/or maintain stormwater control measures allowed sediment-laden stormwater to flow into the natural drainage thence into Shadow Lake. These discharges of inadequately treated stormwater continue to adversely impact the receiving stream and Shadow Lake by causing a reduction in the aesthetically attractive condition of the waterbodies and by significantly increasing the color over natural background levels. This is in violation of Compliance Order WE-C-06-0181, LPDES general permit LAG490049 (Part II, Section K 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.1113.B.1 and B.2.a, and LAC 33:IX.2701.A.

### III

In response to the Penalty Assessment, the Compliance Order, and the Consolidated Compliance Order and Notice of Potential Penalty, Respondent made timely requests for hearings.

### 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 AND NO/100 DOLLARS (\$15,000.00), of which Five Thousand Two Hundred Thirty-Six and No/100 Dollars (\$5,236.00) 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 Penalty Assessment, the Compliance Order, 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 Bossier 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.

**MURPHY BROS. TRUCKING &  
CONSTRUCTION, LLC**

BY: Randall M. Murphy  
(Signature)

Randall M Murphy  
(Print)

TITLE: Managing Member

THUS DONE AND SIGNED in duplicate original before me this 18th day of  
June, 2010, at 1:55 P.M. CST Bossier Parish, La.

Joan Martin-Jackson  
NOTARY PUBLIC (ID # 64117)

Joan Martin-Jackson  
(Print)

**LOUISIANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

Peggy M. Hatch, Secretary

BY: RJB

Beau James Brock, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 12th day of  
October, 2010, at Baton Rouge, Louisiana.

Christopher A. Ratchiff  
NOTARY PUBLIC (ID # 10149)

Christopher A. Ratchiff  
(Print)

Approved: Paul D. Miller  
Paul D. Miller, P.E., Assistant Secretary