

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	Settlement Tracking No.
	*	SA-AHE-10-0063
NORTH AMERICAN	*	
SHIPBUILDING, L.L.C.	*	Enforcement Tracking No.
	*	AE-CN-08-0072
AI # 26155	*	HE-CN-08-0226
	*	
PROCEEDINGS UNDER THE LOUISIANA	*	
ENVIRONMENTAL QUALITY ACT	*	
LA. R.S. 30:2001, <u>ET SEQ.</u>	*	

SETTLEMENT

The following Settlement is hereby agreed to between North American Shipbuilding, L.L.C. ("Respondent") and the Department of Environmental Quality ("LDEQ" 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 marine construction and repair facility and a water vessel construction facility located in Larose, Lafourche Parish, Louisiana ("the Facility").

II

On September 26, 2008, the LDEQ issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-08-0072, which was based upon the following findings of fact:

The Respondent owns and/or operates a marine construction and repair facility located at 800 Industrial Park Road, Larose, Lafourche Parish, Louisiana. The facility currently operates

under Air Permit No. 1560-00136-01, issued on March 9, 2006. An application for a Title V permit was submitted on July 11, 2007, and updated emission calculations were submitted to the Department on June 11, 2008. The Title V permit application is currently under review by the Department.

On or about April 18, 2008, a meeting was held to discuss the circumstances surrounding permit limit exceedances, the status of the Title V permit application, and to request interim permit emission limits. As discussed in a letter from the Respondent dated April 18, 2008, "one of the primary actions proposed in the permit application was to increase emissions from outdoor painting operations to account for a projected increase in facility operations." An expedited permit request form was also submitted by the Respondent on April 18, 2008.

On or about May 22, 2008, a meeting was held to submit corrections to the 2007 emission estimates included in the Respondent's 4th quarter 2007 Emission Exceedance report dated March 31, 2008, and to discuss corrections to the 2006 annual paint consumption and associated VOC/TAP emission summary report dated March 30, 2007. The corrections to the 2006 annual paint consumption and associated VOC/TAP emission summary report was received by the Department on May 23, 2008.

On or about May 26, 2008, and June 12, 2008, the Department performed a file review of the facility with reference to Air Permit No. 1560-00136-01 to determine the degree of compliance with the Act and federal and state Air Quality regulations.

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

- A. According to the Respondent's corrected 2007 annual paint consumption and associated VOC/TAP emission summary report submitted to the Department on May 22, 2008, and a letter dated June 16, 2008, the Respondent exceeded its consecutive twelve-month limits of 51.26 tons per year (TPY) for total VOCs (Emission Point 06- outdoor painting operations) ten times as per the table below:

12-month Consecutive Total (tons)	Month/Year Exceeded
51.7	August, 2007
56.2	September, 2007
61.0	October, 2007
62.9	November, 2007
64.5	December, 2007
64.0	January, 2008
62.6	February, 2008
63.4	March, 2008
66.6	April, 2008
71.3	May, 2008

Each exceedance is a violation of Specific Requirement No. 20 for outdoor painting operations, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- B. According to the Respondent's corrected 2007 annual paint consumption and associated VOC/TAP emission summary report submitted to the Department on May 22, 2008, and a letter dated June 16, 2008, the Respondent exceeded its consecutive twelve-month limit of 23.686 TPY for total TAPs twelve times (Emission Point 06 - outdoor painting operations) as per the table below:

12-month Consecutive Total (tons)	Month/Year Exceeded
23.9	June, 2007
25.7	July, 2007
27.8	August, 2007
30.3	September, 2007
32.6	October, 2007
33.2	November, 2007
33.9	December, 2007
33.8	January, 2008
32.9	February, 2008
33.9	March, 2008
36.2	April, 2008
40.1	May, 2008

Each exceedance is a violation of Specific Requirement No. 22 for outdoor painting operations, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- C. According to the Respondent's corrected 2006 annual paint consumption and associated VOC/TAP emission summary report submitted to the Department on March 28, 2008, the corrected 2007 annual paint consumption and associated VOC/TAP emission summary report submitted to the Department on May 22,

2008, and a letter dated June 16, 2008, the Respondent exceeded its consecutive twelve-month total limit of 0.058 TPY for copper twenty times (Emission Point 06 - outdoor painting operations) as per the table below:

12-month Consecutive Total (tons)	Month/Year Exceeded
0.075	October, 2006
0.087	November, 2006
0.087	December, 2006
0.088	January, 2007
0.097	February, 2007
0.117	March, 2007
0.125	April, 2007
0.170	May, 2007
0.203	June, 2007
0.191	July, 2007
0.202	August, 2007
0.213	September, 2007
0.212	October, 2007
0.206	November, 2007
0.206	December, 2007
0.207	January, 2008
0.224	February, 2008
0.234	March, 2008
0.243	April, 2008
0.246	May, 2008

Each exceedance is a violation of Specific Requirement No. 22 for outdoor painting operations, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- D. According to the Respondent's corrected 2007 annual paint consumption and associated VOC/TAP emission summary report submitted to the Department on May 22, 2008, and a letter dated June 16, 2008, the Respondent exceeded its consecutive twelve-month limit of 2.990 TPY for total N-Butyl Alcohol twelve times (Emission Point 06 - outdoor painting operations) as per the table below:

12-month Consecutive Total (tons)	Month/Year Exceeded
3.0	June, 2007
3.2	July, 2007
3.4	August, 2007
3.6	September, 2007
3.7	October, 2007
3.7	November, 2007

12-month Consecutive Total (tons)	Month/Year Exceeded
3.7	December, 2007
3.7	January, 2008
3.6	February, 2008
3.9	March, 2008
4.5	April, 2008
5.5	May, 2008

Each exceedance is a violation of Specific Requirement No. 22 for outdoor painting operations, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- E. According to the Respondent's corrected 2007 annual paint consumption and associated VOC/TAP emission summary report submitted to the Department on May 22, 2008, and a letter dated June 16, 2008, the Respondent exceeded its consecutive twelve-month limit of 7.930 TPY for xylene fourteen times (Emission Point 06 - outdoor painting operations) as per the table below:

12-month Consecutive Total (tons)	Month/Year Exceeded
8.3	April, 2007
9.6	May, 2007
11.2	June, 2007
11.9	July, 2007
12.8	August, 2007
14.3	September, 2007
15.4	October, 2007
15.7	November, 2007
16.1	December, 2007
16.3	January, 2008
15.4	February, 2008
15.8	March, 2008
17.0	April, 2008
19.5	May, 2008

Each exceedance is a violation of Specific Requirement No. 22 for outdoor painting operations, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- F. According to the Respondent's corrected 2007 annual paint consumption and associated VOC/TAP emission summary report submitted to the Department on May 22, 2008, and a letter dated June 16, 2008, the Respondent exceeded its consecutive twelve-month limit of 1.990 TPY for total ethylbenzene twelve times (Emission Point 06 - outdoor painting operations) as per the table below:

12-month Consecutive Total (tons)	Month/Year Exceeded
2.2	June, 2007
2.4	July, 2007
2.5	August, 2007
2.9	September, 2007
3.1	October, 2007
3.1	November, 2007
3.2	December, 2007
3.2	January, 2008
3.0	February, 2008
3.0	March, 2008
3.1	April, 2008
3.3	May, 2008

Each exceedance is a violation of Specific Requirement No. 22 for outdoor painting operations, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- G. The Respondent failed to submit quarterly exceedance emission reports for the fourth quarter of 2006, the first, second, and third quarters of 2007. Each failure to submit the quarterly exceedance report is a violation of General Condition No. XI of Air Permit No. 1560-00136-01, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

On October 29, 2008, the LDEQ issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. HE-CN-08-0226, which was based upon the following findings of fact:

The Respondent owns and/or operates a water vessel construction facility located at 800 Industrial Park Road in Larose, Lafourche Parish, Louisiana. The facility is operating as a large quantity generator of hazardous waste with EPA identification number LAR000009183.

On or about June 13, 2007, an inspection of the facility was performed and the following violations were observed:

- A. The Respondent failed to maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency as

required by LAC 33:V.1511.F, in violation of LAC 33:V.1109.E.1.e. This violation has been addressed.

- B. The Respondent failed to clearly mark six (6) drums storing hazardous waste, located in the less than ninety (90) day storage area, with the date upon which each period of accumulation began and because there was inadequate aisle space initially, the labels could not be clearly read, in violation of LAC 33:V.1109.E.1.c. This violation has been addressed.
- C. The Respondent failed to keep several 55-gallon containers holding hazardous waste closed during storage, except when it is necessary to add or remove waste, as required by LAC 33:V.2107.A., in violation of LAC 33:V.1109.E.1.a.i. This violation has been addressed.
- D. The Respondent failed to label two (2) 55-gallon containers of hazardous waste with the words "Hazardous Waste" or other words that properly identify the contents of the container, in violation of LAC: 33:V.1109.E.1.d. This violation has been addressed.
- E. The Respondent failed to determine if used fluorescent bulbs are a hazardous waste before disposal, in violation of LAC 33:V.1103. Specifically, used ALTO Fluorescent T8 U-Bent F32 T8/TL 700 Series bulbs were disposed in a dumpster. On August 1, 2007, the Respondent received TCLP results indicating that the bulbs are non-hazardous. This violation has been addressed.
- F. The Respondent failed to notify the Office of Environmental Services within seven (7) days of changes in the information submitted in the application for the identification number, in violation of LAC 33:V.1105.B. Specifically, the

Respondent failed to include the F005 and D035 waste codes on the HW-1 form. On June 20, 2007, the Respondent submitted an updated HW-1, thus addressing this violation.

- G. The Respondent failed to retain a copy of two (2) manifests, dated 6/8/2006 and 7/6/2006, signed in accordance with LAC 33:V.1111.A, in violation of LAC 33:V.1107.D.1.c. The Respondent contacted the TSD facility and copies of the completed manifests were faxed to the Respondent, thus addressing this violation.
- H. The Respondent failed to contact the transporter and/or the owner or operator of the designated facility to determine the status of two (2) shipments of hazardous waste after not receiving a copy of the manifests, dated 6/8/2006 and 7/6/2006, with the handwritten signature of the owner or operator of the designated facility within thirty-five (35) days of the date the waste was accepted by the initial transporter, in violation of LAC 33:V.1111.C.1. The Respondent contacted the TSD facility and copies of the completed manifests were faxed to the Respondent, thus addressing this violation.
- I. The Respondent failed to file an exception report with the Office of Environmental Services when he did not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within forty-five (45) days of the date the waste was accepted by the initial transporter, in violation of LAC 33:V.1111.C.2.

- J. The Respondent failed to update the facility contingency plan to include the current emergency coordinators' phone numbers in accordance with LAC 33:V.1513.B.4, in violation of LAC 33:V.1109.E.1.e.
- K. The Respondent failed to inspect, at least weekly, areas where containers are stored, looking for leaking containers and for deterioration of containers in accordance with LAC 33:V.2109.A, in violation of LAC 33:V.1109.E.1.a.i.
- L. The Respondent failed to maintain records documenting that the training or job experience required under LAC 33:V.1515.A, B, and C have been given to, and completed by, facility personnel as specified in LAC 33:V.1515.D.4, in violation of LAC 33:V.1109.E.1.e. This violation has been addressed.
- M. The Respondent failed to develop and retain a waste minimization plan on-site as specified in LAC 33V.2245.K, in violation of LAC 33V.1109.E.1.e.

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 LDEQ agrees to accept, a payment in the amount of TWENTY-TWO THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$22,100.00), of which Two Thousand One Hundred and No/100 Dollars (\$2,100.00) represents the LDEQ's enforcement costs, in settlement of the claims set forth in this agreement.

Respondent, in addition to the penalty amount specified in Paragraph IV above and as part of this Settlement, agrees to expend the amount of \$20,000.00 to implement and/or perform the following beneficial environmental project:

- A. Respondent agrees to donate Twenty Thousand Dollars (\$20,000.00) to the LA 1 Improvement project, which will provide public health benefits, environmental restoration and protection benefits, and emergency planning benefits to the citizens of Louisiana. Respondent agrees to make such donation through an Act of Donation within thirty (30) days after the effective date of this Settlement Agreement.
- B. Respondent shall submit a report to the LDEQ verifying that the funds have been donated. Respondent shall make such report within thirty (30) days after the conclusion of any semi-annual period in which donation has been made and/or notice is received by Respondent of the expenditure of donated funds.
- C. If Respondent does not spend the amount of \$20,000.00, then it shall, in its final report, propose additional projects for the LDEQ's approval in an amount equal to the difference between the amount of money agreed to be spent and the amount of money actually spent.
- D. The total amount of money expended by Respondent on cash payments to the LDEQ and on beneficial environmental projects, 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, and this Settlement for the purpose of determining compliance history in connection with any future enforcement action 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 allegations of violations herein for the sole purpose of determining Respondent's compliance history. Respondent may use any mitigating factors it believes applicable in any such future proceedings.

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 LDEQ 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 LDEQ considered the factors for issuing civil penalties set forth in LSA- R. S. 30:2025(E) of the Act and the rules relating to beneficial environmental projects set forth in LAC 33:I.Chapter 25.

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 LDEQ, 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 LDEQ and, as of the date this Settlement is executed on behalf of the LDEQ, 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 LDEQ. 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.

NORTH AMERICAN SHIPBUILDING, L.L.C.

BY: _____
(Signature)

(Print)

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)

Preliminary Approval: 
Cheryl Sonnier Nolan, Assistant Secretary