

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

OWENSBY & KRITIKOS, INC.

AI # 86598, 38795

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

\* Settlement Tracking No.  
\* SA-RE-05-0054

\* Enforcement Tracking No.  
\* RE-P-01-0043  
\* RE-P-01-0043A

\* Docket No. 2005-4200-EQ

SETTLEMENT

The following Settlement is hereby agreed to between Owensby & Kritikos, 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 who is licensed to have sealed sources (radioactive equipment) at 2850 South Beglis Parkway in Sulphur, Calcasieu Parish, Louisiana (Lake Charles Division) and at 671-B Whitney Avenue in Gretna, Jefferson Parish, Louisiana (New Orleans Division) "the Facility(s)".

II.

On February 27, 2003, the Department issued a Penalty Assessment, Enforcement No. RE-P-01-0043, to the Respondent in the amount of \$29,813.08. Subsequently, on December 2, 2003 the Department issued an Amended Penalty Assessment, Enforcement Number RE-P-01-

0043A, in the amount of \$24,074.86, correcting a mathematical miscalculation. The original and amended penalty assessments are based upon the following findings of fact:

On or about June 9, 2000, an inspection of the Respondent's facility located at the Lake Charles Division in Sulphur, was conducted by an employee of the Department. During this inspection the following violations were noted:

- A. An employee of the Respondent exceeded the occupational annual dose limit of 5000 mR. While reviewing the 1998 Landauer reports, it was revealed that the employee received 5690 mR, in violation of LAC 33:XV.410.A.1.a.
- B. The Respondent failed to notify the Department that the same employee, referred to in "A" above, exceeded the occupational annual dose limit, in violation of LAC 33:XV.487.A.2.a.

On or about January 29, 2001, Consolidated Compliance Order and Notice of Potential Penalty RE-CN-00-0197 was issued to the Respondent.

On or about April 7, 2000, and May 22, 2001, inspections of the Respondent's facility located at the New Orleans Division in Gretna, Louisiana were conducted by an employee of the Department. During these inspections the following violations were noted:

- A. The Respondent failed to perform an annual inventory and maintain records of the annual inventory for the Niton alloy analyzer containing a Cd-109 sealed source, in violation of LAC 33:XV.104.B.
- B. An employee of the Respondent's New Orleans Division, failed to receive the annual radiation safety refresher training. A file review performed during the inspection shows this employee took his 40 hour radiation safety class in May

of 1999 and has not received the annual radiation refresher training since then, in violation of LAC 33:XV.320.A.2 and Chapter 5 of the Owensby & Kritikos' Operations and Emergency Procedures, page 21.

This is a repeat violation from an inspection performed on April 7, 2000.

- C. The Respondent allowed another employee of the New Orleans Division to perform radiography without completing a radiation safety examination within the past five years, in violation of LAC 33:XV.575.A.6.
- D. The Respondent failed to maintain records of positive dosimeter response for dosimeter 9045624, in violation of LAC 33:XV.577.B.

This is a repeat violation from an inspection performed on April 7, 2000.

- E. The Respondent failed to calibrate the alarm ratemeters at periods not to exceed one year for the correct response radiation. Specifically, rate meter number 20847 was calibrated on October 13, 1998, and then again on May 4, 2001, rate meter number 23242 was last calibrated on September 15, 1999, and rate meter 32161 was last calibrated on May 9, 2000, in violation of LAC 33:XV.577.H.4. This was a repeat violation from an inspection performed on April 7, 2000.

On or about October 16, 2001, Consolidated Compliance Order & Notice of Potential Penalty RE-CN-01-0051 was issued to the Respondent.

On or about October 10, 2001, a representative of the Department performed a field inspection of the licensee while the licensee was working at a temporary jobsite located at the Motiva Refinery in Norco, Louisiana. During this inspection the following violation was

revealed:

The Respondent failed to have a qualified two-man crew at a temporary job site, in violation of LAC 33:XV.575.D.

On or about December 17, 2001, Consolidated Compliance Order & Notice Of Potential Penalty RE-CN-01-0108 was issued to the Respondent.

III.

In response to Penalty Assessment, Enforcement No. RE-P-01-0043 and Amended Penalty Assessment, Enforcement No. RE-P-01-0043A, Respondent made timely requests for hearing. A hearing was granted on July 22, 2005.

IV.

The Respondent and the Department entered into informal dispute resolution negotiations in an effort to arrive at a settlement and compromise of this matter.

V.

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

VI.

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 THOUSAND AND NO/100 DOLLARS (\$20,000.00), of which, ONE HUNDRED NINE AND 76/100 DOLLARS (\$109.76) represents DEQ'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 DEQ as described above, shall be considered a civil penalty for tax purposes, as

required by La. R.S. 30:2050.7(E)(1).

VII.

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

VIII.

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.

IX.

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.

X.

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Calcasieu and 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 a proof-of-publication affidavit 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 Darryl Serio, Office of Management and Finance, 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/her respective party, and to legally bind such party to its terms and conditions.

OWENSBY & KRITIKOS, INC.

BY: Bob J. Ledet  
(Signature)

Bob J. Ledet  
(Printed or Typed)

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 31<sup>st</sup> day of MAY, 2006, at GRETN, LA.

[Signature]  
NOTARY PUBLIC (ID # 3243)

ROY M. BOWES  
NOTARY PUBLIC  
STATE OF LOUISIANA  
MY COMMISSION IS FOR LIFE.

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
Mike D. McDaniel, Ph.D., Secretary

BY: [Signature]  
Harold Leggett, Ph.D., Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 15<sup>th</sup> day of September, 2006, at Baton Rouge, Louisiana.

[Signature]  
NOTARY PUBLIC (ID # 21673)

G. Allen Kinnpatrick  
(Printed or Typed)

Approved: [Signature]  
Harold Leggett, Ph.D., Assistant Secretary