

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

* **Settlement Tracking No.**
* **SA-MM-07-0039**

PEARL RIVER NAVIGATION, INC.

* **Enforcement Tracking No.**
* **MM-CN-03-0042**

AI # 24247

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

* **Docket No. 2005-3116-EQ**
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*

SETTLEMENT

The following Settlement is hereby agreed to between Pearl River Navigation, 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 owns and/or operates a ship and barge repair facility located in Slidell, St. Tammany Parish, Louisiana ("the Facility").

II

On March 1, 2004, the Department issued a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. MM-CN-03-0042, to Respondent, which was based upon the following findings of fact:

The Respondent owns and/or operates a ship and barge repair facility located at 36138 Old Bayou Liberty Road in Slidell, St. Tammany Parish, Louisiana. The Respondent was issued

Louisiana Water Discharge Permit System (LWDPS) Permit WP2228 effective October 19, 1995, with an expiration date of October 18, 2000. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) Permit LA0109461 effective January 1, 2001, with an expiration date of December 31, 2005. The LPDES permit authorizes the Respondent to discharge uncontaminated storm water runoff, ballast water, treated sanitary wastewater, and ship and barge repair wastewater from its facility to Bayou Bonfouca, waters of the state. Based on the operations of the Respondent, the facility emits or has the potential to emit air contaminants; however, the Respondent does not currently operate under an air permit.

An inspection conducted by the Department on or about April 27, 1999, revealed the following violations:

- A. The Respondent failed to submit Discharge Monitoring Reports (DMRs) as required by the permit from the date the permit was issued, October 19, 1995, through the date of the inspection, April 27, 1999. Each failure to submit DMRs from October 19, 1995, to August 27, 1996, is in violation of LWDPS permit WP2228 (Part II, Item 8, and Part III, Section D.3), La. R. S. 30:2076 (A) (3), LAC 33:IX.311.A, LAC 33:IX.311.J.6, and LAC 33:IX.501.A. Each failure to submit DMRs from August 27, 1996, to April 27, 1999, is in violation of LWDPS permit WP2228 (Part II, Item 8, and Part III, Section D.3), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.4.a.
- B. The Respondent failed to monitor the effluent from Outfalls 001 and 002 as required by the permit from the issuance date, October 19, 1995, to the inspection date, April 27, 1999. Each failure to monitor its effluent from October 19, 1995,

to August 27, 1996, is in violation of LWDPs permit WP2228 (Part II, Item 8, and Part III, Section D), La. R. S. 30:2076 (A) (3), LAC 33:IX.311.A, LAC 33:IX.311.J.3, and LAC 33:IX.501.A. Each failure to monitor its effluent from August 27, 1996, to April 27, 1999, is in violation of LWDPs permit WP2228 (Part II, Item 8, and Part III, Section D), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.

- C. The inspector noted several 5-gallon containers with waste oil that were not covered, oily contaminated soils in the oil and drum storage areas, and scrap piles located throughout the site. These deficiencies in operations and maintenance are in violation of LWDPs permit WP2228 (Part III, Section A.1 and B.1), La. R. S. 30:2076 (A) (3), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.E.
- D. The Respondent's Spill Prevention and Control Plan (SPC Plan) did not address the fuel storage tanks onsite, nor other substances stored at the facility. The Respondent's failure to prepare and/or implement an adequate Spill Prevention and Control (SPC) plan is a violation of La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.907, and LAC 33:IX.905.B.

In response to a complaint filed with the Department on or about February 6, 2003, alleging that the Respondent's facility was emitting fuels from old boats and barges into Bayou Bonfouca, the Department conducted an inspection at the facility on or about February 10, 2003. Although the direct source of the sheen surrounding the barges could not be determined, the inspection revealed the following violations:

- A. Grey (shower/sink/washing machine discharge wastewater) and black waters (toilet discharge wastewater) were discharging from the "Living Quarters" barge into Bayou Bonfouca, waters of the state, without any means of treatment or disinfection. According to the facility representative, two employees of the facility live on the barge. The unauthorized discharge of wastewater from a source or at a location not authorized by a permit is in violation of LPDES permit LA0109461 (Part I, and Part III Section A.2), La. R.S. 30:2075, 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.2355.A.
- B. The sewage treatment plant servicing the office building did not have any means of disinfection. The inspector observed this outfall (003) discharging at the time of inspection. The failure to provide disinfection is in violation of LPDES permit LA0109461 (Part III, Sections A.2 and B.3), La. R. S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.E.
- C. The facility did not have a copy of their permit on site.
- D. According to the Respondent, the facility was not sampling any of their outfalls and they were not sure when samples were last taken. The Respondent's failure to monitor its effluent is in violation of LPDES permit LA0109461 (Part I and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.
- E. The facility has not submitted DMRs to the Department as required by their permit. A file review conducted by the Department on or about February 5, 2004,

revealed that the only DMRs submitted by the Respondent were for April, May, and June of 1999, and April, May, and June of 2003. Each failure to submit DMRs is in violation of LPDES permit LA0109461 (Part II, Section J, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.4.a.

- F. The facility did not maintain a daily operating log monitoring for visible sheen in discharges from outfall 002 as required by their permit. The Respondent's failure to maintain sheen logs for Outfall 002 is in violation of LPDES permit LA0109461 (Part II, Section M.3, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.
- G. The facility did not monitor and maintain daily operating logs for incoming and maintenance ballast waters as required by their permit. The Respondent's failure to monitor its ballast waters and maintain the appropriate operating logs is in violation of LPDES permit LA0109461 (Part II, Section M, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.
- H. The Respondent failed to adequately prepare and implement a Storm Water Pollution Prevention Plan (SWP3), as evidenced by the following:
1. The Respondent is required to conduct annual inspections to identify areas contributing to the storm water discharge, and to evaluate whether measures to reduce pollutant loadings are adequate and have been properly implemented. The Respondent has failed to conduct these annual inspections as required in Part II, Section H.4.a of LA0109461.

2. The Respondent has failed to maintain records summarizing the results of the annual inspections, as well as the certifications that the facility is in compliance with their SWP3, as required by Part II, Section H.4.c of LA0109461.
3. The facility did not have a signed certification that the facility is in compliance with the SWP3 as required by Part II, Section H.4.d of LA0109461.
4. The SWP3 for the site was originally developed in August, 1998. The facility's SWP3 has not been updated to include the Best Management Practices (BMPs) required in Part II, Section H.5 of LA0109461.

The Respondent's failure to prepare and implement an adequate SWP3 is in violation of LPDES permit LA0109461 (Part II, Section H and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A.

I. The Respondent also failed to adequately prepare and implement a Spill Prevention and Control Plan (SPC Plan) as evidenced by the following:

1. The facility's SPC Plan has not been updated since it was developed in August, 1998. The Plan is required to be updated every three years.
2. The drain valve on the bulk storage secondary containment was in the open position, allowing materials collected in the secondary containment to flow outside of the containment.

The Respondent's failure to prepare and implement an adequate SPC Plan is in violation of La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.905.F, and LAC 33:IX.907.F.2.

J. The following violations were observed around the mechanics shop by the inspector during the inspection:

1. Oil stained earth was observed under the welding machine located in front of the mechanics shop.
2. Used oil was observed leaking from a trash filled trash can located in front of the mechanics shop.
3. Antifreeze was observed on the ground underneath and around the diesel powered "jet pump" located in front of the mechanics shop. According to the mechanic the radiator on the engine overflowed and the antifreeze leaked onto the ground.
4. Oil stained earth and absorbent pads were observed underneath a "hydraulic power pack" adjacent to the mechanics shop.
5. The facility's metal lathe was uncovered and exposed to the outside elements. Cutting oil, covering the working area of the lathe, has the potential to contaminate facility storm water.

The Respondent's failure to clean up and dispose of spilled products and wastes is in violation of LPDES permit LA0109461 (Part II, Section H.5, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.905.B, LAC 33:IX.907, LAC 33:IX.2355.A, and LAC 33:VII.315.A & E.

- K. The inspector noted the following violations around the storage shed:
1. Diesel contaminated soil was observed underneath 5 gallon cans of diesel near the parts storage shed.
 2. Oil stained earth and absorbent pads were observed in the parts storage shed. The gradient in the shed is such that the sheet flow of storm water would pass over this area in route to the facility's main storm water ditch.
 3. An oil stained gear was observed in the open doorway of the parts storage shed. The oil on this gear has the potential to contaminate facility storm water.

The Respondent's failure to clean up and dispose of spilled products and wastes is in violation of LPDES permit LA0109461 (Part II, Section H.5, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.905.B, LAC 33:IX.907, LAC 33:IX.2355.A, and LAC 33:VII.315.A & E.

- L. The inspector noted that used oil was spilling over the top of a fifty-five gallon drum and onto the deck of the "Scott" barge. According to the facility representative, the drum had been filled with the used oil on the previous Friday and rainfall over the weekend caused the barrel to overflow (the bung was never replaced in the barrel). The Respondent's failure to clean up and dispose of spilled products and wastes is in violation of LPDES permit LA0109461 (Part II, Section H.5, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.905.B, LAC 33:IX.907, and LAC 33:IX.2355.A.

M. The following violations were noted on the "Popeye" barge:

1. Used Hydraulic oil was observed leaking from a hydraulic power pack and onto the deck of the crane barge "Popeye".
2. There is a drain hole in the secondary containment system for the "ringer crane" on the "Popeye" barge with no provision for plugging the hole, therefore allowing any material that collects in the containment to drain out.
3. Used oil was observed leaking from underneath the "ringer crane" on the "Popeye" barge. The oil was leaking onto and down the side of the base of the ringer crane.

The Respondent's failure to clean up and dispose of spilled products and wastes is in violation of LPDES permit LA0109461 (Part II, Section H.5, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.905.B, LAC 33:IX.907, and LAC 33:IX.2355.A.

N. The inspector also noted the following violations on the "Living Quarters" barge:

1. Used oil was observed leaking from the generator on the "Living Quarters" barge and onto the deck. The generator did not have secondary containment.
2. Used hydraulic oil was observed leaking from the stern mounted winch on the "Living Quarters" barge. This winch did not have secondary containment.

The Respondent's failure to clean up and dispose of spilled products and wastes is in violation of LPDES permit LA0109461 (Part II, Section H.5, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.905.B, LAC 33:IX.907, and LAC 33:IX.2355.A.

O. The inspector also noted the following violations on the "Corp of Engineers" barge:

1. The secondary containment for the crane on the "Corp of Engineers" barge has been damaged to the point of being ineffective for its intended use.
2. Unused oil was observed leaking from a plastic, one-gallon container sitting on top of the starboard winch on the "Corps of Engineers" barge. The oil had leaked down the side of the winch and onto the deck of the barge.

The Respondent's failure to clean up and dispose of spilled products and wastes is in violation of LPDES permit LA0109461 (Part II, Section H.5, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.905.B, LAC 33:IX.907, and LAC 33:IX.2355.A.

P. The inspector also noted the following violations:

1. Diesel stained earth, from a broken diesel hose, was observed adjacent to the portable diesel fuel tank.
2. Oil and/or diesel stained earth was observed underneath the facility's sandblasting compressor.

3. Used oil was observed leaking from underneath the facility's yard crane and onto the ground below.
4. Oil stained earth and absorbent materials were observed underneath the "government surplus" diesel engine stored in the facility's yard. According to the facility representative, the oil was changed four days prior to the date of the inspection and the oil must have spilled onto the ground at that time.
5. Used engine pistons, cylinder liners, crankshafts and other engine parts were observed in the facility's scrap pile, which was exposed to the elements.
6. Used oil was observed leaking from an oil filter/filter assembly that had been thrown onto the facility's scrap pile, which is exposed to the elements.

The Respondent's failure to clean up and dispose of spilled products and wastes is in violation of LPDES permit LA0109461 (Part II, Section H.5, and Part III, Section A.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.905.B, LAC 33:IX.907, LAC 33:IX.2355.A, LAC 33:VII.315.A & E.

- Q. The Respondent failed to stop the release of used oil, contain the released used oil, and clean up and properly manage the released used oil, in violation of LAC 33:V.4013.D. Specifically, used oil was observed on the ground under the welding machine located in front of the mechanics shop, leaking from a trash filled trash can located in front of the mechanics shop, on the ground underneath a

“hydraulic power pack” adjacent to the mechanics shop, covering the working area of the lathe which has the potential to contaminate facility storm water, on the ground in the parts storage shed, spilling over the top of a fifty-five gallon drum and onto the deck of the “Scott” barge, leaking from a hydraulic power pack and onto the deck of the crane barge “Popeye”, leaking from underneath the “ringer crane” on the “Popeye” barge, leaking from the generator on the “Living Quarters” barge, leaking from the stern mounted winch on the “Living Quarters” barge, on the ground underneath the facility’s sandblasting compressor, leaking from underneath the facility’s yard crane and onto the ground below, underneath the “government surplus” diesel engine stored in the facility’s yard, and leaking from an oil filter/filter assembly that had been thrown onto the facility’s scrap pile.

- R. The Respondent burned solid waste in a fifty-five (55) gallon drum located outside in front of the parts storage shed, in violation of La. R.S. 30:2155 and LAC 33:VII.315.Q.
- S. The Respondent failed to manage universal waste antifreeze in a way that prevents releases of any universal waste or component of a universal waste to the environment, in violation of LAC 33:V.3821.E.

In response to an anonymous complaint filed with the Department on or about September 11, 2003, alleging that the Respondent was sandblasting a tugboat on the water without controls, the Department conducted an inspection at the facility on or about September 12, 2003. The inspection revealed the following violations:

- A. The Respondent failed to employ adequate containment methods during sandblasting operations, in violation of LAC 33:III.1305.A.3 and Sections 2057(A)(1) and (A)(2) of the Act. Specifically, paint chips and rust from sandblasting operations were observed in the water around a tugboat being sandblasted.
- B. The Respondent did cause or allow the unauthorized discharge of sandblasting material (paint chips, rust, and sand) directly into Bayou Bonfouca, waters of the state, in violation of La. R.S. 30:2075, La. R.S. 30:2076(A)(1)(a), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.501.C, and LAC 33:IX.501.D.

A file review conducted by the Department on or about February 5, 2004, revealed the following permit excursions, as reported by the Respondent on Discharge Monitoring Reports (DMRs):

Date	Outfall	Parameter	Permit Limit	Sample Value
04/2003	003	BOD Daily Maximum	45 mg/L	480 mg/L
04/2003	003	TSS Daily Maximum	45 mg/L	294 mg/L
04/2003	003	Fecal Coliform Daily Maximum	400 col/100 ml	1288 col/100 ml

Each excursion of the permit constitutes a violation of LPDES permit LA0109461 (Part I, Page 4, 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.2355.A.

III

In response to the Consolidated Compliance Order and Notice of Potential Penalty, 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 TWELVE THOUSAND AND NO/100 DOLLARS (\$12,000.00) of which Four Thousand Two Hundred Eighty-Five and No/100 Dollars (\$4,285.00) represents DEQ's enforcement costs, in settlement of the claims set forth in this agreement.

VI

Respondent, in addition to the penalty amount specified in Paragraph V above and as part of this Settlement, agrees to expend the amount of \$38,000.00 to implement and/or perform the following beneficial environmental projects:

- A. The creation of an artificial reef within 50 miles from Pearl River Yard 3 in the Gulf with the location to be selected by LDEQ with a project value of \$38,000.00. The artificial reef will be completed within twelve (12) months of notice to Respondent of the Department's final signature on the settlement.
- B. Respondent shall submit reports regarding its progress on the project in ninety (90) day intervals. The first shall be due on the 90th day following the date the Department signs this Settlement. Subsequent reports shall follow every ninety days and thereafter until such time as the project is completed. In the event that the 90th day falls on a legal holiday the report is due the next business day. Each

such report shall include a description of the project, tasks completed, tasks remaining, the percentage completed, and money expended on the project through the date of the report. Upon completion of the project required under this Settlement, Respondent shall submit a final report to include a summary of all the information previously submitted and a total amount spent on the projects listed above. It shall also contain a certification that the projects were completed as described.

- C. If the project is not completed by the end of the twelfth month from the project inception, the Department has the discretion of extending the time needed to complete the beneficial environmental project described above.
- D. If Respondent does not spend the amount of \$38,000.00, then it shall, in its final report, propose additional projects for the Department's approval [or pay to the Department] in an amount equal to the difference between the amount of money agreed to be spent and the amount of money actually spent.
- E. The total amount of money expended by Respondent on cash payments to DEQ 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).

VII

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

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 and the rules relating to beneficial environmental projects set forth in LAC 33:1.Chapter 25.

X

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

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.

PEARL RIVER NAVIGATION, INC.

BY: *Allen Warriner*
(Signature)

Allen Warriner
(Print)

TITLE: PRES

THUS DONE AND SIGNED in duplicate original before me this 2nd day of Dec, 20 08, at Slidell, LA

Meliah J. Flanagan
NOTARY PUBLIC (ID #)
Meliah J. Flanagan #86374
Notary Public, St. Tammany Parish
My Commission Expires For Life 

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Harold Leggett, Ph.D., Secretary

BY: *Peggy M. Hatch*
Peggy M. Hatch, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 24th day of March, 20 09, at Baton Rouge, Louisiana.

Perry Theriot
NOTARY PUBLIC (ID # 19181)
Perry Theriot
(Print)

Approved: *Peggy M. Hatch*
Peggy M. Hatch, Assistant Secretary