

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

PETRON, L.L.C.

AI # 138202

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

* Settlement Tracking No.
* SA-HE-10-0054
*
* Enforcement Tracking No.
* HE-P-09-0390
* HE-PP-06-0329
*
*
*

SETTLEMENT

The following Settlement is hereby agreed to between Petron, 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 motor fuel distribution facility located in Alexandria, Rapides Parish, Louisiana ("the Facility").

II

On December 4, 2009, the LDEQ issued to Respondent a Penalty Assessment, Enforcement No. HE-P-09-0390, in the amount of \$10,682.29, which was based upon the following findings of fact:

On or about April 11, 2006, the Department responded to an incident that occurred at Landry's Auto Truck Stop (the Site). The Respondent overfilled an aboveground unleaded gasoline storage tank located at the Site during its gasoline delivery operations. The Site is located at 20355 Highway 90 Frontage Road in Jeanerette, St. Mary Parish, Louisiana. The Respondent owns and/or

operates a motor fuel distribution company located at 1600 Harris Street, Alexandria, Rapides Parish, Louisiana (Agency Interest No. 1667).

On or about April 10, 2006, the Respondent delivered gasoline to the Site. While transferring gasoline into an aboveground unleaded gasoline storage tank, a fuel delivery driver employed by the Respondent caused a release of gasoline by overfilling the aforementioned storage tank. The driver's actions resulted in the release of approximately eight hundred and eighty-one (881) gallons of unleaded gasoline into an earthen secondary containment system. During its remediation efforts, the Respondent excavated the resultant gasoline-contaminated soil and placed the waste material into two (2) twenty-five (25) cubic yard roll-off containers. The two (2) containers of contaminated soil were sent to IESI Timberlane Landfill, a permitted Type I and II solid waste landfill. The waste profile associated with disposed contaminated soils identified the material as "yard waste" generated at the Petron facility in Alexandria.

As a result of the gasoline release that occurred on or about April 10, 2006, the Department performed an incident investigation to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Hazardous Waste Regulations. The investigation revealed the following violation:

The Respondent failed to determine if contaminated soils generated as a result of the gasoline release were a hazardous waste, in violation of LAC 33:V.1103.

On April 23, 2007, a Notice of Potential Penalty (NOPP), Enforcement Tracking No. HE-PP-06-0329, was issued to the Respondent as a result of the violation referenced in Findings of Fact Paragraph III of the Enforcement Action. The Respondent received the NOPP on May 6, 2007.

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 SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00), of which One Thousand Four Hundred Ninety-Seven and 29/100 Dollars (\$1,497.29) represents the LDEQ's enforcement costs, in settlement of the claims set forth in this agreement.

V

Respondent, in addition to the penalty amount specified in Paragraph IV above and as part of this Settlement, agrees to expend the amount of \$3,750.00 to implement and/or perform the following beneficial environmental projects:

- A. Respondent will plant a total of twenty-five (25) Bald Cypress trees, each tree being 8 feet to 10 feet in height, at Fountainbleau State Park in Mandeville, St. Tammany Parish, Louisiana. The Respondent will have 90 days from the effective date of the settlement to complete this project. The total cost to be expended by Respondent for this beneficial environmental project is \$3,750.00.
- B. Respondent shall submit monthly reports to the LDEQ regarding its progress on the project. The first shall be due on the 5th of the month following the date the LDEQ signs this Settlement. Monthly reports shall be submitted on the 5th of every month thereafter until the project is completed. Each such monthly report shall include a description of the project, tasks completed, tasks remaining, the percentage

completed, and money expended through the date of the report. Upon completion of all projects 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 Respondent does not spend the amount of \$3,750.00, then it shall, in its final report, propose additional projects for the LDEQ's approval, or pay to the LDEQ, 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 LDEQ 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 LDEQ 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 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 St. Mary 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 Louisiana 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.

PETRON, L.L.C.

BY:

[Handwritten Signature]

(Signature)

David R. Pabalais

(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this 23 day of May, 2011, at Lafayette, LA.

[Handwritten Signature: Karen T. Guidry]

NOTARY PUBLIC (ID # _____)

KAREN T. GUIDRY
#55444

(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch Secretary

BY:

[Handwritten Signature: Cheryl Sonnier Nolan]

Cheryl Sonnier Nolan, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 25 day of August, 2011, at Baton Rouge, Louisiana.

[Handwritten Signature: Debra King]

NOTARY PUBLIC (ID # 20590)

[Handwritten: Ben Roll]

[Handwritten: Life Commission]

[Handwritten Signature: Debra King]

(stamped or printed)

Approved:

[Handwritten Signature: Cheryl Sonnier Nolan]

Cheryl Sonnier Nolan, Assistant Secretary