

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

R. J. DAIGLE & SONS CONTRACTORS, INC.

AI # 163141

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

* Settlement Tracking No. SA-MME-10-0006 * Enforcement Tracking No. MM-CN-09-0004 * Docket No. 2009-7594-EQ *

SETTLEMENT

The following Settlement is hereby agreed to between R. J. Daigle & Sons Contractors, 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 that owns and/or operates a commercial construction company located in Gonzales, Ascension Parish, Louisiana ("the Facility").

II

On April 21, 2009, the Department issued to Respondent a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. MM-CN-09-0004, which was based upon the following findings of fact:

The Respondent owns and/or operates R. J. Daigle & Sons Contractors, Inc. (the facility), a commercial and retail building construction company, located at 1107 East Highway 30 in Gonzales, Ascension Parish, Louisiana. Under Department Regulations the facility currently operates without the requirement of obtaining an Air Permit. In early 2009, the facility conducted land

clearing operations at West Ridge Subdivision near Prairieville, in Ascension Parish, Louisiana (the Site).

On or about February 5, 2009, February 6, 2009, February 10, 2009, February 11, 2009, February 12, 2009, and February 13, 2009, Air Quality Compliance Evaluation Inspections (CEI) were performed to determine the degree of compliance with the Act and the Air Quality Regulations. On or about February 13, 2009, a file review of the facility was performed to determine the degree of compliance with the Act and the Air Quality Regulations.

The following violations were noted during the course of the inspection and file review:

- A. Inspections were conducted on February 5, 2009, February 6, 2009, February 10, 2009, February 11, 2009, February 12, 2009, and February 13, 2009, at the West Ridge Subdivision as a result of citizen complaints concerning smoke from burning piles of waste material. Six actively burning piles of vegetative matter were observed by the inspection team on February 5, 2009. Three actively burning piles were observed on February 11, 2009. Six actively burning piles were observed on February 13, 2009. Locations of each of the actively burning piles were documented at distances of less than one thousand (1,000) feet from dwellings on private property on which the burning is conducted. Each day of conducting open burning of each pile of vegetative waste within 1,000 feet of occupied dwellings on adjacent property is a violation of LAC 33:III.1109.D.6.b, and La. R.S. 30:2057(A)(1), and La R.S. 30:2057(A)(2).
- B. Inspections were conducted on February 10, 2009, February 11, 2009, and February 13, 2009, at the West Ridge Subdivision as a result of citizen complaints concerning smoke from burning piles of waste material. On February 10, 2009, one pile was observed actively burning at 6:20 PM. On February 11, 2009, three piles were observed actively burning at 6:00 AM. On February 13, 2009, three piles were observed actively burning at 7:05 AM. Each day of conducting open burning of each pile of vegetative waste outside the allowed hours of 8:00AM to 5:00PM is a violation of LAC 33:III.1109.D.6.c, and La. R.S. 30:2057(A)(1) and La. R.S. 30:2057(A)(2).

On or about February 5, 2009, an inspection was performed at the Site to determine the degree of compliance with the Act and the Solid Waste Regulations. The inspection team observed

and documented the presence of construction materials and demolition debris in the actively burning waste piles.

The following violations were noted during the course of the inspection and file review:

- A. The Respondent caused and/or allowed the deposition of regulated solid waste without a permit and/or authority from the Department. Each instance of improper deposition of construction and/or demolition debris is a violation of LAC 33:VII.315.C and La. R.S. 30:2155.
- B. The Respondent was engaged in the outdoor burning of regulated solid waste. Each instance of outdoor burning of regulated solid waste is a violation of LAC 33:VII.315.M.

III

In response to the Consolidated Compliance Order and Notice of Potential Penalty, the 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 ONE THOUSAND FIVE HUNDRED FIFTY AND NO/100 DOLLARS (\$1,550.00), of which Three Hundred Seven and 02/100 Dollars (\$307.02) 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 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 Ascension, 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 twenty (20) 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.

R. J. DAIGLE & SONS CONTRACTORS, INC.

BY: Ronnie Daigle
(Signature)

RONNIE J. DAIGLE
(Print)

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 8th day of March, 20 10, at Bonnyville, LA.

Erin Wiley Lanoux
NOTARY PUBLIC (ID # _____)

Erin Wiley Lanoux
Bar Roll No. 28651
Notary Public, State of Louisiana
My Commission is for Life.

(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch, Secretary

BY: Paul D. Miller
Paul D. Miller, P.E., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 14th day of July, 2010, at Baton Rouge, Louisiana.

Ted R. Probst
NOTARY PUBLIC (ID # 40539)
Ted R. Probst
(Print)

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