

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

RADIATIONRX, LLC

AI # 140138

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

* Settlement Tracking No.
* SA-RE-10-0085
*
* Enforcement Tracking No.
* RE-P-10-014
*
*
* Docket No. 2010-10769-EQ
*

SETTLEMENT

The following Settlement is hereby agreed to between RadiationRX, LLC (“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 limited liability company that formerly owned and/or operated a radiation infusion therapy facility located in Metairie, Jefferson Parish, Louisiana (“the Facility”).

II

On September 29, 2010, the Department issued to Respondent a Penalty Assessment, Enforcement No. RE-P-10-014, in the amount of \$7,592.77, which was based upon the following findings of fact:

The Respondent owns and/or operates RadiationRx, LLC, a radiation infusion therapy facility, located at 3440 Division Street, Suite H, in Metairie, Jefferson Parish, Louisiana. The Respondent currently operates under Radioactive Material License No. LA-11430-L01 issued by the Department on February 27, 2008.

On or about December 8, 2009, an inspection was conducted at the Respondent's facility to determine the degree of compliance with the Radiation Protection Regulations and the Act.

The following violations were noted:

- A. During the course of the inspection, it was noted that the Radiation Safety Officer (R.S.O.), Michael T. Sullivan, had resigned his position by letter submitted to the Department on or about March 9, 2009, and the Respondent failed to amend their operating license to provide a qualified replacement R.S.O. This is a violation of LAC 33:XV.320.A.2, and Radioactive Material License No. LA-11430-L01 Condition No. 3.
- B. During the course of the inspection, it was noted that the Respondent failed to amend their license to reflect the removal of three (3) authorized users no longer employed by the Respondent. The authorized users were William Stein, III, M.D., Paul Schwarzenberger, M.D. and Michael H. Hayman, M.D. This is a violation of LAC 33:XV.320.A.2 and Radioactive Material License No. LA 11430-L01 Condition No. 2.
- C. During the course of the inspection, it was noted that the Respondent failed to provide and/or maintain records of individual monitoring results required by LAC 33:XV.431 for review by the Department at the time of the inspection. This is a violation of LAC 33:XV.476.A.
- D. During the course of the inspection, it was noted that the Respondent conducted the most recent quarterly brachytherapy sealed source(s) inventory on October 9, 2008. The Respondent failed to conduct brachytherapy sealed source(s) inventory every three months or quarterly a total of four (4) instances in 2009 in violation of LAC 33:XV.719.G.
- E. During the course of the inspection, it was noted the Respondent conducted the most recent quarterly brachytherapy sealed source(s) storage area survey(s) on October 9, 2008. The Respondent failed to conduct brachytherapy sealed source(s) storage area survey(s) a total of four (4) instances in 2009 in violation of LAC 33:XV.719.H.

On February 9, 2010, a Consolidated Compliance Order and Notice of Potential Penalty (CONOPP), Enforcement Tracking No. RE-CN-09-0044, was issued to the Respondent.

III

In response to Penalty Assessment RE-P-10-014, Respondent made a timely request for a hearing.

IV

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 TWO THOUSAND NINETY-TWO AND 77/100 DOLLARS (\$2,092.77), of which One Thousand Ninety-Two and 77/100 Dollars (\$1,092.77) 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).

V

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.

VI

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.

VII

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 La. R. S. 30:2025(E) of the Act.

VIII

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

IX

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).

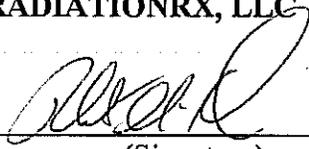
X

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XI

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.

RADIATIONRX, LLC

BY: 
(Signature)

ROBERT KESSLER
(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this 20th day of May, 20 11, at Metairie, La. 70001


NOTARY PUBLIC (ID # _____)

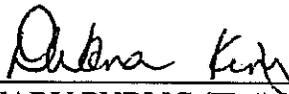
DAVID R. SHERMAN
Notary Public, Parish of Jefferson, State of La.
My Commission is issued for Life
Bar Roll #12015

(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 25th day of August, 20 11, at Baton Rouge, Louisiana.


NOTARY PUBLIC (ID # 20599)
Bar Roll

life commission

Dwana King
(stamped or printed)

Approved: 
Cheryl Sonnier Nolan, Assistant Secretary