

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

THE BLOOD CENTER

AI # 39629

PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT

LA. R.S. 30:2001, ET SEQ.

\* Settlement Tracking No.  
\* SA-RE-09-0038  
\*  
\* Enforcement Tracking No.  
\* RE-P-08-0007  
\*  
\*  
\* Docket No. 2008-7108-EQ  
\*

SETTLEMENT

The following Settlement is hereby agreed to between The Blood Center ("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 non-profit corporation that owns and/or operates a blood bank facility located at 315 South Johnson Street in New Orleans, Orleans Parish, Louisiana ("the Facility").

II

On May 6, 2008, the Department issued to Respondent a Penalty Assessment, Enforcement No. RE-P-08-0007, in the amount of \$11,184.22, which was based upon the following findings of fact:

The Respondent was in possession of a sealed source under the provisions of Radioactive Material License, LA-10098-L01, issued by the Department. The blood irradiator containing the Cs-137 sealed source was removed by International Isotopes Transportation Services on September 11, 2007. The Respondent's facility is located at 315 South Johnson Street in New Orleans, Orleans Parish, Louisiana.

On or about November 15, 2006, an inspection conducted to verify compliance with the Increased Control (IC) Principles revealed the following violations:

- A. The Respondent failed to control access at all times to radioactive material quantities of concern to only approved individuals who require access to perform their job duties, in violation of LAC 33:XV.320.A.2 and Radioactive Material License, LA-10098-L01, Condition #7.B and the Nuclear Regulatory Commission Order Imposing Increased Controls, Principle IC 1.
- B. The Respondent failed to have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern, in violation of LAC 33:XV.320.A.2 and Radioactive Material License, LA-10098-L01, Condition #7.B and the Nuclear Regulatory Commission Order Imposing Increased Controls, Principle IC 2.
- C. The Respondent failed to protect the detailed information that describes the physical protection system for the radioactive material quantities of concern, in violation of LAC 33:XV.320.A.2 and Radioactive Material License, LA-10098-L01, Condition #7.B and the Nuclear Regulatory Commission Order Imposing Increased Controls, Principle IC 6.

On February 12, 2007, a Consolidated Compliance Order & Notice of Potential Penalty (CONOPP), Enforcement Tracking No. RE-CN-07-0004 was issued to the Respondent. The enforcement action, RE-CN-07-0004, is considered final as the Respondent failed to file request for a hearing.

III

In response to the Penalty Assessment, 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 SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$6,500.00), of which One Hundred Thirty-Four and 22/100 Dollars (\$134.22) represents 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 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.

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 Orleans 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.

#### 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 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.

THE BLOOD CENTER

BY: [Signature]  
(Signature)

Billy Neales  
(Print)

TITLE: PRESIDENT + CEO

THUS DONE AND SIGNED in duplicate original before me this 12<sup>th</sup> day of July, 20 11, at 4:04 P.M.

[Signature]  
NOTARY PUBLIC (ID # 31153)  
**EVERETT R. FINERAN**  
NOTARY PUBLIC  
LSBN 31153  
NOTARY NO. 086058  
Parish of Orleans, State of Louisiana  
~~My Commission is issued for life.~~  
(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
Peggy M. Hatch, Secretary

BY: [Signature]  
Cheryl Sonnier Nolan, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 18<sup>th</sup> day of July, 20 11, at Baton Rouge, Louisiana.

[Signature]  
NOTARY PUBLIC (ID # 20540)  
Ben Cole  
*Life Commission*

Debra King  
(stamped or printed)

Approved: [Signature]  
Cheryl Sonnier Nolan, Assistant Secretary



JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

*State of Louisiana*

DEPARTMENT OF JUSTICE  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

June 1, 2011

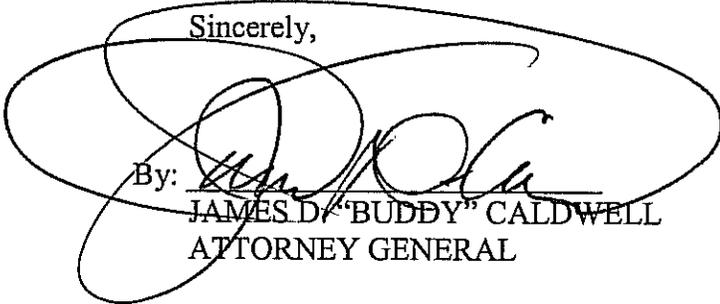
Mr. Herman Robinson, Executive Counsel  
La. Department of Environmental Quality  
Legal Affairs Division  
P.O. Box 4302  
Baton Rouge, LA 70821-4302

Re: AG Review of DEQ Settlement;  
The Blood Center  
Settlement No. SA-RE-09-0038

Dear Mr. Robinson:

Pursuant to the authority granted to me by Art. IV, Sec. 8 of the state constitution and R.S. 30:2050.7, I approve the above referenced settlement.

Sincerely,

By: 

JAMES D. "BUDDY" CALDWELL  
ATTORNEY GENERAL

JDC/MKT/tp