

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

TOMMY CRUSE

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

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* **ENFORCEMENT TRACKING NO.**

* **SE-P-02-0201**

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* **DOCKET NO. 2001-2383-EQ**

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SETTLEMENT

The following Settlement is hereby agreed to between Tommy Cruse (“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 an individual who operated an unauthorized solid waste disposal site known to the Department as the Tommy Cruse Unauthorized Dump (the Site) located at 47 Kendall Lane in Boyce, Rapides Parish, Louisiana.

II

On August 28, 2002, the Department issued a Penalty Assessment to Respondent in the amount of \$6,363.60, which was based upon the following findings of fact:

- A. On or about July 21, 2000, and August 31, 2000, inspections of the Respondent’s facility revealed that Respondent caused and/or allowed the deposition of solid waste without a permit and/or other authority from the Department. Specifically, household garbage and scrap metal were deposited onto the Respondent’s back yard. The

Respondent's unauthorized disposal of solid waste was in violation of La. R.S. 30:2155, LAC 33:VII.315.A, and LAC 33:VII.315.E.

- B. On or about February 6, 2001, a Compliance Order, SE-C-00-0159, was issued to the Respondent for the violations cited above. This order is final and is not subject to further review.
- C. On or about February 12, 2001, and May 29, 2001, follow up inspections of the Respondent's facility were performed to verify compliance with SE-C-00-0159. It was revealed that the Respondent created a new pile of solid waste at a different area of the Site, in violation of La. R.S. 30:2155, LAC 33:VII.315.A, and LAC 33:VII.315.E and Compliance Order SE-C-00-0159 issued on February 6, 2001.
- D. On or about November 29, 2001, Notice of Potential Penalty SE-PP-01-0031 was issued to Respondent based on the findings of the February 12, 2001, and May 29, 2001, inspections.
- E. On or about July 1, 2002, Compliance Order SE-C-00-0159 was made executory by the Department.
- F. On or about February 16, 2002, the Respondent was observed and photographed dumping a trailer of solid waste, including but not limited to construction and demolition material, household garbage and scrap metal at a new site known to the Department as the United States National Forest Service property off Forest Service Road 216 in Section 27, T4N, R4W. As a result, the Respondent was issued a citation by the Forest Service Officer. The Respondent removed the above-mentioned solid waste from the United States National Forest Service property and

brought it back to his residence.

- G. On or about February 28, 2002, a representative of the Department performed a follow up inspection at the Respondent's residence. Specifically, the Respondent transported construction/demolition material to his residence located at 47 Kendall Lane. It was revealed that some of the solid waste has been removed; however, substantial waste remained at the site. The Respondent's unauthorized disposal of solid waste is in violation of La. R.S. 30:2155, LAC 33:VII.315.A, LAC 33:VII.315.E, and Compliance Order SE-C-00-0159 issued on February 6, 2001.
- H. On or about July 15, 2002, a Notice of Potential Penalty, SE-PP-02-0100, was issued to the Respondent based on the findings of the February 29, 2002, inspection.

III

In response to the Penalty Assessment, Respondent made a timely request for a hearing.

IV

A follow-up inspection conducted by the Department on September 3, 2002, and additional information provided the Department by Respondent on or about September 19, 2002, indicate that Respondent properly cleaned up the site and properly disposed of the unauthorized solid waste material.

V

Respondent denies he committed any violations or is liable for any fines, forfeitures and/or penalties.

VI

Nonetheless, the 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 Five Hundred and 00/100 (\$500.00) Dollars, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to DEQ as described above shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VII

Payment is to be made within thirty (30) 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. Penalties are to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303.

VIII

Respondent agrees to pay to the Department stipulated penalties in the amount of Two Thousand and 00/100 (\$2,000.00) Dollars in the event Respondent, or anyone acting in his behalf, operates, or causes to be created, a solid waste disposal site without first obtaining authority from the Department, or otherwise violates the solid waste regulations promulgated by the Department. This stipulated penalty will be payable in addition to any penalties the Department may impose for any new violation. Said stipulated penalty shall be due and payable to the Department within thirty (30) days of amicable demand.

IX

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 the 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.

X

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.

XI

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.

XII

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

XIII

The Respondent has caused a public notice advertisement to be placed in the official journal

of the parish governing authority in Rapides Parish. 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.

XIV

In consideration of the above, the Department will not seek to recover any penalty amount assessed herein, provided Respondent undertakes and timely completes the projects listed in Paragraph V and does not allow the deposition of any regulated solid waste at the site. The Department will dismiss, without prejudice, any claims for penalties in this matter. However, should Respondent allow the deposition of solid waste at the site, the Department reserves its rights to reopen this action and assess further penalties for further noncompliance.

XV.

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.

WITNESSES:

RESPONDENT

Roger D. Maitre

BY: Tommy Cruse
(Signature)

Tommy Cruse
(Printed)

Edm Can

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this 30th day of

September, 2003, in RAPIDES, Parish

of _____, Louisiana.

Thomas H. Roper
NOTARY PUBLIC

STATE OF LOUISIANA

Mike D. McDaniel, Ph.D., Secretary

Department of Environmental Quality

BY: Harold Leggett
Harold Leggett, Ph. D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 30th day of

August, 2003, in Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC

Approved: R. Bruce Hammatt
R. Bruce Hammatt, Assistant Secretary



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

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

August 3, 2004

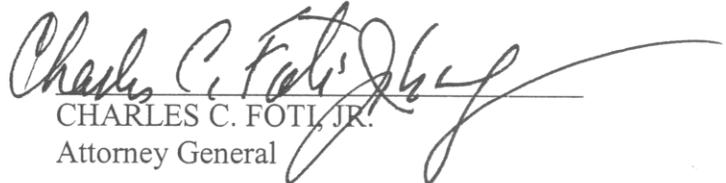
Mike D. McDaniel, Secretary
La. Department of Environmental Quality
Office of the Secretary
P.O. Box 4301
Baton Rouge, LA 70821-4301

Re: Tommy Cruse
SE-P-020201

Dear Secretary McDaniel:

Pursuant to the authority granted to me by R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,


CHARLES C. FOTI, JR.
Attorney General

CCF,Jr./ttp