

JAN 04 2010

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

TOTAL MARINE SERVICES
OF JEFFERSON, INC.

AI # 27602

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

* Settlement Tracking No.
* SA-AE-09-0057
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* Enforcement Tracking No
* AE-PP-08-0008
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SETTLEMENT

The following Settlement is hereby agreed to between Total Marine Services of Jefferson, 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 ship repair facility located in Harvey, Jefferson Parish, Louisiana ("the Facility").

II

On June 15, 2009, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. AE-PP-08-0008, which was based upon the following findings of fact:

On or about November 16, 2007, an inspection of a ship repair facility, owned and/or operated by Total Marine Services of Jefferson, Inc. (Respondent), was performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Air Quality Regulations. On or about February 27, 2009, a subsequent file review was conducted. The facility is

located at 2057 Destrehan Avenue in Harvey, Jefferson Parish, Louisiana. The facility currently operates under Air Permit No. 1340-00203-02, issued on January 8, 2009.

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

- A. At the time of the inspection, the inspector requested to review the facility's records for the types and total quantities of paints, thinners, and solvents used each month and for all previous twelve consecutive month periods; however, the Respondent failed to keep these records on site and available for inspection as required by Specific Condition No. 3 of Air Permit No. 1340-00203-01. This is a violation of Specific Condition No. 3 of Air Permit No. 1340-00203-01, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- B. At the time of the inspection, the inspector requested to review the facility's emissions of total volatile organic compounds (VOCs) from painting, thinner, and solvent usage records for each month and for all previous twelve consecutive month periods; however, the Respondent failed to keep these records on site and available for inspection as required by Specific Condition No. 4 of Air Permit No. 1340-00203-01. This is a violation of Specific Condition No. 4 of Air Permit No. 1340-00203-01, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

- C. The Respondent failed to employ adequate containment during sandblasting operations to prevent particulate matter (PM₁₀) from becoming airborne. At the time of the inspection, the inspector noted gaps, holes, and tears of the shrouds in place at the time of inspection. The failure to employ adequate containment during sandblasting operations to prevent particulate matter from becoming airborne is a violation of LAC 33:III.1305.A.3, Specific Condition No. 5 of Air Permit No. 1340-00203-01, LAC 33:III.501.C.4, LAC 33:III.905, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2). According, to the Respondent's email dated February 17, 2009, the Respondent erects "30ft. x 30ft. mesh-like curtains or sand screens having a shade factor of 85% around the vessels being sandblasted and have since the inspection on November 16, 2007. The screens are raised and secured to supporting structure adjacent to the vessel(s) being sandblasted. Additional screens are secured together if required to effectively extend the screen around the perimeter of the vessel(s) being sandblasted."

- D. The Department received the facility's 2004 Annual VOC Emissions Report dated February 28, 2005, the 2005 Annual VOC Emissions

Report dated June 21, 2006, the 2006 Annual VOC Emissions Report dated January 24, 2007, and the 2007 Annual VOC Emissions Report dated June 3, 2008. The Respondent reported that the facility used 752 tons of blasting sand during the 2004 calendar year, 1,287 tons of blasting sand during the 2005 calendar year, 1,075 tons of blasting sand during the 2006 calendar year, and 970 tons of blasting sand during the 2007 calendar year. Based on information disclosed in these reports, the Respondent failed to comply with the maximum operating rate for abrasive blasting emissions. According to Air Permit No. 1340-00203-01, the maximum operating rate for abrasive blasting emissions (Emission Point No. 96-1) is 750 tons per year (tpy). Each exceedance of the maximum operating rate for abrasive blasting emissions is a violation of Air Permit No. 1340-00203-01, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2). Air Permit No. 1340-00203-02, issued on January 8, 2009, included an increase in the abrasive blasting emissions.

- E The Department received the facility's 2005 Annual VOC Emission Report dated June 21, 2006, and the 2006 Annual VOC Emission Report dated January 24, 2007. The Respondent reported that the facility emitted 16.73 tons of PM₁₀ during the 2005 calendar year, and 13.98 tons of PM₁₀ during the 2006 calendar year. Based on the information disclosed in these reports, the Respondent failed to comply with the annual permitted emission rate for PM₁₀. According to Air Permit No. 1340-00203-01, the total annual permitted emission rate for PM₁₀ is 13.95 tpy. Each exceedance of the permitted emission rate is a violation of Air Permit No. 1340-00203-01, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

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 Department agrees to accept, a payment in the amount of TWO THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$2,300.00), of which Eight Hundred Eighty-Five and 95/100 Dollars (\$885.95) 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 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.

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 LSA- 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. Payment shall 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. The payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

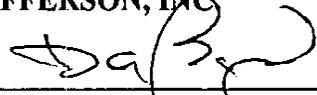
X

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.

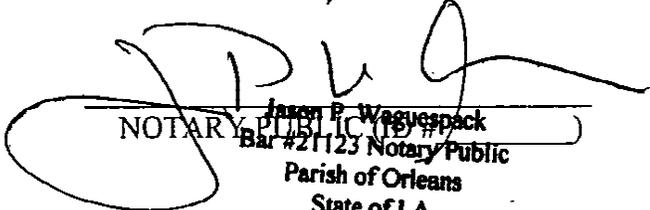
**TOTAL MARINE SERVICES OF
JEFFERSON, INC**

BY: 
(Signature)

DENNIS A. BERUMEN
(Print)

TITLE: CONTROLLER

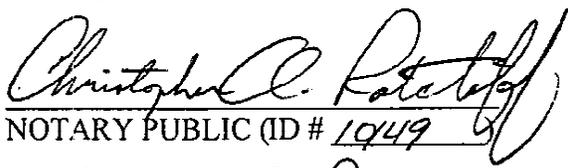
THUS DONE AND SIGNED in duplicate original before me this 27th day of
December, 20 09, at New Orleans, La.

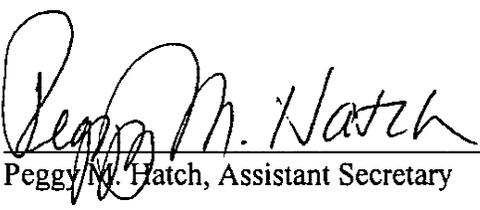

NOTARY PUBLIC (ID #)
Jason P. Waguespack
Bar #21123 Notary Public
Parish of Orleans
State of LA
Commission expires at death

**LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY
Peggy M. Hatch, Secretary**

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

THUS DONE AND SIGNED in duplicate original before me this 12th day of
April, 20 10, at Baton Rouge, Louisiana.


NOTARY PUBLIC (ID # 1049)
Christopher A. Ratchiff
(Print)

Approved: 
Peggy M. Hatch, Assistant Secretary