

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

TOTAL SAFETY U.S., INC.

AI # 39007

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

* Settlement Tracking No.
* SA-RE-10-0091
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* Enforcement Tracking No.
* RE-P-09-0027
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SETTLEMENT

The following Settlement is hereby agreed to between Total Safety U.S., 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 radiation instrument calibration service facility in Broussard, Lafayette Parish, Louisiana ("the Facility").

II

On March 9, 2010, the Department issued to Respondent a Penalty Assessment, Enforcement No. RE-P-09-0027, in the amount of \$29,123.03, which was based upon the following findings of fact:

The Respondent owns and/or operates Total Safety U.S., Inc. (facility), a radiation instrument calibration service company, located at 5749 Highway 190 East in Broussard, Lafayette Parish, Louisiana. The Respondent currently operates under Radioactive Material License No. LA-7132-L01 issued by the Department on June 4, 2009.

On or about September 21, 2006, 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 during the course of the inspection:

- A. The Respondent failed to store the radiation control badge in a location where the radiation level is at a natural background. This is a violation of LAC 33:XV.320.A.2 and Operating and Emergency Procedures Section 2.4.1.
- B. The Radiation Safety Officer, specified in the license, was not the current Radiation Safety Officer. This is a violation of LAC 33:XV.320.A.2 and Radioactive Material License No. LA-7132-L01 Condition No. 3. The violation was adequately addressed on or about January 10, 2007.
- C. The Respondent failed to leak test each designed non-alpha particle emitting sealed source at intervals not to exceed six (6) months. This is a violation of LAC 33:XV.426.A.2.
- D. The Respondent failed to ensure that instruments and equipment used for quantitative radiation measurements are calibrated at intervals not to exceed twelve (12) months. This is a violation of LAC 33:XV.430.B.
- E. The Respondent failed to maintain records showing the results of surveys and calibrations required by LAC 33:XV.430 and LAC 33:XV.455.B for three (3) years after the record was created. This is a violation of LAC 33:XV.472.A.
- F. The Respondent failed to maintain records of doses received by all individuals for whom monitoring was required pursuant to LAC 33:XV.431. This is a violation of LAC 33:XV.476.A.
- G. The Respondent failed to post a current copy of the Operating Procedures. This is a violation of LAC 33:XV.1011.A.3.

On July 9, 2007, a Notice of Potential Penalty (NOPP), Enforcement Tracking No. RE-PP-07-0015 was issued to the Respondent.

A penalty in the amount of \$29,123.03 was assessed together with legal interest as allowed by law and all costs of bringing and prosecuting this enforcement action accruing after the date of issuance.

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 TEN THOUSAND TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$10,250.00), of which One Thousand One Hundred Twenty-Three and 03/100 Dollars (\$1,123.03) 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 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 La. 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 Lafayette 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.

TOTAL SAFETY U.S., INC.

BY: _____
(Signature)

(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20 _____, at _____.

NOTARY PUBLIC (ID # _____)

(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 _____ day of _____, 20 _____, at Baton Rouge, Louisiana.

NOTARY PUBLIC (ID # _____)

(stamped or printed)

Approved: 

Cheryl Sonnier Nolan, Assistant Secretary