

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

WEBER MARINE, INCORPORATED

AI # 82449, 82452

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

\* Settlement Tracking No.  
\* SA-AMM-08-0014  
\*  
\* Enforcement Tracking No.  
\* WE-CN-03-0075  
\* AE-CN-03-0368  
\* MM-P-04-0023  
\* AE-PP-05-0235  
\*  
\* Docket No. 2004-8081-EQ  
\* 2004-8082-EQ  
\* 2005-3348-EQ

SETTLEMENT

The following Settlement is hereby agreed to between Weber Marine, Incorporated (“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 who owns and/or operates crewboats and pushboats and maintains a barge fleet to transport industrial and agricultural products at its marine facility located near 10148 Louisiana Highway 44 in Convent, St. James Parish, Louisiana (“the Facility”).

II

On October 28, 2003, the Department issued to Respondent a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-03-0368, which was based upon the following findings of fact:

The Respondent owns and/or operates crewboats and pushboats and maintains a barge fleet to transport industrial and agricultural products. On occasion, the Respondent extinguishes and

reconditions smoldering corn gluten pellets, which ignite due to spontaneous combustion. The Respondent's facility is located near 10148 Louisiana Highway 44 in Convent, St. James Parish, Louisiana. The Respondent does not currently operate under an Air Permit; however, in a meeting with the Department, the Respondent submitted operating procedures to minimize the occurrence of air emissions and smoke.

On or about September 30, 2003, an inspection of the Respondent's facility was performed to determine the degree of compliance with the Act and Air Quality Regulations in response to citizens' complaints regarding smoke and odors from barges on the Mississippi River.

The following violation was noted during the course of the inspection:

The cargo on the Ingram Barge, Barge No. ING 4554, was smoldering and spread fire to the barge. The Respondent allowed the outdoor burning of combustible material under its control. This is a violation of LAC 33:III.1109.B and Sections 2057(A)(1) and 2057(A)(2) of the Act.

On May 28, 2004, the Department issued to Respondent a Penalty Assessment, Enforcement No. MM-P-04-0023, in the amount of \$10,105.00, which was based upon the following findings of fact:

The Respondent owns and/or operates a sewage treatment plant for an office barge located at Mississippi River Mile 157 in Convent, St. James Parish, Louisiana. The Respondent was granted coverage under Louisiana Pollutant Discharge Elimination System (LPDES) General Permit LAG530000 on or about May 12, 2000, and was specifically assigned permit number LAG531073. The permit expired on November 18, 2002, and was administratively continued. LPDES permit LAG531073 requires the Respondent to comply with effluent limitations and monitoring requirements for treated sanitary wastewater discharges in Part I, Page 3, of the permit. Under the

terms and conditions of LPDES permit LAG531073, the Respondent is authorized to discharge treated sanitary wastewater totaling less than 2,500 gallons per day (GPD) maximum quantity from the facility to the Mississippi River, waters of the state.

A file review conducted by the Department on or about February 21, 2003, revealed the following:

The Respondent was not sampling its effluent and did not monitor flow at outfall 001 annually as required by LPDES permit LAG531073 since the issuance of the permit. Each failure to sample the effluent and to monitor flow is a violation of LPDES permit LAG531073 (Part I, Section B, and Part III, Sections A.2 and C.2), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2355.A. Specifically, LPDES permit LAG531073 states that monitoring results obtained for each monitoring period shall be summarized annually on a DMR form for discharges of less than 2,500 GPD. The Respondent has submitted DMRs every month from May 2000 to June 2003 but has stated on most DMRs "No analysis collected this quarter."

On March 31, 2003, a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement Tracking No. WE-CN-03-0075 was issued to the Respondent.

On or about June 26, 2003, a meeting was held between a representative for the Respondent and members of the Department to discuss the violations cited in WE-CN-03-0075. During this meeting, the Respondent's representative stated that the discharge from the facility was so minimal that a sample could not have been taken.

The Department received two letters dated November 3, 2003, from the Respondent. In the letters, the Respondent presented details of the history of the events surrounding the violation cited in the Enforcement Tracking No. AE-CN-03-0368 and the actions taken to correct the violation.

On or about November 24, 2003, a meeting was held between representatives of the Respondent and members of the Department. The Respondent submitted additional information

relating to Enforcement Tracking No. AE-CN-03-0368 at the time of the meeting.

On April 9, 2006, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. AE-PP-05-0235, which was based upon the following findings of fact:

On or about November 30, 2005, a complaint inspection of The Latania, owned and/or operated by Weber Marine, Incorporated (Respondent), was performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Air Quality Regulations. This complaint investigation was conducted in response to citizens' complaints regarding odors from barges in front of the Respondent's facility. The facility is located at 10148 Highway 44 in Convent, St James Parish, Louisiana.

The following violation was noted during the course of the inspection:

According to the Respondent's records, burning cargo was reported on the following barges: No. RRS-7902 on November 28, 2005, at 8:10pm, and No. TCB-436 on November 28, 2005, at 8:00pm and on November 29, 2005, at 1:00pm. The Respondent allowed the outdoor burning of combustible material under his control. This is a violation of LAC 33:III.1109.B and Sections 2057(A)(1) and 2057(A)(2) of the Act. The records indicate that there was approximately a four hour period between the time the incident was reported and the time the fire was extinguished on November 29, 2005. According to the Baton Rouge airport data, the wind direction was variable.

### III

In response to the Consolidated Compliance Orders and Notices of Potential Penalty, Enforcement No. WE-CN-03-0075 and AE-CN-03-0368, and the Penalty Assessment, Enforcement No. MM-P-04-0023, 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 TWELVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$12,500.00), of which One Thousand One Hundred Ninety-eight and 46/100 Dollars (\$1,198.46) represents DEQ'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 DEQ 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 Consolidated Compliance Orders and Notices of Potential Penalty, the Penalty Assessment, 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.

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 St. James 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 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.

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.

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.

WEBER MARINE, INCORPORATED

BY: Eric Jarrell  
(Signature)

Eric Jarrell  
(Print)

TITLE: Attorney

THIS DONE AND SIGNED in duplicate original before me this 2<sup>nd</sup> day of March, 20 11, at New Orleans, LA.

Michael Carniglia  
NOTARY PUBLIC (ID # 90055)

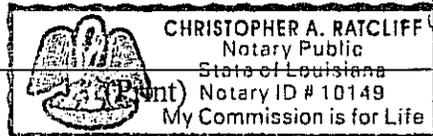
Michael Carniglia  
(Print)

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

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

THIS DONE AND SIGNED in duplicate original before me this 7<sup>th</sup> day of April, 20 11, at Baton Rouge, Louisiana.

Christopher A. Ratcliff  
NOTARY PUBLIC (ID # \_\_\_\_\_)



Approved: Paul D. Miller  
Paul D. Miller, P.E., Assistant Secretary