

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**JAMES HOLYFIELD AND HOLYFIELD
TREE SERVICE, LLC**

AI # 159494, 164642, 165099

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

* **Settlement Tracking No.**
* **SA-MM-16-0022**
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* **Enforcement Tracking No.**
* **SE-CN-08-0514**
* **MM-CN-10-01803**
* **MM-CN-10-01803A**
*
* **Docket No. 2010-2062-EQ**
* **2011-15993-EQ**

SETTLEMENT

The following Settlement is hereby agreed to between James Holyfield and Holyfield Tree Service, LLC (“Respondents”) 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

Respondents are an individual and limited liability company that own and/or operate a tree service and construction demolition business located in Ouachita Parish, Louisiana (“the Facility”).

II

On January 29, 2009, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. SE-CN-08-0514, which was based upon the following findings of fact:

“The Respondent owns and/or operates Holyfield Tree Service, a tree service and construction demolition business, located on East Martin Street (the Site) in West Monroe, Ouachita

Parish, Louisiana. The Respondent does not have a permit and/or other authorization from the Department for the disposal or transportation of regulated solid waste.

On or about July 15, 2008, an inspection was conducted at the site as a result of a complaint filed with this Department. The site investigation revealed the following violations:

- A. The Respondent caused and/or allowed the disposition of regulated solid waste without a permit and/or the authority of the Department, in violation of La. R.S. 30:2155 and LAC 33:VII.315.C. Specifically, the Respondent disposed of woodwaste, lumber, furniture, shingles and other construction and demolition debris at the Site.
- B. The Respondent caused and/or allowed the open burning of regulated solid waste without a permit and/or the authority of the Department, in violation of LAC 33:VII.315.M. Specifically, the Respondent was burning woodwaste, lumber, furniture, shingles and other construction and demolition debris at the Site.
- C. The Respondent failed to obtain a solid waste transporter ID number prior to transporting regulated solid waste, in violation of LAC 33:VII.401.A.
- D. The Respondent transported regulated solid waste, including, but not limited to, woodwaste and construction demolition debris, to the Site which is not authorized to receive regulated solid waste, in violation of LAC 33:VII.505.D.”

On July 11, 2011, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. MM-CN-10-01803, which was based upon the following findings of fact:

“The Respondent owns and/or operates Holyfield Tree Service, a tree service and construction demolition business. The Respondent was issued Portable Source Air Permit No. 7777-00675 on September 15, 2009, to operate an air curtain destructor (ACD), Agency Interest (AI) No. 165099. The Respondent does not have a solid waste processing permit to burn solid waste. The Respondent is permitted to operate the ACD to burn vegetative debris at the following two disposal sites (the Sites):

1. 3930 Hadley Street, Monroe, LA (AI No. 164642)

2. WT Hemphill Street (dead end, no physical address), West Monroe, LA (AI No. 159494)

On or about October 13, 2010, and March 9, 2011, inspections conducted at the Hadley Street Site (AI No. 164642) revealed the following violation:

The Respondent caused and/or allowed the deposition of regulated solid waste without a permit and/or other authority from the Department, in violation of La. R.S. 30:2155, and LAC 33:VII.315.C. Specifically, vegetative debris and ash were disposed at the Site. The March 9, 2011, inspection confirmed that the ash had been removed from the Site. Vegetative debris has been deposited along the embankment of a creek/bayou on the Site for erosion control.

On or about October 13, 2010, and March 9, 2011, inspections conducted at the W T Hemphill Street Site (AI No. 159494) revealed the following violations:

- A. The Respondent caused and/or allowed the deposition of regulated solid waste without a permit and/or other authority from the Department, in violation of La. R.S. 30:2155, and LAC 33:VII.315.C. Specifically, vegetative debris and household garbage were disposed at the Site. The March 9, 2011, inspection confirmed that the household garbage and vegetative debris has been removed from the Site.
- B. The Respondent caused and/or allowed the processing of regulated solid waste without a permit and/or authority from the Department, in violation of La. R.S. 30:2155, and LAC 33:VII.315.C. Specifically, on or about March 9, 2011, the Respondent utilized the ACD to burn the vegetative debris without a solid waste processing permit from the Department.

On or about October 13, 2010, an inspection of the two (2) permitted locations (AI Nos. 159494 and 164642) were conducted to determine the degree of compliance with the Act and the Air Quality Regulations, and to determine the degree of compliance with Portable Source Air Permit No. 7777-00675 issued on September 15, 2009, for the operation of an air curtain destructor (AI No. 165099).

At the time of the inspection, the air curtain destructor (AI No. 165099) was stationed at the Hadley Street Site (AI No. 164642). The Respondent stated that the air curtain destructor had never been moved to the WT Hemphill Site (AI No. 159494). The inspector noted that material was

stockpiled at the Hadley Street Site (AI No. 164642) and at the WT Hemphill Site (AI No. 159494). According to No. 2 of the Respondent's Housekeeping Plan, 'The portable ACI [air curtain incinerator] machine will be moved every (90) days, upon written notification to the LDEQ, to the company's other disposal site in order to burn up the other disposal site's accumulated vegetative wood waste debris, in a fire trench.' According to No. 3 of the Respondent's Housekeeping Plan, 'Vegetative wood waste/tree debris will not be stockpiled, as this is considered a public nuisance and health/safety hazard. Every effort will be made to keep the wood waste/tree debris burned down to a safe and manageable level to deter rodents, fire hazard potential and/or other nuisances.'

On or about March 9, 2011, an inspection of the two (2) permitted locations (AI Nos. 159494 and 164642) was conducted to determine the degree of compliance with the Act and the Air Quality Regulations, and to determine the degree of compliance with Portable Source Air Permit No. 7777-00675 issued on September 15, 2009, for the operation of an air curtain destructor (AI No. 165099).

While the Department's investigation is not yet complete, the following violation was noted during the course of the inspection on March 9, 2011:

On October 13, 2010, the ACD was stationed at the Hadley Street Site (AI No. 164642). At the time of the inspection on March 9, 2011, the inspector noted that the air curtain destructor was located at the WT Hemphill Site (AI No. 159494). According to No. 2 of the facility's Housekeeping Plan, 'The portable ACI [air curtain incinerator] machine will be moved every (90) days, upon written notification to the LDEQ, to the company's other disposal site, in order to burn up the other disposal site's accumulated vegetative wood waste debris, in a fire trench.' As of April 6, 2011, the Respondent has not submitted written notification to the Department stating that the ACD was moved. This is a violation of LAC 33:III.501.C.4 and La. R.S. 30:2057(A)(2)."

On May 8, 2012, the Department issued to Respondent an Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. MM-CN-10-01803A, which was based upon the following findings of fact:

“The Department hereby amends paragraph III of the Order Portion to read as follows:

‘To immediately cease, upon receipt of this **COMPLIANCE ORDER**, burning/processing or allowing the burning of regulated solid waste of any kind at the Site or any other site. If the Respondent chooses to continue processing solid waste at its site(s), by burning with an Air Curtain Destructor, a request for an Administrative Order on Consent (AOC) shall be submitted along with a copy of a Best Management Practice (BMP) plan approved by the Louisiana Department of Agriculture and Forestry to the following:

Office of Environmental Services
Attention: Scott Guilliams, Administrator
Waste Permits Division
Post Office Box 4313
Baton Rouge, LA 70821-4313

If ash management is not included in the BMP, then a description of how the ash will be disposed shall be submitted.’ The Respondent shall not process regulated solid waste until the AOC has been signed and issued by the Department.

The Department incorporates all of the remainder of the original **COMPLIANCE ORDER, ENFORCEMENT TRACKING NO. MM-CN-10-01803** and **AGENCY INTEREST NOS. 159494, 164642, 165099** as if reiterated herein.”

III

In response to the Consolidated Compliance Orders & Notices of Potential Penalty, Respondents made timely requests for a hearing.

IV

Respondents deny they committed any violations or that they are liable for any fines, forfeitures and/or penalties.

V

Nonetheless, Respondents, without making any admission of liability under state or federal statute or regulation, agree to pay, and the Department agrees to accept, a payment in the amount of THREE THOUSAND AND NO/100 DOLLARS (\$3,000.00), of which One Thousand Twenty-Four and 60/100 Dollars (\$1,024.60) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondents 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

Respondents further agree that the Department may consider the inspection report(s), the Consolidated Compliance Orders & Notices of Potential Penalty, the Amended Consolidated Compliance Order & 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 Respondents, and in any such action Respondents shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondents' 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 Respondents hereby waive 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

As required by law, the Department has submitted this Settlement Agreement to the Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

X

The Respondents have caused a public notice advertisement to be placed in the official journal of the parish governing authority in Ouachita Parish, Louisiana. The advertisement, in form and wording approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondents have 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.

XI

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).

XII

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XIII

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.

**JAMES HOLYFIELD AND HOLYFIELD
TREE SERVICE, LLC**

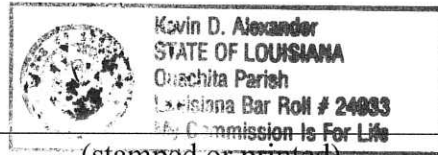
BY: James Holyfield
(Signature)

JAMES Holyfield
(Printed)

TITLE: Owner

THUS DONE AND SIGNED in duplicate original before me this 30th day of
January, 20 17, at Mouroe, LA.

Kevin D. Alexander
NOTARY PUBLIC (ID # 24933)



(stamped or printed)

**LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**

Chuck Carr Brown, Ph.D., Secretary

BY: Loures Iturralde

Loures Iturralde, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 5th day of
April, 20 17, at Baton Rouge, Louisiana.

Perry Theriot
NOTARY PUBLIC (ID # 19181)

Perry Theriot
(stamped or printed)

Approved: Loures Iturralde
Loures Iturralde, Assistant Secretary