

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

TULANE UNIVERSITY

AI # 2371

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

\* Settlement Tracking No.  
\* SA-MM-15-050  
\*  
\* Enforcement Tracking No.  
\* MM-CN-11-01070  
\* MM-CN-11-01070A  
\*  
\* Docket No. 2013-12169-EQ  
\* Consolidated with 2013-17274-EQ  
\*

SETTLEMENT

The following Settlement is hereby agreed to between Tulane University (“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 institution of higher learning that owns and/or operates a facility located in New Orleans, Orleans Parish, Louisiana (“the Facility”).

II

On May 22, 2012, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty (CONOPP), Enforcement No. MM-CN-11-01070, which was based upon the following findings of fact:

“The Respondent owns and/or operates Tulane Uptown Campus (the facility) located at 6823 Saint Charles Street in New Orleans, Orleans Parish, Louisiana. The facility previously operated under Air Permit No. 2140-00146-01 issued on December 6, 2006. The facility currently operates under Air Permit No. 2140-00146-02 issued on February 22, 2011. At the

time of the inspection, the facility was a Large Quantity Generator (LQG) of hazardous waste.

On or about February 22, 2011, an inspection of the Respondent's facility revealed the following Hazardous Waste violations:

- A. The Respondent failed to determine if solid wastes generated at its facility were hazardous wastes, in violation of LAC 33:V.1103. Specifically, a student lab assistant in Stern Hall Room 5063, disposed of an acetone rinse in the lab's sink drain. The Respondent addressed the violation by providing training to the Chemistry Department faculty, staff, and graduate students on proper hazardous waste procedures, on or about April 7, 2011. In addition, the entire Chemistry Department has been instructed to take the online hazardous waste training available on the Tulane Office of Environmental Health & Safety (OEHS) website and a handout on proper chemical waste handling procedures has been provided to all Chemistry labs for posting in the laboratories.
- B. The Respondent failed to sign and date the manifest certification by hand when the initial transporter accepts the shipment, in violation of LAC 33:V.1107.D.1.a. Specifically, Gregory Horne, of Horne Environmental Services, LLC signed and dated the generator's certification on hazardous waste manifest 003383701 in lieu of a facility representative. The Respondent addressed the violation by instructing the Tulane OEHS personnel to be present when hazardous waste is picked up by the contractor and to oversee the execution of manifests, on or about April 7, 2011.
- C. The Respondent stored hazardous waste for more than ninety (90) days without a permit or other authorization, in violation of LAC 33:V.303.B. Specifically, ten (10) containers of hazardous waste were stored in the "Room 6004 Less Than 90 Day Hazardous Waste Storage Area" (Room 6004 of Stern Hall) for more than 90 days. The Respondent corrected the violation by shipping all of the aforementioned hazardous waste containers offsite under manifest numbers 007847760JJK and 007844761JJK on February 23, 2011. Additionally, on or about April 7, 2011, the Respondent instructed the contractor in writing not to leave any containers behind in the future.
- D. The Respondent failed to include and clearly mark the date upon which each period of accumulation begins on each container and visible for inspection on each container, in violation of LAC 33:V.1109.E.1.c. Specifically, five (5) hazardous waste containers in "Room 6004 Less Than 90 Day Hazardous Waste Storage Area" (Room 6004 of Stern Hall) and five (5) hazardous waste containers in the "Chemical Store Room Less Than 90 Day Hazardous Waste Storage Area" (Room 1027 of Stern Hall) were not marked with an accumulation start date. The Respondent addressed the violation by training Tulane OEHS personnel in the proper labeling and dating of hazardous waste containers managed at the facility, on or about April 7, 2011. All waste in the

less than ninety (90) day storage facility was picked up by the waste disposal company on February 23, 2011.

- E. The Respondent failed to perform weekly inspections of areas where hazardous waste containers are stored as specified in LAC 33:V.2109.A, in violation of LAC 33:V.1109.E.1.a.i. Specifically, the Respondent failed to conduct weekly inspections of the containers of hazardous waste stored in the “Room 6004 Less Than 90 Day Hazardous Waste Storage Area” (Room 6004 of Stern Hall) and the “Chemical Store Room Less Than 90 Day Hazardous Waste Storage Area” (Room 1027 of Stern Hall) between the dates of November 4, 2010, and November 17, 2010, December 22, 2010, and January 4, 2011 (periods where the school was in recess). The Respondent addressed the violation by revising its procedures to ensure hazardous waste personnel coverage during school recess periods, on or about April 7, 2011.
- F. The Respondent failed to maintain records of the job title for each position at the facility related to hazardous waste management and the name of each employee filling each job, as specified in LAC 33:V.1515.D.1, in violation of LAC 33:V.1109.E.1.e. The Respondent addressed the violation by providing several service training sessions on hazardous waste for the departmental safety officers as well as for various laboratory groups in 2010. The entire Chemistry Department has been instructed since the February 22, 2011, inspection to review the online training session and two (2) members of the Tulane OEHS staff are being trained on hazardous waste management.
- G. The Respondent failed to close containers storing hazardous waste except when it is necessary to add or remove waste, as specified of LAC 33:V.2107.A, in violation of LAC 33:V.1109.E.4. Specifically, wadding was stuffed into the mouths of two (2) satellite accumulation containers holding waste mercury in Room 6004 and two satellite accumulation (2) containers of aqueous basic waste and waste acetonitrile in the Satellite Accumulation Area in Stern Hall Room 5063. During the inspection, the Respondent corrected the violation by repackaging the materials into closed containers. The Respondent provided training on hazardous waste issues including proper closing of containers.
- H. The Respondent failed to label universal waste batteries with “Universal Waste-Battery(ies)” or “Waste Battery(ies)”, in violation of LAC 33:V.3823.A.1. Specifically, approximately fourteen (14) universal waste batteries were observed unlabeled in the mechanic shop. The Respondent corrected the violation by labeling the batteries, on or about April 7, 2011.
- I. The Respondent stored universal waste lamps for more than one (1) year from the date the universal waste is generated, in violation of LAC 33:V.3825.A. Specifically, waste lamps generated at Tulane’s Uptown Campus are stored at Tulane’s Hebert Research Center in Algiers. As per email conversation with

the Respondent waste lamps have been stored in Algiers since Hurricane Katrina. The Respondent corrected the violation by shipping 210 universal waste lamps for recycling as documented on non-hazardous manifest 10355, on or about March 22, 2011. The Respondent has instituted labeling and dating procedures and ensure the lamps will be shipped for recycling within one (1) year of collection, on or about April 7, 2011.

- J. The Respondent failed to properly label or mark aboveground tanks used to store used oil, with the words "Used Oil", in violation of LAC 33:V.4013.D.1. Specifically, the Respondent has one (1) 500-gallon used oil storage tank located at the mechanic shop that was incorrectly labeled with the words "waste oil" at the time of the inspection. The facility relabeled the tank with the words "Used Oil", on or about April 7, 2011.

On or about September 26, 2011, a file review of the Respondent's facility was performed to determine the degree of compliance with the Act and the Air Quality Regulations.

While the Department's investigation is not yet complete, the following violations were noted during the course of the file review:

- A. On or about March 27, 2008, the Department received the facility's compliance stack test report for Emission Point EQT030, solar cogeneration turbine. During the stack test performed on March 6, 2008, EQT030 was found to be operating above the maximum and average pounds per hour (lb/hr) permit emission limits for nitrogen oxides (NO<sub>x</sub>) when using diesel as fuel.

1-99A Cogeneration Unit (EQT030) Firing No. 2 Fuel Oil (Diesel)	Permit Limits	Run 1	Run 2	Run 3	Average
NO <sub>x</sub> lb/hr	11.16 (avg)/23.90(max)	33.60	32.89	31.36	32.62

The exceedance of a permitted emission limit of NO<sub>x</sub> is a violation of Air Permit No. 2140-00146-01, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057 (A)(2). On or about May 28, 2008, a stack test was performed on EQT030 which showed NO<sub>x</sub> emissions in excess of the permitted average limit but the permitted maximum limit was not exceeded.

- B. On or about March 27, 2008, the Department received the facility's compliance stack test report for Emission Point EQT030, solar cogeneration turbine. During the stack test performed on March 6, 2008, the NO<sub>x</sub> concentration from EQT030 exceeded the limits under NSPS Subpart GG.

1-99 A Cogeneration Unit (EQT030) Firing No. 2	Limit under NSPS Subpart GG	Test 1	Test 2	Test 3	Average

Fuel Oil (Diesel)	At 100% Load				
NO <sub>x</sub> , ppm @15% O <sub>2</sub>	157	171.90	173.11	173.40	172.80

The exceedance of the NO<sub>x</sub> concentration limit is a violation 40 CFR 60.332(a)(2), which language has been adopted as a Louisiana regulation in LAC 33:III.3003, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2). On or about May 28, 2008, a stack test was performed which resulted in no exceedances of the NO<sub>x</sub> concentration.

- C. On or about March 28, 2008, a stack test was performed on EQT030, solar cogeneration turbine, which showed NO<sub>x</sub> average emissions were 12.62 lbs/hr, which exceeds the permitted average limit of 11.16 lbs/hr. The Respondent is required to submit an application to modify the current permit level for NO<sub>x</sub> within 45 days after receiving test results. The Respondent has not submitted an application to modify the NO<sub>x</sub> average limit. The failure to submit an application within 45 days after receiving the test results is a violation of LAC 33:III.523.A, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).
- D. On or about March 28, 2008, a stack test was performed on EQT030, solar cogeneration turbine, and the details are listed below:

Permitted NO <sub>x</sub> for EQT030	Stack Test results NO <sub>x</sub> for EQT030	Permitted Total NO <sub>x</sub> for facility	Total NO <sub>x</sub> including stack test results for facility
11.16 lbs/hr	12.62 lbs/hr	97.57 tpy	103.97 tpy
48.86 tpy	55.27 tpy		

Once a facility's potential to emit is more than 100 tpy of any criteria pollutant, a major source permit is required. The Respondent's failure to apply for a Part 70 permit is a violation of LAC 33:III.507.C.3 and La. R.S. 30:2057(A)(2).

- E. The Respondent has operated the facility as a major source as defined by LAC 33:III.502 from March 28, 2008 till February 21, 2011. A Synthetic Minor Permit Modification was issued on February 22, 2011, with a total annual NO<sub>x</sub> emissions limit of 75.72 tons. This is a violation of LAC33:III.507.B.2, La. R.S. 30.2057(A)(1) and 30:2057(A)(2).
- F. On or about October 17, 2011, the Department received the facility's 2008 Specific Requirement Report dated October 11, 2011, reporting the number of hours No. 2 Fuel Oil was fired each month and annual total. The Respondent's failure to submit the report by the March 31, 2009, due date is a violation of Specific Requirement 26 of Air Permit No. 2140-00146-01, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2)."

### III

On November 14, 2012, the Department issued to Respondent an Amended Consolidated Compliance Order & Notice of Potential Penalty (Amended CONOPP), Enforcement No. MM-CN-11-01070A, wherein the Department amended the CONOPP as follows:

“The Department hereby removes paragraphs III.A, III.B, III.C, III.D, and III.E of the Findings of Fact portion of Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. MM-CN-11-01070.

The Department hereby removes paragraph II of the Compliance Order portion of Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. MM-CN-11-01070.

The Department incorporates all of the remainder of the original **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. MM-CN-11-01070** and **AGENCY INTEREST NO. 2371** as if reiterated herein.”

### IV

In response to the CONOPP and the amended CONOPP, Respondent made timely requests for hearing.

### V

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

### VI

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 EIGHT THOUSAND SEVEN HUNDRED FIFTY AND NO/100 DOLLARS (\$8,750.00), of which Two Thousand Three Hundred Sixty-Eight and 65/100 Dollars (\$2,368.65) 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).

## VII

Respondent further agrees that the Department may consider the inspection report(s), permit record(s), the CONOPP, the amended CONOPP, 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. It is expressly understood and agreed, however, that none of the paragraphs that were removed from by the amended CONOPP or portions of the inspection reports or permit records related thereto shall be considered for purposes of determining Respondent's compliance history.

## VIII

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.

IX

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.

X

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.

XI

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Orleans 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. 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.

XII

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).

### XIII

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

### XIV

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.

**TULANE UNIVERSITY**

BY: [Signature]  
(Signature)

Patrick Norton  
(Printed)

TITLE: Senior Vice President and Chief Operating Officer

THUS DONE AND SIGNED in duplicate original before me this 3<sup>rd</sup> day of August, 20 18, at New Orleans, Louisiana.

Meredith Archette  
NOTARY PUBLIC (ID # 19212)

\_\_\_\_\_  
(stamped or printed)

**LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Dr. Chuck Carr Brown, Secretary

BY: [Signature]  
Lourdes Iturralde, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 7<sup>th</sup> day of Sept, 20 18, at Baton Rouge, Louisiana.

[Signature]  
NOTARY PUBLIC (ID # 19181)

Perry Theriot  
(stamped or printed)

Approved: [Signature]  
Lourdes Iturralde, Assistant Secretary