

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

LOUISIANA SCRAP METALS RECYCLING
CORPORATION

AI # 79272

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

* Settlement Tracking No.
* SA-RE-17-0046
*
* Enforcement Tracking No.
* RE-CN-12-00272
*
*
* Docket No. 2013-8733-EQ
*

SETTLEMENT

The following Settlement is hereby agreed to between Louisiana Scrap Metals Recycling Corporation (“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 facility located in Lafayette, Lafayette Parish, Louisiana (“the Facility”).

II

On September 9, 2012, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. RE-CN-12-00272, which was based upon the following findings of fact:

“The Respondent owns and/or operates Louisiana Scrap Metal Recycling, a portable nuclear gauge licensee, located at 2200 Cameron Street in Lafayette, Lafayette Parish, Louisiana. The Respondent currently operates under the Radioactive Material License No. LA-10073-L01 issued by

the Department on December 6, 2010.

On or about January 10, 2012, an inspection was conducted by the Department in order to determine the degree of compliance with the Radiation Protection Regulations and the Act. While the Department's investigation is not yet complete, the following violations were noted:

- A. During the course of the inspection, it was noted that the Respondent failed to secure registered radioactive material from unauthorized removal or access. Specifically, the Respondent stated that on January 5, 2012, Mr. Nathan Abshire, employee, was utilizing the Niton XLI Model 818Q Analyzer, Serial No. 6066 (Am-241 30 milliCurie), to determine the type of scrap present. The Niton Analyzer was discovered missing the next morning January 6, 2012, by Mr. Doug Labbie, employee, at 9:00 am with notification to the Department occurring at 10:48 am the same day. Mr. Abshire stated that he believed he left the Niton Analyzer on the truck bed of a customer, and he followed up with contacting the customer and following the route taken by the customer but did not recover the Niton Analyzer. This is a violation of LAC 33:XV.445.A. Further, the Respondent submitted additional corrective action taken in their response to the Notice of Deficiency (NOD) issued by the Department on or about January 12, 2012. In the response, the Respondent stated that at the time the Niton Analyzer was lost, it was being used by an authorized employee.
- B. During the course of the inspection, it was noted that the Respondent failed to maintain constant surveillance to prevent the unauthorized use of the licensed radioactive material that is in a controlled or unrestricted area that is not in storage. This is a violation of LAC 33:XV.445.B. Further, the Respondent submitted additional corrective action taken in their response to the Notice of Deficiency (NOD) issued by the Department on or about January 12, 2012. In the response, the Respondent stated that at the time the Niton Analyzer was lost, it was being used by an authorized employee.
- C. During the course of the inspection, it was noted that the Respondent failed to have a minimum of two (2) independent physical controls that form a tangible barrier to secure the portable nuclear gauge from unauthorized removal whenever the portable gauge(s) are not under the control and constant surveillance of the licensee. This is a violation of LAC 33:XV.326.B. Further, the Respondent submitted additional corrective action taken in their response to the Notice of Deficiency (NOD) issued by the Department on or about January 12, 2012. In the response, the Respondent stated that Louisiana Scrap Metal has revised their administrative procedures on constant surveillance of the portable gauge while it is not in storage to improve the control of the portable gauge while it is not in the controlled storage area. To date, the Department has not received a copy of the revised administrative procedures.”

III

In response to the Consolidated Compliance Order & Notice of Potential Penalty, 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 ONE THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$1,900.00), of which Three Hundred Ninety-Three and 01/100 Dollars (\$393.01) 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 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 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

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 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 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.

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.

LOUISIANA SCRAP METALS RECYCLING CORPORATION

BY: Christopher D. Sammons
(Signature)

Christopher D. Sammons
(Printed)

TITLE: CFO

THIS DONE AND SIGNED in duplicate original before me this 26th day of MARCH, 20 19, at LAFAYETTE, LA.

[Signature]

NOTARY PUBLIC (ID # 49095)

Lawrence C. Billeaud
Attorney at Law (BR No. 20106)
Notary Public (No. 49095)
My Notary Commission Expires at Death

(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Chuck Carr Brown, Ph.D., Secretary

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

THIS DONE AND SIGNED in duplicate original before me this 25th day of April, 20 19, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 19181)

Perry Theriot
(stamped or printed)

Approved: [Signature]
Lourdes Iturralde, Assistant Secretary



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

February 19, 2019

Herman Robinson, General Counsel
La. Department of Environmental Quality
Legal Division
P.O. Box 4302
Baton Rouge, LA 70821-4302

Louisiana Scrap Metals Recycling Corporation
c/o Henry C. Perret, Jr.
Agent for Service of Process
1200 Camellia Blvd., Suite 220
Lafayette, LA 70508

Re: AG Review of DEQ Settlement;
Louisiana Scrap Metals Recycling Corporation
Settlement No.: SA-RE-17-0046

Dear Mr. Robinson and Louisiana Scrap Metals Recycling Corporation:

Louisiana Revised Statute 30:2050.7 authorizes the Louisiana Department of Environmental Quality, with the concurrence of the Attorney General, to settle claims for penalties under the Louisiana Environmental Quality Act or the regulations or permit terms and conditions applicable thereto. Specifically, La. R.S. 30:2050.7(E)(2)(a) provides, “[s]ettlements provided for under this Section shall be submitted to the attorney general for his approval or rejection...[a]pproval or rejection by the attorney general shall be in writing with a detailed written reason for rejection.”

Settlement No. SA-RE-17-0046, and the underlying enforcement action, has been submitted to me for approval or rejection as required by law. Pursuant to the authority granted to me by Art. IV, Sec. 8 of the state constitution and R.S. 30:2050.7, I approve the above referenced settlement.

Sincerely,

JEFF LANDRY
ATTORNEY GENERAL

By: _____

Harry J. Vorhoff
Assistant Attorney General

RECEIVED

FEB 25 2019

LA DEPT OF ENV QUALITY
LEGAL DIVISION

SETTLEMENT PAYMENT FORM

Please attach this form to your settlement payment
and submit to:

Department of Environmental Quality
Financial Services Division
P. O. Box 4303
Baton Rouge, Louisiana 70821-4303
Attn: Accountant Administrator

Payment # _____

Respondent: Louisiana Scrap Metals Recycling Corporation

Settlement No: SA-RE-17-0046

Enforcement Tracking No(s): RE-CN-12-00272

Payment Amount: \$1,900.00

AI Number: 79272

Alternate ID No(s):

TEMPO Activity Number:

For Official Use Only. Do Not write in this Section.	
Check Number:	Check Date:
Check Amount:	Received Date:
PIV Number:	PIV Date:
Stamp "Paid" in the box to the right and initial.	
Route Completed form to: Celena Cage, Administrator Enforcement Division	
And copy Perry Theriot Legal Division	