

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AMERICAN SUGAR REFINING, INC.

AI # 1329

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

* **Settlement Tracking No.**
* **SA-WE-15-0047**
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* **Enforcement Tracking No.**
* **WE-C-10-00345**
* **WE-CN-10-01971**
* **WE-L-12-00722**
* **WE-L-14-00496**
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* **Docket No. 2011-11670-EQ**
* **Consolidated with 2011-7111-EQ**
*

SETTLEMENT

The following Settlement is hereby agreed to between American Sugar Refining, 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 facility located in St. Bernard Parish, Louisiana (“the Facility”).

II

On May 12, 2010, the Department issued to Respondent a Compliance Order (CO), Enforcement No. WE-C-10-00345, which was based upon the following findings of fact:

“Respondent owns and/or operates a cane sugar refinery located at 7417 North Peters Street in Arabi, St. Bernard Parish, Louisiana. Previously, the Respondent was issued LPDES permit LA0005665 with an effective date of September 1, 2003, and with an expiration date of August 31,

2008. A renewal application (SCC-2) was received by the Department on or about January 17, 2008, and was determined to be administratively complete on January 28, 2008; therefore LPDES permit LA0005665 was administratively continued. Respondent is authorized to discharge certain qualities and quantities of process wastewater and storm water runoff via an effluent pipe into the Mississippi River, and low potential contamination storm water runoff into an open ditch, thence into Eickes canal, thence into Florida Canal thence into the marshes north of Arabi, all waters of the state, under the terms and conditions of Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0005665, effective on November 1, 2008, with an expiration date of October 31, 2013.

On or about February 15, 2008, a Settlement Agreement (SA-WE-07-0027) was finalized between the Respondent and the Department. The Settlement Agreement covered violations documented in **CONSOLIDATED COMPLIANCE ORDERS & NOTICE OF POTENTIAL PENALTIES ENFORCEMENT TRACKING NOS. WE-C-97-0407A, WE-PP-00-0277, WE-C-01-0013 and WE-CN-02-0237C**. The Settlement Agreement required the Respondent to pay \$15,000.00 (Fifteen Thousand dollars) to resolve the violations documented in the aforementioned enforcement actions.

An inspection conducted by the Department on or about June 26, 2007, and a subsequent file review conducted by the Department on or about March 24, 2010, revealed that the Respondent did cause or allow the overflow and/or unauthorized discharges from locations not specified in LPDES permit LA0005665. Specifically, the June 2007 inspection noted that the lift station/sump that services the west side of the facility dock was observed to be overflowing and discharging into the Mississippi River. Further investigation revealed that a pump inside the lift station had failed causing the overflow and the subsequent unauthorized discharge. The pump was replaced on July 3, 2007. A file review also noted a discharge of approximately 1,200 gallons of molasses into the

Mississippi River through outfall 002 during a rail car loading operations on or about September 26, 2008. Each unauthorized discharge from a location not specified in a permit is in violation of LPDES permit LA0005665 (Part I and Part III, Section A.1), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.

An inspection conducted by the Department on or about June 26, 2007, also revealed that the Respondent failed to provide adequate Operations and Maintenance (O&M) on the lift station/sump that services the west side of the facility dock and subsequently did cause or allow an unauthorized discharge of untreated sanitary wastewater into waters of the state as indicated in paragraph III, above. The failure to provide adequate O&M, specifically by failing to have back-up or auxiliary systems, is in violation of LPDES permit LA005665 (Part III, Sections A.2 and B.3.a) La. R.S. 30:2076(A) (1), La. R.S. 30:2076(A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, LAC 33:IX.2701.A, and LAC 33:IX.2701.E.

A file review conducted by the Department on or about March 24, 2010, and an inspection conducted by the Department on or about June 26, 2007, revealed the following effluent violations as reported by the Respondent on Discharge Monitoring Reports (DMRs) and Non-compliance Reports (NCRs) that were submitted to the Department:

Date	Outfall	Parameter	Permit Limit	Sample Value	Units
June 2005	004Q	TOC daily max	50	56.4	mg/L
	SUM-A	BOD daily max	8002	8202	lb/d
Jan 2006	SUM-A	BOD monthly average	2891	3475	ld/d
Feb 2006	SUM-A	BOD monthly average	2891	3678	ld/d
June 2006	SUM-A	BOD monthly average	2891	3958	ld/d
		BOD daily max	8002	10148	lb/d
Dec 2006	SUM-A	BOD monthly average	2891	3164	ld/d
June 2007	SUM-A	BOD monthly average	2891	14862	ld/d

		BOD daily max	8002	55332	lb/d
Aug 2007	SUM-A	TSS monthly average	605	685	ld/d
		TSS daily max	1815	2817	lb/d
Dec 2007	003Q	TOC daily max	50	97.6	mg/L
	004Q	TOC daily max	50	384	mg/L
Mar 2008	SUM-A	BOD monthly average	2891	3147	ld/d
Aug 2008	SUM-A	BOD monthly average	2891	4237	ld/d
		BOD daily max	8002	11899	lb/d
June 2009	SUM-A	BOD monthly average	3090.2	3327.5	ld/d
		BOD daily max	8551.9	10118	lb/d
Sep 2009	SUM-A	TSS monthly average	646.8	1753	mg/L
		TSS daily max	1940.3	8365	mg/L
Dec 2009	004Q	TOC daily max	50	64.2	mg/L
	SUM-A	TSS monthly average	646.8	2087	mg/L
		TSS daily max	1940.3	6389	mg/L
		BOD daily max	8551.9	>8551.9*	lb/d
Feb 2010	SUM-A	pH Inst max	9.0	9.87	SU
Mar 2010	004Q	TOC daily max	50	3040	mg/L

* As reported on NCRs based on the amount of sugar syrup spilled (2,308 gals)

Each of the above-noted effluent violations are in violation of LPDES permit LA0005665 (Part I and Part III, Section A.1), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.

A file review conducted by the Department on or about March 24, 2010, also revealed that the Respondent failed to submit timely and/or complete DMRs. Specifically, the DMRs for outfalls 003 and 004 for the 3Q-2009 monitoring period were not received until March 1, 2010; and pH-instantaneous minimum was not reported for outfalls 003 and 004 on the DMRs for the 4Q-2009 monitoring period. Each failure to submit a timely and/or complete DMR is a violation of LPDES permit LA0005665 (Part I, page 2 of 4; Part II, Section N, and Part III, Section A.2 and D.4), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, and LAC 33:IX.2701.A.”

On February 18, 2011, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty (CONOPP), Enforcement No. WE-C-10-01971, which was based upon the following findings of fact:

“Respondent owns and/or operates a cane sugar refinery located at 7417 North Peters Street in Arabi, St. Bernard Parish, Louisiana. Respondent is authorized to discharge certain qualities and quantities of process wastewater and storm water runoff via an effluent pipe into the Mississippi River, and low potential contamination storm water runoff into an open ditch, thence into Eickes canal, thence into Florida Canal thence into the marshes north of Arabi, all waters of the state, under the terms and conditions of Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0005665, effective on November 1, 2008, with an expiration date of October 31, 2013.

The Respondent was issued **COMPLIANCE ORDER WE-C-10-00345** on or about May 12, 2010, for violations of LPDES permit LA005665 effluent limitations; for an unauthorized discharge at a location not specified in LPDES permit LA005665; for the failure to provide adequate O&M; and for the failure to submit a timely and/or complete DMR. The Order required the Respondent to immediately take any and all steps to meet and maintain compliance with LPDES permit LA005665 and to submit a written report to include the circumstances of the cited violations. The Respondent submitted a written response on or about June 21, 2010. The Respondent did timely request an Adjudicatory Hearing on **COMPLIANCE ORDER WE-C-10-00345**. The Department entered into a Dispute Resolution Agreement with the Respondent on or about July 13, 2010, with an expiration date of July 13, 2011.

A file review conducted by the Department on or about January 13, 2011, revealed the following effluent violations as reported by the Respondent on Discharge Monitoring Reports (DMRs) and Non-compliance Reports (NCRs) that were submitted to the Department:

Date	Outfall	Parameter	Permit Limit	Sample Value	Units
June 2010	004Q	TOC daily max	50	136	mg/L
Sept 2010	004Q	TOC daily max	50	109	mg/L
Dec 2010	SUM-A	TSS monthly avg	646.8	1654	lbs/day
		TSS daily max	1940.3	5027	lbs/day
	003Q	TOC daily max	50	163	mg/L
	004Q	pH inst max	9	9.78	SU

Each of the above-noted effluent violations are in violation of LPDES permit LA0005665 (Part I and Part III, Section A.1), La. R.S. 30:2076 (A) (1), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2701.A.”

On June 27, 2012, the Department issued to Respondent a Warning Letter (WL), Enforcement No. WE-L-12-00722, which was based upon the following findings of fact:

“On or about November 30, 2011, an inspection of the above referenced facility was conducted to determine compliance with the Louisiana Environmental Quality Act and supporting regulations. The inspection report, noting areas of concern, has been forwarded to the Enforcement Division. All violations at your facility will be taken into consideration in determining what further actions this office will take.”

On June 18, 2014, the Department issued to Respondent a Warning Letter (WL), Enforcement No. WE-L-14-00496, which was based upon the following findings of fact:

“During a file review conducted by the Louisiana Department of Environmental Quality on or about June 12, 2014, it was revealed that your facility reported the following effluent measurements which are above your authorized permit limits. For your information, the sample measurements and permit limits are listed in the following table.

Date	Outfall	Parameter	Permit Limit	Sample Value
June 2011	003Q	TOC Daily Maximum	50 mg/L	67.8 mg/L
March 2012	SUMA	BOD Monthly Average	3090.2 lb/d	3862 lb/d
July 2013	SUMA	BOD Daily Maximum	8551.9 lb/d	12443 lb/d
		BOD Monthly Average	3090.2 lb/d	3331.5 lb/d
November 2013	SUMA	BOD Monthly Average	3090.2 lb/d	3447 lb/d
January 2014	SUMA	BOD Monthly Average	3090.2 lb/d	3253.8 lb/d
		TSS Daily Maximum	1940.3 lb/d	3153 lb/d
		TSS Monthly Average	646.8 lb/d	1374 lb/d
February 2014	SUMA	TSS Daily Maximum	1940.3 lb/d	2432.1 lb/d
		TSS Monthly Average	646.8 lb/d	1409.2 lb/d

III

In response to the CO and CONOPP, Respondent made timely requests for 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 FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00), of which Six Hundred Ninety-Five and 04/100 Dollars (\$695.04) 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), permit record(s), the CO, CONOPP, WLs 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 St. Bernard 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.

AMERICAN SUGAR REFINING, 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: _____
D. Chance McNeely, 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: 

D. Chance McNeely, Assistant Secretary