**STATE OF LOUISIANA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

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| **IN THE MATTER OF:** | * | **Settlement Tracking No.** |
| | * | **SA-WE-14-0002** |
| **CHERRY PICKER PARTS &** | * | |
| **SERVICE COMPANY, INC.** | * | **Enforcement Tracking No.** |
| **AI # 25062** | * | **WE-CN-10-00247** |
| | * | **WE-CN-10-00247A** |
| **PROCEEDINGS UNDER THE LOUISIANA** | * | |
| **ENVIRONMENTAL QUALITY ACT** | * | **Docket No. 2012-12283-EQ** |
| **LA. R.S. 30:2001, ET SEQ.** | * | |

**SETTLEMENT**

The following Settlement is hereby agreed to between Cherry Picker Parts & Service Company, 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 hydraulic crane maintenance facility located in Ascension Parish, Louisiana ("the Facility").

II

On May 11, 2011, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. **WE-CN-10-00247**, which was based upon the following findings of fact:

"I.

The Respondent owns and/or operates a hydraulic crane maintenance facility located at 45180 Fontenot Road, St. Amant, Ascension Parish. The Respondent was granted coverage under Louisiana Pollutant Discharge Elimination System (LPDES) General Permit LAG530000 on or

about November 30, 2001, and was specifically assigned permit number LAG531180. LPDES General Permit LAG531180 expired on November 18, 2002, and was administratively extended. LPDES General Permit LAG531180 was reissued to the Respondent on or about December 20, 2004, expired on November 30, 2007, and then administratively extended while the general permit underwent reissuance. LPDES General Permit LAG531180 was reissued to the Respondent on or about February 1, 2008, and will expire on November 30, 2012. The Respondent is authorized to discharge treated sanitary wastewater through Outfall 001 into an unnamed ditch, thence into New River, all waters of the state.

II

An inspection conducted by the Department on or about November 23, 2009, revealed that the Respondent caused or allowed the unauthorized discharge of treated wash rack washwater through a hose and into a ditch, which flowed offsite. Specifically, a representative of the Respondent stated that the facility occasionally empties "treated" wash rack wastewater from the treatment system. Also, and according to the representative, the washwater is usually recycled. A follow-up inspection conducted by the Department on or about December 15, 2009, revealed that the hose had been removed from the yard. Each unauthorized discharge to waters of the state is a violation of La. R.S. 30:2075.

III

An inspection conducted by the Department on or about November 23, 2009, and a file review conducted by the Department on or about April 14, 2010, revealed that the Respondent failed to submit a Notice of Intent (NOI) for the discharge of exterior vehicle and equipment wash wastewater to waters of the state. Specifically, the Respondent discharged wash rack wastewater to waters of the state through the connection of a wash rack wastewater treatment system to one end of a hose with the other end located in a ditch that flowed off-site. As previously stated, a representative of the Respondent said the facility occasionally empties "treated" water from the treatment system for wash rack wash water. A follow-up inspection conducted by the Department on or about December 15, 2009, revealed that the hose had been removed from the yard. The Respondent's failure to submit a NOI for the proposed discharge of exterior vehicle and equipment wash wastewater to waters of the state is a violation of La. R.S. 30:2076 (A)(3), LAC 33:IX.2501.A, and LAC 33:IX.2515.B.2.

IV

An inspection conducted by the Department on or about November 23, 2009, and a file reviewed conducted by the Department on or about April 14, 2010, revealed that the Respondent failed to prepare a Spill Prevention and Control (SPC) Plan. The facility stored applicable substances such as used oil, diesel, and an oil product in five tanks with a capacity of 500-gallons each within a common storage area with secondary containment, which required the preparation and implementation of a SPC Plan. The failure to prepare a SPC Plan is a violation of La. R.S. 30:2076 (A)(3) and LAC 33:IX.905.

V

An inspection conducted by the Department on or about November 23, 2009, and a file reviewed conducted by the Department on or about April 14, 2010, revealed that the Respondent failed to submit DMRs for the annual monitoring periods since the issuance of LPDES General Permit LAG531180 on or about November 30, 2001. Each failure to submit DMRs after November 30, 2001, and prior to December 20, 2004, for the monitoring periods specified above is a violation of LPDES permit LAG531180 (Part I, Section C.6, and Part III, Sections A.2 and D.4), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.L.4.a. Each failure to submit DMRs after December 20, 2004, and prior to February 1, 2008, for the monitoring periods specified above is a violation of LPDES permit LAG531180 (Part I, Section C.8, and Part III, Sections A.2 and D.4), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.L.4.a. Each failure to submit DMRs after February 1, 2008, for the monitoring periods specified above is a violation of LPDES permit LAG531180 (Part II, Section N.8, and Part III, Sections A.2 and D.4), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.L.4.a."

On January 24, 2012, the Department issued to Respondent an Amended Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. **WE-CN-10-00247A**, which provides:

"I

The Department hereby adds Paragraph VI to the Findings of Fact, which shall read as follows:

VI

A file review conducted by the Department on or about September 30, 2011, revealed that the Respondent failed to sample the effluent in accordance with their LPDES permit. Specifically, the Department received Discharge Monitoring Reports (DMRs) for Outfall 001 from the Respondent, as ordered by Consolidated Compliance Order & Notice Of Potential Penalty WE-CN-10-00247, for the January 2008 through December 2008, January 2009 through December 2009, and the January 2010 through December 2010 annual monitoring periods with comments that sampling was not conducted for those monitoring periods. Each failure to sample the effluent is a violation of LPDES General Permit LAG531180 (Part I, Section B, Page 3 of 16 and Part III, Sections A.2 and C.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.501.A."

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 FIVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($5,500.00), of which Six Hundred Nine and 17/100 Dollars ($609.17) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement.

VI

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order & Notice of Potential Penalty and 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 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

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

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.

XII

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.

**CHERRY PICKER PARTS & SERVICE COMPANY, 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: _____
Cheryl Sonnier Nolan, 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: _____
Cheryl Sonnier Nolan, Assistant Secretary