

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	* Settlement Tracking No.
	* SA-MM-11-0008
STOLTHAVEN NEW ORLEANS, L.L.C.	* Enforcement Tracking Nos.
	* AE-PP-05-0148, AE-PP-05-0148A,
AI # 87738	* HE-PP-07-0625, MM-CN-08-0050,
	* and MM-CN-08-0050A
	* PROCEEDINGS UNDER THE LOUISIANA ENVIRONMENTAL QUALITY ACT
	* Docket No. 2008-9940-EQ
LA. R.S. 30:2001, <u>ET SEQ.</u>	* (MM-CN-08-0050 Only)

SETTLEMENT

The following Settlement is hereby agreed to between Stolthaven New Orleans, L.L.C. (“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 the Stolthaven New Orleans – Braithwaite Terminal facility at 2444 English Turn Road in Braithwaite, Plaquemines Parish, Louisiana (“the Facility”).

II

On August 27, 2008, a Notice of Potential Penalty, Enforcement Tracking Number AE-PP-05-0148, was issued to the Respondent. This Notice of Potential Penalty was amended by Enforcement Tracking Number AE-PP-05-0148A, which was issued to the Respondent on January 4, 2010, and deleted three (3) findings of fact, leaving the following findings of fact:

- "D. According to the Respondent's Quarterly Deviation Report dated December 23, 2003, for the period encompassing July through September 2003, the records of the amount of fuel combusted during each day for Boiler Nos. 1, 2, and 3 could not be located for the month of September 2003. Each failure to record and maintain daily records of the amount of fuel combusted each day is a violation of 40 CFR 60.48c(g) which language has been adopted as a Louisiana regulation in LAC 33:III.3003, the Part 70 Specific Condition and the State Only Specific Condition of Title V Permit No. 2240-00304-V2, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act. This information was also reported in the Respondent's July through December 2003 semiannual monitoring report dated March 16, 2004.
- E. According to the Respondent's Quarterly Deviation Report dated March 16, 2004, for the period encompassing October through December 2003, the records of the amount of fuel combusted during each day for Boiler Nos. 1, 2, and 3 could not be located for October 4 and 5, November 26 and 30, 2003. Each failure to record and maintain daily records of the amount of fuel combusted each day is a violation of 40 CFR 60.48c(g) which language has been adopted as a Louisiana regulation in LAC 33:III.3003, the Part 70 Specific Condition and the State Only Specific Condition of Title V Permit No. 2240-00304-V2, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act. This information was also reported in the Respondent's July through December 2003 semiannual monitoring report and 2003 annual compliance certification, both dated March 16, 2004.
- F. According to the Respondent's Quarterly Deviation Report dated June 18, 2004, for the period encompassing January through March 2004, the records of the amount of fuel combusted during each day for Boiler Nos. 1, 2, and 3 could not be located for January 21, 22, and 26, 2004. Each failure to record and maintain daily records of the amount of fuel combusted each day is a violation of 40 CFR 60.48c(g) which language has been adopted as a Louisiana regulation in LAC 33:III.3003, the Part 70 Specific Condition and the State Only Specific Condition of Title V Permit No. 2240-00304-V2, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act. This information was also reported in the Respondent's January through June 2004 semiannual monitoring report dated September 23, 2004 and 2004 annual compliance certification dated March 31, 2004.
- G. According to the Respondent's Quarterly Deviation Report dated September 23, 2004, for the period encompassing April through June 2004, the records of the amount of fuel combusted during each day for Boiler Nos. 1, 2, and 3 could not be located for April 3, 9, 10, 17, and 24, and June 25, 2004. Each failure to record and maintain daily records of

the amount of fuel combusted each day is a violation of 40 CFR 60.48c(g) which language has been adopted as a Louisiana regulation in LAC 33:III.3003, the Part 70 Specific Condition and the State Only Specific Condition of Title V Permit No. 2240-00304-V2, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act. This information was also reported in the Respondent's January through June 2004 semiannual monitoring report dated September 23, 2004, and 2004 annual compliance certification dated March 31, 2005.

- H. According to the Respondent's Quarterly Deviation Report dated December 28, 2004, for the period encompassing July through September 2004, the records for the amount of fuel combusted for July 9, 2004, for Boiler Nos. 1, 2, and 3 were not documented on the log. Each failure to record and maintain daily records of the amount of fuel combusted each day is a violation of 40 CFR 60.48c(g) which language has been adopted as a Louisiana regulation in LAC 33:III.3003, the Part 70 Specific Condition and the State Only Specific Condition of Title V Permit No. 2240-00304-V2, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act. This information was also reported in the Respondent's July through December 2004 semiannual monitoring report and 2004 annual compliance certification, both dated March 31, 2005.
- I. According to the Respondent's Quarterly Deviation Report dated June 26, 2006, for the period encompassing January through March 2006, the daily fuel usage records were not maintained for Boiler Nos. 1, 2, and 3. Each failure to record and maintain daily records of the amount of fuel combusted each day is a violation of 40 CFR 60.48c(g) which language has been adopted as a Louisiana regulation in LAC 33:III.3003, the Part 70 Specific Condition and the State Only Specific Condition of Title V Permit No. 2240-00304-V2, LAC 33:III.501.C.4, and Section 2057(A)(2) of the Act. This information was also reported in the Respondent's July through December 2006 semiannual monitoring report and 2006 annual compliance certification, both dated March 31, 2007."

On August 8, 2008, a Compliance Order & Notice of Potential Penalty, Enforcement Tracking Number MM-CN-08-0050, was issued to the Respondent. This Compliance Order & Notice of Potential Penalty was amended by Enforcement Tracking Number MM-CN-08-0050A, which was issued to the Respondent on July 27, 2009 and was based upon the following findings of fact:

The Respondent owns and/or operates Stolthaven New Orleans – Braithwaite Terminal (the Site), a petro/chemical bulk liquid storage and transfer terminal, and centralized waste treatment facility, located at 2444 English Turn Road in Braithwaite, Plaquemines Parish, Louisiana.

The Respondent operates under the EPA identification number LAR000043521 issued on or about February 22, 2001. The most recent Hazardous Waste Notification Form (HW-1) form submitted to the Department on or about February 6, 2007, indicates the facility is a large quantity generator of hazardous waste.

The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0114405 with an effective date of July 1, 2007. LPDES permit LA0114405 will expire on June 30, 2012. Under the terms and conditions of the LPDES permit, the Respondent is authorized to discharge treated wastewater from Outfalls 001-003, 005 to the Mississippi River, and from Outfalls 005-012 to Braithwaite Canal via local drainage, all waters of the state.

An inspection conducted by the Department on or about March 17, 2008, revealed that the Respondent caused and/or allowed the unauthorized discharge of hydrofluorosilicic acid to waters of the state. Specifically, during the inspection a sixteen (16) inch long vertical crack eight (8) feet above the ground was discovered on tank C15-16. Acid was leaking from the crack and collecting in the containment system. The Respondent pumped and discharged the hydrofluorosilicic acid that had collected in the containment system to the Mississippi River through Outfall 003. On or about March 17, 2008, the Department determined this action to be in response to an emergency situation; however, the Department neither granted nor approved the discharge to the Mississippi River. The unauthorized discharge of hydrofluorosilicic acid, a pollutant not specified in the permit, is in violation of LPDES permit LA0114405 (Part II,

Paragraph B., and Part III. Section A.2), La. R.S. 30:2075, La. R.S. 30:2076 (A)(1)(a), La. R.S. 30:2076 (A)(1)(b), La. R.S. 30:2076 (A)(3), LAC 33:IX.2701.A, LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2311.A.1.

An inspection conducted by the Department on or about March 17, 2008, revealed that the Respondent disposed of hazardous waste without having a permit or interim status, in violation of LAC 33:V.303.B. Specifically, during the inspection a sixteen (16) inch long vertical crack eight (8) feet above the ground was discovered on tank C15-16 that contained hydrofluorosilicic acid. The acid is a solution of 24% by weight or approximately 109,072 gallons of hydrofluorosilicic acid, .05% by weight or approximately 2,272 gallons of hydrofluoric acid, and 8.37 mg\L or approximately 4 gallons of arsenic balanced with water at a pH of approximately 1.2. The acid was leaking from the crack and collecting in the containment system. The Respondent pumped and discharged the hydrofluorosilicic acid that had collected in the containment system to the Mississippi River. The acid remaining in the tank above the crack was pumped into the Mississippi River through product piping. The Respondent disposed of approximately 454,465 gallons of hydrofluorosilicic acid solution, a solid waste that is characteristically hazardous for corrosivity (D002) and arsenic (D004), into the Mississippi River.

An inspection conducted by the Department on or about July 30, 2008, and subsequent information provided by the Respondent on or about August 5, 2008, revealed that the Respondent caused and/or allowed the unauthorized discharge of 11,907 gallons of ethylene glycol polyester grade to the Mississippi River, waters of the state. Specifically, the discharge occurred during the transfer of ethylene glycol polyester grade from a ship to tank A50-2. The Respondent failed to close and cap a one (1) inch sample port (bleeder valve) prior to and during

transfer due to an operator error. Ethylene glycol polyester grade was discharged to the Mississippi River through internal Outfall 004 that was placed in automatic pumping mode because of local rain events, thence to Outfall 003 and then into the Mississippi River. The unauthorized discharge of 11,907 gallons of untreated ethylene glycol polyester grade, through Outfall 003, is in violation of LPDES permit LA0114405 (Part II, Paragraph B., and Part III, Section A.2), La. R.S. 30:2075, La. R.S. 30:2076 (A)(1)(a), La. R.S. 30:2076 (A)(1)(b), La. R.S. 30:2076 (A)(3), LAC 33:IX.2701.A, LAC 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2311.A.1.

Inspections conducted by the Department on or about March 17, 2008, and July 30, 2008, revealed that the Respondent failed to implement an adequate Spill Prevention and Control (SPC) plan. The Respondent's failure to prepare and/or implement an adequate SPC plan is a violation of La. R.S. 30:2076 (A)(3), LAC 33:IX.501.A, LAC 33:IX.905.B, and LAC 33:IX.907.

An inspection conducted by the Department on or about July 30, 2008, revealed that the Respondent caused, allowed, and/or permitted regulated solid waste to be disposed of in such a manner that it entered the waters of the state, in violation of LAC 33:VII.315.L. Specifically, during the transfer of ethylene glycol polyester grade product from a marine ship at dock #3 to tank A50-2 on or about July 29, 2008, the Respondent failed to close and cap a one (1) inch sample port (bleeder valve) prior to and during transfer due to operator error. As a result the Respondent disposed of approximately 11, 907 gallons of ethylene glycol polyester grade into the Mississippi River, waters of the state.

A file review conducted by the Department on or about August 6, 2008, revealed that the Respondent failed to notify the Office of Environmental Services within seven (7) days to reflect

a change in the information submitted in February 6, 2007, HW-1 form, in violation of LAC 33:V.1105.B. Specifically, the Respondent did not list the hazardous waste code D004 on the most recently submitted HW-1.

On July 16, 2008, a Notice of Potential Penalty, Enforcement Tracking Number HE-PP-07-0625, was issued to the Respondent, which was based upon the following findings of fact:

The Respondent stored hazardous waste for greater than ninety (90) days without having interim status or a standard permit, in violation of LAC 33:V.303.B. Specifically, there were two (2) containers, one (1) container storing used oil mixed with waste diesel (D001) and one (1) container storing ethylbenzene (D001), with an accumulation start date of January 2, 2007.

The following incidents, although not cited in an enforcement action issued to the Respondent, are included herein and made part of this settlement agreement.

- A. The Respondent exceeded the permitted limit for Fecal Coliform during the monitoring period of May 2010.
- B. On or about May 13, 2010, the Respondent experienced an overflow due to a hose detaching from the suction side of a diaphragm pump during the transfer of activated sludge from a clarifier to an aeration tank. The wastewater traveled to the drainage ditch on Hwy 39.
- C. According to the Respondent, approximately 400 gallons of base oil was released through a bleeder valve on or about December 25, 2009. At the time of the release, 40 gallons of base oil was released outside of the containment system and onto the soil. The Respondent has indicated that the release was timely addressed.

### III

In response to the Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. MM-CN-08-0050, 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 NINETY-SEVEN THOUSAND THREE HUNDRED AND NO/100 DOLLARS (\$97,300.00), of which Thirty-Two Thousand Two Hundred Sixty-Three and 17/100 Dollars (\$32,263.17) 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 aforementioned enforcement actions, 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 LSA- 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 Plaquemines 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 thirty (30) 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.

**STOLTHAVEN NEW ORLEANS, L.L.C.**

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print)

TITLE: \_\_\_\_\_

THUS DONE AND SIGNED in duplicate original before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_, at \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC (ID # \_\_\_\_\_)

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

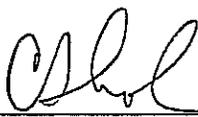
**LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Peggy M. Hatch, Secretary

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