STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	**Settlement Tracking No.**
	*	**SA-AE-14-0017**
THOMA-SEA MARINE CONSTRUCTORS, L.L.C.	*	
	*	
	*	**Enforcement Tracking No.**
AI # 2449, 140410	*	**AE-CN-11-00705**
	*	**AE-CN-11-00705A**
	*	
PROCEEDINGS UNDER THE LOUISIANA ENVIRONMENTAL QUALITY ACT LA. R.S. 30:2001, ET SEQ.	*	

SETTLEMENT

The following Settlement is hereby agreed to between Thoma-Sea Marine Constructors, 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 limited liability company that owns and/or operates facilities located in Lafourche and Terrebonne Parishes ("the Facilities").

II

On May 3, 2012, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty (CONOPP), Enforcement No. AE-CN-11-00705, which was based upon the following findings of fact:

"The Respondent owns and/or operates the Lockport Yard, (Agency Interest No. 2449) an existing shipyard facility located at 6130 Louisiana Highway 308 South in Lockport, Lafourche

Parish, Louisiana. The facility currently operates under Title V Permit No. 1560-00062-V0 issued on May 26, 2009. The Respondent also owns and/or operates the West Yard (Agency Interest No. 140410) located at 174 Industrial Boulevard in Houma, Terrebonne Parish, Louisiana. The facility currently operates under Air Permit No. 2880-00367-00 issued on August 28, 2006.

On or about January 27, 2011, an inspection of the Respondent's Lockport Yard was conducted to determine the degree of compliance with the Act and the Air Quality Regulations. The following violations were noted during the course of the inspection and subsequent file reviews conducted on December 5, 2011, and April 23, 2012:

A. During the course of the inspection of the Lockport Yard, the inspector noted the Respondent failed to submit the Emissions Inventory (EI) reports as required by Specific Requirement No. 165 of Title V Permit No. 1560-00062-V0. The Respondent failed to submit the 2009 and 2010 EI reports. Each failure to submit the report by the required due date is a violation of Specific Requirement No. 165 of Title V Permit No. 1560-00062-V0, LAC 33:III.501.C.4, LAC 33:III.919, and La. R.S. 30:2057(A)(2).

B. The inspection and file review revealed the Respondent failed to submit Semiannual Monitoring Reports and Annual Compliance Certifications for the Lockport Yard. The Respondent failed to submit the following reports:

Report	Due Date
2009 1st Semiannual Monitoring Report	September 30, 2009
2009 2nd Semiannual Monitoring Report	March 31, 2010
2009 Annual Compliance Certification	March 31, 2010
2010 1st Semiannual Monitoring Report	September 30, 2010
2010 2nd Semiannual Monitoring Report	March 31, 2011
2010 Annual Compliance Certification	March 31, 2011
2011 1st Semiannual Monitoring Report	September 30, 2011

Each failure to submit the report by the required due date is a violation of Title V Permit No. 1560-00062-V0, LAC 33:III.501.C.4, and La. R.S. 30:257(A)(2).

C. During the course of the inspection of the Lockport Yard, the inspector noted the Abrasive Blasting Best Management Practices (BMP) Plan was not onsite and available. This is a violation of Specific Requirement No. 142 of Title V Permit No. 1560-00062-V0, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

D. During the course of the inspection of the Lockport Yard, the inspector noted the Respondent failed to have paint and coating records as required by Title V Permit No. 1560-00062-V0. Specifically for ARE 001, Boat Painting Areas, as required by 40 CFR 63 Subpart II and LAC 33:III.2123. Each incident of the Respondent's failure to comply with applicable recordkeeping requirements is a violation of Title V Permit No. 1560-00062-V0, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

E. On March 3, 2011, the Department received Notification of Change of Ownership/Operator or Name Change (NOC-1) Forms indicating the name of the owner and/or operator had been changed for the Lockport Yard and the West Yard. The NOC-1 forms list the effective date of change as January 1, 2011. Each incident of the Respondent's failure to submit a complete NOC-1 form to the Department within 45 days after the name, ownership, or operatorship change is a violation of LAC 33:I.1905.A, LAC 33:III.517.G and La. R.S. 30:2057(A)(2)."

On January 9, 2013, the Department issued to Respondent an Amended Consolidated Compliance Order & Notice of Potential Penalty (CONOPP), Enforcement No. AE-CN-11-00705A, which was based upon the following findings of fact:

"The Department hereby amends Section II, Paragraph D of Enforcement Tracking No. AE-CN-11-00705 to read as follows:

D. During the inspection of the Lockport Yard, the inspector noted the Respondent failed to have paint and coating records as required by Title V Permit No. 1560-00062-V0. This is specifically associated with paint and coating records for EPN ARE 001, Boat Painting Areas, as required by 40 CFR 63 Subpart II and LAC 33:III.2123. In the 2011 Title V Annual Compliance Certification dated March 30, 2012, and a revised

2011 Title V Annual Compliance Certification dated July 19, 2012, the Respondent reported the following:

Description	Frequency	Specific Requirement/ Regulator Requirement
Failed to determine maximum allowable thinning ratio and notify painters and other persons as necessary, of the determined maximum allowable thinning ratio for each batch of coating group	Prior to the first application of each batch of coating	Specific Requirement No. 77 40 CFR 63.785(c)(3)(iii)
Failed to determine a maximum allowable thinning ratio using equations in 40 CFR 63.785(c)(2)	Prior to the first application of each batch of coating	Specific Requirement No .76 40 CFR 63.785(c)(3)(ii)
Failed to determine the total allowable volume of thinner using 40 CFR 63 Subpart II Equation 3	Monthly	Specific Requirement No. 79 40 CFR 63.785(c)(3)(v)
Failed to determine the volume of each batch of coating group used, as supplied, during the previous month by the 15th day of each month	Monthly	Specific Requirement No. 78 40 CFR 63.785(c)(3)(iv)
Failed to determine the volume of thinner actually used with each coating group during the previous month by the 15th day of each calendar month	Monthly	Specific Requirement No. 80 40 CFR 63.785(c)(3)(vi)
Failed to monitor that the volume of thinner actually used with each coating group is less than or equal to the total allowable volume of thinner for each coating group	Prior to coating activities	Specific Requirement No. 81 40 CFR 63.785(c)(3)(vii)
Failed to monitor that the certified as – applied VOC content of each batch of coating used during a calendar month is less than or equal to the applicable limit in 40 CFR 63.783(a)	Monthly	Specific Requirement No. 68 40 CFR 63.785(c)(1)(iii)
Failed to determine the volume in each batch of coating used, as supplied, during the previous month by the 15th day of each month	Monthly	Specific Requirement No. 71 40 CFR 63.785(c)(2)(iii)
Failed to calculate the maximum allowable thinning ratio(s) for each batch of coating using 40 CFR 63.785(c)(2)(i) Equations 1 and 2 prior to the first application of each batch	Prior to the first application of each batch of coating	Specific Requirement No. 69 40 CFR 63.785(c)(2)(i)
Failed to determine the total allowable volume of thinner for the coating used during the previous month using	Monthly	Specific Requirement No. 72 40 CFR 63.785(c)(2)(iv)

Description	Frequency	Specific Requirement/ Regulator Requirement
40 CFR 63.785(c)(2)(iv) Equation 3 by the 15th day of each calendar month		
Failed to determine the volume of thinner actually used with each coating during the previous month by the 15th day of each calendar month	Monthly	Specific Requirement No. 73 40 CFR 63.785(c)(2)(v)
Failed to determine the maximum allowable thinning ratio and notify painters and other persons as necessary, of the determined maximum allowable thinning ratio for each batch of coating group	Prior to coating activities	Specific Requirement No. 70 40 CFR 63.785(c)(2)(ii)
Failed to monitor that the volume of thinner actually used with the coating was less than or equal to the total allowable volume of thinner for the coating	Prior to coating activities	Specific Requirement No. 74 40 CFR 63.785(c)(2)(vi)
Failed to comply with applicable recordkeeping requirements in 40 CFR 63.10	Initially	Specific Requirement No. 86 40 CFR 63.788(a)
Failed to monitor VOC emissions of coating as applied	Prior to coating activities	Specific Requirement No. 123 LAC 33:III.2123.H
Failed to monitor certification from paint manufacturer concerning the solvent makeup of the paint	Prior to the coating activities	Specific Requirement No. 120 LAC 33:III.2123.D.3
Failed to determine the maximum allowable thinning ratio using equations in 40 CFR 63.785(c)(2) monthly. Failed to monitor that the as-applied VOC content of each batch of coating used is less than the applicable VOHAP limit. Failed to track the amounts of coating and thinner used monthly.	Prior to the coating activities	Specific Requirement No. 83 40 CFR 63.786
Failed to monitor emissions of coating as applied. Failed to calculate paint VOC content prior to application.	Prior to coating activities	Specific Requirement No. 121 LAC 33:III.2123.E
Failed to calculate the actual VOC and VOHAP content per thinner and coating and monitor that the actual VOC and VOHAP contents are less than or equal to the allowable limits. Failed to document procedures used in determining the actual VOC and VOHAP content prior to any coating application	Prior to application of coating	Specific Requirement No. 65 40 CFR 63.785(b)(1)

Description	Frequency	Specific Requirement/ Regulator Requirement
Failed to determine the coating category and the applicable VOHAP limit for each batch of coating received	As coating is received	Specific Requirement No. 63 40 CFR 63.785(a)(1)
Failed to compile applicable surface coating records on a monthly basis and maintain records for a minimum of five years	Maintain records for five years	Specific Requirement No. 87 40 CFR 63.788(b)
Failed to determine the most stringent coating limitation of either 40 CFR 63.785(a) or LAC 33:III.2123.C.11 for each coating prior to every application	Prior to application of coating	Specific Requirement No. 124
Failed to prepare a written implementation plan	Initially	Specific Requirement No. 85 40 CFR 63.787(b)(1)
Failed to submit report of the records required in 40 CFR 63.788(b)(2) and (b)(3) before the 60th day following completion of each 6 month period after the compliance date	Semiannually	Specific Requirement No. 88 40 CFR 63.788(c)
Failed to monitor that total VOC content of antifoulant coating as applied was less than or equal to 3.66 lb/gal or 0.44 kg/L	As applied	Specific Requirement No. 112 LAC 33:III.2123.C
Failed to monitor that total VOC content of other specialty coating as applied was less than or equal to 3.5 lb/gal or 0.42 kg/L	As applied	Specific Requirement No. 91 LAC 33:III.2123.C

Each incident of the Respondent's failure to comply with the requirements listed in the above table is a violation of Title V Permit No. 1560-00062-V0, LAC 33:III.501.C.4, 40 CFR 63 Subpart II, which language has been adopted as a Louisiana regulation in LAC 33:III.5122, LAC 33:III.2123, and La. R.S. 30:2057(A)(2).

The Department hereby adds Paragraph F and G to Section II of the Findings of Fact of Enforcement Tracking No. AE-CN-11-00705 which shall read as follows:

F. In the 2011 Title V Annual Compliance Certification dated March 30, 2012, a revised 2011 Title V Annual Compliance Certification dated July 19, 2012, and 2012 Title V 1st Semiannual Monitoring Report dated September 17, 2012, the Respondent reported the following associated with EPN ARE002, Boat Sand Blasting Area:

Description	Frequency	Specific Requirement/ Regulator Requirement
Failed to amend the BMP plan when required by the Department or whenever	As required	Specific Requirement No. 144 LAC 33:III.1331.D

Description	Frequency	Specific Requirement/ Regulator Requirement
physical or operations modification of the facility renders the existing plan inadequate. The implementation of the amendment shall occur prior to or concurrent to facility modification.		
Failed to designate a person accountable for the implementation and effectiveness of the BMP plan	Every 3 years	Specific Requirement No. 143 LAC 33:III.1331.C
Failed to conduct a review of the BMP Plan every three years to determine if the plan adequately reduces nuisances and adverse impacts, and retain records of each three year review	Every 3 years	Specific Requirement Nos. 145 and 148 LAC 33:III.1331.E LAC 33:III.1331.H.1
Failed to maintain records specified in LAC 33:III.1333.A.1 through A.7 on facility premises at all times.	During blasting activities	Specific Requirement No. 150 LAC 33:III.1333
Failed to maintain prepare and implement a BMP Plan. Plan shall be prepared in accordance with sound engineering practices and ensure that it is site specific.	During blasting activities	Specific Requirement Nos. 132 and 146 LAC 33:III.1329.A LAC 33:III.1331.F
Failed to include provisions for personnel training in the BMP plan	Continuous	Specific Requirement No. 147 LAC 33:III.1331.G
Failed to maintain the following records on the facility premises: self inspection reports, and documentation of employee and contractor training including dates, subjects, and hours of training and a list of attendees with signatures	Continuous	Specific Requirement No. 149 LAC 33:III.1331.H.2
Failed to re-circulate to the cabinet or vent to emission control equipment	During blasting activities	Specific Requirement No. 133 LAC 33:III.1329.B

Each incident of the Respondent's failure to perform and/or implement the requirements listed in the above table is a violation of Title V Permit No. 1560-00062-V0, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

G. The Respondent failed to submit the 2011 Emissions Inventory (EI) for the Lockport Yard by the required due date of April 30, 2012. The EI was submitted on May 15, 2012. This is a violation of Specific Requirement No. 165 of Title V Permit No. 1560-00062-V0, LAC 33:III.501.C.4, LAC 33:III.919.F.1.d, and La. R.S. 30:2057(A)(2).

The Department incorporates all of the remainder of the original **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY, ENFORCEMENT TRACKING NO. AE-CN-11-00705** and **AGENCY INTEREST NOS. 2449 & 140410** as if reiterated herein."

In correspondence dated June 14, 2013 and July 9, 2013, the Respondent provided information to the Department which indicated that the Respondent does not operate a blasting cabinet. On October 16, 2013, the Department issued a statement of No Further Action for the following citation in Paragraph F of Enforcement Action Tracking No. AE-CN-11-00705A; therefore, this citation is not included in the settlement agreement:

> LAC 33:III.1329.B and Specific Requirement No. 133: Failed to re-circulate to the cabinet or vent to emission control equipment during blasting activities.

III

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

IV

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 EIGHTY-ONE THOUSAND FIVE HUNDRED THREE AND NO/100 DOLLARS ($81,503.00), of which One Thousand Nine Hundred Fifty-Seven and 59/100 Dollars ($1,957.59) 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).

V

Respondent further agrees that the Department may consider the inspection report(s), permit record(s), the CONOPPs 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.

VI

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.

VII

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.

VIII

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Lafourche and Terrebonne Parishes, 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 from the newspaper of each affected parish 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.

IX

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).

X

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

XI

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.

THOMA-SEA MARINE CONSTRUCTORS, L.L.C.

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