

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

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SETTLEMENT NO.
SA-MM-05-0040

DOCKET NO. 71033
SECTION 'A'

SONIC OF FORT POLK, INC.
AI # 87370

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

SETTLEMENT

The following Settlement is hereby agreed to between Sonic of Fort Polk, 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 owns and/or operates a sewage treatment plant "STP" serving Sonic of Fort Polk, Inc. located at 1295 Entrance Road in Leesville, Vernon Parish, Louisiana ("the Facility").

II

On or about July 3, 2003, the Department filed a Petition for Injunctive Relief in response to Respondent's alleged violations of Louisiana Pollutant Discharge Elimination System (LPDES) Permit LAG531213 in the matter entitled "Louisiana Department of Environmental Quality v. Sonic of Fort Polk, Inc., Suit No. 71033A, 30th Judicial District Court, Parish of Vernon, State of Louisiana (the "Litigation"). In this suit, the Department alleges:

The Respondent owns a STP serving the Sonic of Fort Polk located at 1295 Entrance Road in Leesville, Vernon Parish, Louisiana. The Respondent was granted coverage under Louisiana Pollutant Discharge Elimination System (LPDES) General Permit LAG530000 on January 10, 2002, and was specifically assigned Permit Number LAG531213 (the "Permit").

The Permit required the Respondent to comply with Schedule B of the permit (Table 1).

Table 1. **LPDES General Permit LAG530000**

Schedule B – Final Effluent limitations

Effluent Characteristics	Discharge Limitations
Each Outfall	Weekly Average
Flow – Gallons Per Day (GPD)	Report
Biochemical Oxygen Demand (BOD ₅) mg/L	45
Total Suspended Solids (TSS) mg/L	45
Oil & Grease mg/L	15
Fecal Coliform Colonies/100 ml	400
pH – Allowable Range (Standard Units)	9.0

Under the terms and conditions of the Permit, the Respondent was authorized to discharge treated sanitary wastewater to the Sabine River, waters of the state.

The Permit authorized the Respondent to discharge treated sanitary wastewater totaling less than five thousand (5,000) gallons per day (GPD). As stated in the Permit, Part II, Section B, if, at any time, the flow from Defendant's sewage treatment plant reaches or exceeds five thousand (5,000) gallons per day (GPD), Respondent is required to apply for a permit modification immediately. Based on information provided to DEQ personnel on or about June 19, 2003, documents revealed an average flow from Defendant's facility that exceeded 5,000 GPD for the following months: June 2003 (209,480 GPD), May 2003 (6,434 GPD), April 2003 (5,135 GPD), November 2002 (6,110 GPD), August 2002 (7,275 GPD), and June 2002 (6,746 GPD). The Department claims that all discharges to waters of the state by the Respondent after

June 2002 were unauthorized discharges and were in violation of La. R.S. 30:2075, La. R.S. 30:2076(A)(1)(a), La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, LAC 33:IX.501.C, LAC 33:IX.501.D, and LAC 33:IX.2311.A.1. Additionally, the Department alleges that an inspection conducted by DEQ personnel on or about October 30, 2002, revealed that the Respondent was discharging inadequately treated sanitary wastewater from its sewage treatment plant, and was discharging inadequately treated wastewater from a point not previously authorized by the Permit. The Department contends that (i) Respondent's STP was discharging from the aeration chamber prior to full treatment and chlorination; (ii) there was no flow from the discharge pipe due to sewage sludge and solid blockage; and (iii) laboratory analyses of effluent samples taken during the aforementioned inspection revealed the following:

Effluent Characteristics	Discharge Limitations	Effluent Sample
Each Outfall	Weekly Average	Grab
Biochemical Oxygen Demand (BOD ₅) mg/L	45 mg/L	959 mg/L
Total Suspended Solids (TSS) mg/L	45 mg/L	1,030 mg/L
Oil & Grease mg/L	15 mg/L	561.6 mg/L

Further, the Department contends that a file review conducted by Department personnel on or about August 22, 2003, revealed that the Respondent failed to immediately apply for a permit modification when its flow exceeded 5,000 GPD, thereby allegedly making Respondent in violation of the Permit and the laws of the State of Louisiana including but not limited to La. R.S. 30: 2001 *et seq.*, La. R.S. 30:2076(A)(3), Louisiana Administrative Code (LAC) 33:IX.501.A, LAC 33:IX.501.D, and LAC 33:IX.2355.A.

The Department also claims that an inspection conducted by its personnel on or about March 21, 2002, as the result of complaints received by DEQ, revealed that the Respondent was not properly operating and maintaining its facility. According to the Department, the inspector

noted that the effluent from the Respondent's STP was gray in color and had a strong odor. Also, there was a heavy build-up of gray solids at the receiving area and the outfall location was poorly maintained. The Respondent's failure to properly operate and maintain its facility allegedly violated LPDES Permit LAG531213 Part I, Section C.5, Part III, Sections A.2 and B.3, La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.E.

Inspections conducted by DEQ personnel on or about October 30, 2002, and June 10, 2003, allegedly revealed the Respondent had been disposing of a regulated solid waste without a permit and/or other authority from DEQ, in violation of La. R.S. 30:2155, LAC 33:VII.315.A, and LAC 33:VII.315.E. Specifically, the Department contends the Respondent's STP was not discharging into the receiving stream that was indicated in the Permit application submitted to DEQ by the Respondent thereby causing the Respondent to discharge inadequately treated wastewater, leaving deposits of wastewater sludge and solids, onto its own land from which it flows onto adjacent lands north of the facility and into another landowner's pond. Complaints were filed with DEQ on November 15, 2000, August 1, 2002, and October 7, 2002.

Finally, according to the DEQ, a file review on February 11, 2003, revealed that the Respondent was not submitting discharge monitoring reports (DMRs) as required by the Permit. Specifically, there was no DMR submitted to the Department for the monitoring period of January to June 2002. Failure to submit a DMR is in violation of the Permit (Part I, Section C.6, and Part III, Sections A.2 and D.4), La. R.S. 30:2076 (A) (3), LAC 33:IX.501.A, LAC 33:IX.2355.A, and LAC 33:IX.2355.L.4.a.

Respondent denies the claims and allegations by the Department. Respondent claims it has not violated the terms of the Permit or any other Louisiana laws, statutes and/or regulations, including Department regulations. Respondent did take steps to address the complaints by an adjacent landowner and the Department. First, Respondent engaged Millenium Bio Systems, Inc. ("MBS") to remove certain cooking grease and dirt from Respondent's and the adjacent

landowner's property. Respondent paid \$15,000 to MBS for the removal of the solid wastes from the properties. A follow-up inspection by a DEQ employee found that all visible bio-solids had been removed.

Second, Respondent shut down its restaurant.

III

In lieu of the Litigation, and in full settlement of that Litigation, the Respondent and the Department have agreed to the following terms.

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 One Thousand and No/100 Dollars (\$1,000.00) represents DEQ'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 DEQ 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) 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. The parties agree that the pending litigation shall be dismissed

with prejudice. To that end, the parties agree to file a Joint Motion for Dismissal with Prejudice within 10 days of the Secretary's signature to this Agreement.

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 Vernon Parish. 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 a proof-of-publication affidavit 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 Office 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/her respective party, and to legally bind such party to its terms and conditions.

SONIC OF FORT POLK, INC.

BY: _____

(Signature)

Ted Kergan

(Printed)

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 19th day of April, 2011, at Lafayette, Louisiana.

Dora Ann Ramez

NOTARY PUBLIC (ID # 181)

Doris Ann Reiners

(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 25th day of August, 2011, at Baton Rouge, Louisiana.

Dwana King
NOTARY PUBLIC (ID # 20590)

Bar Rule #

Life Commission

Dwana King

(stamped or printed)

Approved: _____

Cheryl Sonnier Nolan, Assistant Secretary