STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	**Settlement Tracking No.**
	*	**SA-RE-17-0051**
F. G. SULLIVAN, JR. CONTRACTOR, L.L.C.	*	
	*	**Enforcement Tracking No.**
AI # 5940	*	**RE-PP-16-01252**
	*	
PROCEEDINGS UNDER THE LOUISIANA	*	
ENVIRONMENTAL QUALITY ACT	*	
LA. R.S. 30:2001, ET SEQ.	*	

SETTLEMENT

The following Settlement is hereby agreed to between F. G. Sullivan, Jr. Contractor, 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 owned and/or operated a facility located in Baton Rouge, East Baton Rouge Parish, Louisiana ("the Facility").

II

On June 1, 2017, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. RE-PP-16-01252, which was based upon the following findings of fact:

"On or about November 7, 2012, and September 27, 2016, inspections of **F.G. SULLIVAN, JR. CONTRACTOR, L.L.C.**, a portable nuclear gauge licensee, owned and/or operated by **F.G. SULLIVAN, JR. CONTRACTOR, L.L.C. (RESPONDENT)**, were performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Radiation Protection Regulations. The Respondent operates under Radioactive Material (RAM) License LA-

7671-L01B. The facility is located at 9313 South Choctaw Dr. in Baton Rouge, East Baton Rouge Parish, Louisiana.

While the investigation by the Louisiana Department of Environmental Quality (the Department) is not yet complete, the following violations were noted during the course of the inspections:

A. The Respondent failed to provide proof of current Hazmat training available for all gauge users that transported nuclear gauges in accordance with 49 CFR 172.704.c.2, in violation of LAC 33:XV.1504.B. Specifically, Department of Transportation (DOT) regulations require training at least once every three (3) years for gauge users that transport nuclear gauges. DOT Hazmat training certificates were not available for gauge users Randy Allen and Allen Gautreau during the November 7, 2012 inspection. According to the September 27, 2016 inspection, DOT Hazmat training certificates were available for all gauge users except Allen Gautreau and the Radiation Safety Officer (RSO) Jessie Spence. On or about September 30, 2016, the RSO submitted the missing training certificates. This violation has been addressed.

B. The Respondent failed to conduct leak testing for all portable surface moisture and density gauges, in accordance with The F.G. Sullivan, Jr. Contractor, LLC "Radiation Safety Program", Maintenance and Leak Test Procedures Section, Item 3, in violation of LAC 33:XV.426.A.2, LAC 33:XV.320.A.2 and RAM License Condition #14. Specifically, the November 7, 2012 inspection revealed leak test records for the Troxler Model 4640-B gauge serial number 1701 were missing for the period between August 7, 2009, and April 20, 2012. Email correspondence from the Respondent on or about November 14, 2012, contained transfer records that indicated leak testing occurred on February 3, 2010, and April 18, 2011. However, the actual leak test record was not available. Additionally, the period between February 3, 2010, and April 18, 2011 exceeds the allowable twelve (12) month interval. The September 27, 2016 inspection found the Respondent had not conducted leak testing of the Troxler Model 3340 gauge serial number 26021 or the Troxler Model 4640-B gauge serial number 1701 since April 15, 2015. On or about September 30, 2016, the Respondent submitted copies of the leak tests with passing results performed on September 29, 2016. This violation has been addressed.

C. The Respondent failed to apply for a license renewal thirty (30) calendar days prior to the expiration of RAM License LA-7671-L01A on October 31, 2012, in violation of LAC 33:XV.332.C.1. The Respondent allowed the license to expire while continuing to operate with radioactive material. The Respondent submitted a renewal application on or about November 30, 2012, and RAM License No. LA-7671-L01B was issued on or about February 13, 2013. This violation has been addressed."

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 TWO THOUSAND TWO HUNDRED AND NO/100 DOLLARS ($2,200.00), of which Two Hundred Forty-Six and 23/100 Dollars ($246.23) 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), the 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.

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

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.

IX

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

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.

F. G. SULLIVAN, JR. CONTRACTOR, 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
Chuck Carr Brown, Ph.D., Secretary

BY: _____
Lourdes Iturralde, 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: _____
Lourdes Iturralde, Assistant Secretary