

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

OWENSBY & KRITIKOS, INC.

AI # 38795

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

* Settlement Tracking No.
* SA-RE-11-0003
*
* Enforcement Tracking No.
* RE-P-10-015
*
*
* Docket No. 2010-9403-EQ
*

SETTLEMENT

The following Settlement is hereby agreed to between Owensby & Kritikos, 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 performs industrial radiography. Respondent's office is located at 671B Whitney Avenue, Gretna, Jefferson Parish, Louisiana.

II

On August 3, 2010, the Department issued to Respondent a Penalty Assessment, Enforcement No. RE-P-10-015, in the amount of \$41,241.97, which was based upon the following findings of fact:

The Respondent operates under the provisions of Radioactive Material License No. LA-2234-L01 issued by the Department on September 26, 2008.

On or about November 16, 2009, and November 23, 2009, inspections were conducted at the Respondent's facility due to a self-reported radiation overexposure submitted to the Department on

November 13, 2009. The Respondent notified the Department by telephone on November 13, 2009, and was assigned tracking nos. S09-3754 and T-119548. The Respondent submitted a written report to the Department on or about December 10, 2009. According to the notification letter, the overexposure incident occurred on November 12, 2009, at an offsite industrial radiographic worksite at the Conoco Philips Alliance Refinery located at 15551 Louisiana Highway 23 in Belle Chase, Plaquemines Parish, Louisiana. The incident involved two industrial radiographers, Zack Barret, instructor (AI No. 149423), and Cody Camet, industrial radiographer (AI No. 156893). Mr. Zack Barret failed to conduct a physical radiation survey of the camera prior to initiating accidental contact with the source while attempting to install a safety plug in the camera. The camera used by the radiographers on November 12, 2009, was an Ammersham Model 660B that contained a 78.9 Curie Ir-192 source.

The following violations were noted:

- A. During the course of the inspection, it was noted that the Mr. Zack Barret, instructor, and Mr. Cody Camet, radiographer, failed to notify the Radiation Safety Officer (R.S.O.) of the incident involving physical contact with an industrial radiographic source that occurred on November 12, 2009, until November 13, 2009. This is a violation of LAC 33:XV.320.A.2 and the Emergency Procedures, Section Emergency Procedures.
- B. During the course of the inspection, it was noted that the Respondent failed to control the occupational dose limits to individual adults to the annual limit of 5 Rem. Mr. Zack Barret, instructor, received a Total Effective Dose Equivalence (TEDE) of 5,571 mRem during the incident on November 12, 2009, and an annual TEDE of 6,678 mRem. This is a violation of LAC 33:XV.410.A.1.a. This is a repeat violation as cited in the Compliance Order and Notice of Potential Penalty Enforcement Tracking No. RE-CN-00-0197 issued on June 29, 2001.

- C. During the course of the inspection, it was noted that the Respondent failed to control the occupational dose limit to an individual's shallow dose equivalent of 50 Rem to the skin of the extremities. Based upon the incident radiation exposure calculations by the R.S.O., Mr. Zack Barret, instructor, received a shallow dose equivalent of 94.571 Rem to his right hand and 33.755 Rem to his left hand. This is a violation of LAC 33:XV.410.A.2.b.
- D. During the course of the inspection, it was noted that the Respondent failed to ensure that Mr. Zack Barret, instructor, ceased utilizing radiation after the overexposure that occurred on November 12, 2009. Further, the Department noted during the course of the inspection that both radiographers' pocket dosimeters went off scale following the overexposure incident. This is a violation of LAC 33:XV.577.E.
- E. During the course of the inspection, it was noted that the Respondent's industrial radiographers failed to conduct a physical radiation survey to ensure that the source had been returned to its fully shielded position within the camera unit after the radiographic exposure resulting in the overexposure. This is a violation of LAC 33:XV.587.B.

On March 8, 2010, a Consolidated Compliance Order and Notice of Potential Penalty (CONOPP), Enforcement Tracking No. RE-CN-10-004, was issued to the Respondent.

A penalty in the amount of \$41,241.97 was assessed together with legal interest as allowed by law and all costs of bringing and prosecuting this enforcement action accruing after the date of issuance.

III

In response to the Penalty Assessment, 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.

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 TWENTY-ONE THOUSAND AND NO/100 DOLLARS (\$21,000.00), of which One Thousand Two Hundred Forty-One and 97/100 Dollars (\$1,241.97) 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).

VI

Respondent further agrees that the Department may consider the inspection report(s), the Penalty Assessment 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

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 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 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.

OWENSBY & KRITIKOS, 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