

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

MICHAEL ANAKER

AI # 162088

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

* Settlement Tracking No.
* SA-HE-17-0067
*
* Enforcement Tracking No.
* HE-CN-09-0407
*
*
* Docket No. 2010-5331-EQ
*

SETTLEMENT

The following Settlement is hereby agreed to between Michael Aaker (“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 an individual that owned and/or operated a facility located in Roanoke, Jefferson Davis Parish, Louisiana (“the Facility”).

II

On October 22, 2009, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. HE-CN-09-0407 (Exhibit 1).

III

In response to the Consolidated Compliance Order & Notice of Potential Penalty, 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 ONE THOUSAND SIX HUNDRED AND NO/100 DOLLARS (\$1,600.00), of which One Thousand Two Hundred Twenty and 74/100 Dollars (\$1,220.74) 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 Consolidated Compliance Order & 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.

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 La. R. S. 30:2025(E) of the Act.

IX

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.

X

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

XI

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).

XII

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

XIII

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.

MICHAEL ANAKER

BY: Michael Anaker
(Signature)

Michael Anaker
(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this 1st day of November, 20 18, at Sulphur, La.

Joey Dewall
NOTARY PUBLIC (ID # 062784)

Joy Devillier
(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Chuck Carr Brown, Ph.D., Secretary

BY: [Signature]
Loures Iturralde, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 20th day of Feb, 20 19, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 19181)

Perry Theriot
(stamped or printed)

Approved: [Signature]
Loures Iturralde, Assistant Secretary



BOBBY JINDAL
GOVERNOR

HAROLD LEGGETT, PH.D.
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

October 22, 2009

CERTIFIED MAIL (7005 1820 0002 2365 5053)
RETURN RECEIPT REQUESTED

MICHAEL ANAKER
909 Brandi St.
Sulphur, LA 70663

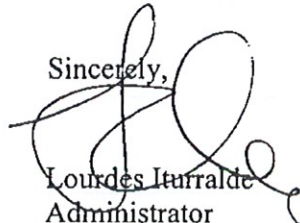
**RE: CONSOLIDATED COMPLIANCE ORDER
& NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. HE-CN-09-0407
AGENCY INTEREST NO. 162088**

Dear Sir:

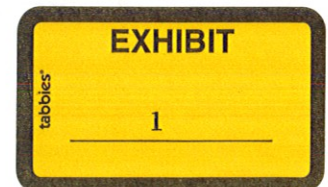
Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **MICHAEL ANAKER (RESPONDENT)** for the violations described therein.

Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violations cited in the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** could result in the issuance of a civil penalty or other appropriate legal actions.

Any questions concerning this action should be directed to Craig Easley at (225) 219-3735.

Sincerely,

Lourdes Iturralde
Administrator
Enforcement Division

LI/KCE/kce
Alt ID No. LAR000068926
Attachment



**STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE**

IN THE MATTER OF	*	
	*	
MICHAEL ANAKER	*	ENFORCEMENT TRACKING NO.
JEFFERSON DAVIS PARISH	*	
ALT ID NO. LAR000068926	*	HE-CN-09-0407
	*	
	*	AGENCY INTEREST NO.
	*	
PROCEEDINGS UNDER THE LOUISIANA	*	162088
ENVIRONMENTAL QUALITY ACT,	*	
La. R.S. 30:2001, <u>ET SEQ.</u>	*	

**CONSOLIDATED
COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY**

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **MICHAEL ANAKER (RESPONDENT)** by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C), 30:2050.2 and 30:2050.3(B).

FINDINGS OF FACT

I.

The Respondent operates an unauthorized waste disposal site located at 8050 Bryan Road in Roanoke, Jefferson Davis Parish, Louisiana (the Site). The Respondent has been employed by and/or had an ownership stake in the following corporations: 1) TL2 Gases, Inc.; 2) Tex-La Gases, Inc.; 3) H.P. Gas Products, Inc.; and 4) Stillwater Consultants, LLC (Stillwater). Each of the aforementioned corporations is responsible for the disposal of various solid and hazardous wastes at the Site by abandonment.

II.

On or about March 1, 2007, Stillwater leased the Site from the owner, United Agri Products (UAP). In May 2008, Crop Production Services, Inc. (and related entities) purchased UAP, thereby assuming ownership of the Site and the legal designation as "Landlord" to the "Tenant," Stillwater, as defined in the original March 1, 2007, lease agreement with UAP. Stillwater began operations (i.e., primarily manufacturing specialty gases such as cyanogen and hydrogen cyanide) at the Site in early 2007. The specialty gas manufacturing operations resulted in the generation of several residual materials classified as hazardous waste including, but not necessarily limited to, cyanide waste salt and hydrogen cyanide waste salts (P030). As a result of Stillwater's failure to make timely rental payments from January 2009 forward, the owner of the Site, Crop Production Services, Inc., began collection proceedings against Stillwater to collect unpaid rent. As a result of the collection proceedings, Crop Production Services, Inc. obtained a court order evicting Stillwater from the Site.

III.

The Department conducted an inspection of the Bryan Road facility on or about October 3, 2008, in response to a request by the Louisiana State Police. During the inspection, the Department observed approximately seventy-five (75) cylinders of various sizes and containing various gases including, but not necessarily limited to, chlorine, cyanogen, and cyanide gases. The aforementioned cylinders appeared to be either used in or produced by specialty gas operations conducted at the Site.

IV.

On or about July 6, 2009, the Department issued Administrative Order (HE-AO-09-0259) to Crop Production Services, Inc. to address wastes abandoned at the Site by the former occupant. The order required Crop Production Services, Inc. to assess and cleanup the wastes abandoned at the Site. In response to the order, Crop Production Services, Inc. obtained EPA Site Identification Number LAR000068926 for the Site and contracted with Clean Harbors Environmental Services (Clean Harbors) to conduct an assessment of the Site. Clean Harbors conducted an assessment of the materials and the conditions at the Site from July 26, 2009, through July 30, 2009, during which it developed a cylinder inventory that identified the number and, when possible, the contents of the cylinders. During Clean Harbor's assessment of the Site, they discovered approximately eight-hundred (800) cylinders of various sizes containing various gases including, but not

necessarily limited to, chlorine, cyanogen chloride, cyanogen, phosgene, arsine pentafluoride, sodium cyanide, and hydrogen cyanide. Additionally, Clean Harbors noted during its assessment that the contents of approximately half of these cylinders could not be identified due to the lack of markings or labels on the containers.

V.

Cylinders labeled as being sent from the Stillwater and H.P. Gas Products, Inc. to the U.S. Army Aberdeen Proving Grounds have been abandoned at the Site. The U.S. Army has and/or had contracts with Stillwater Consultants, LLC to provide it with specialty gases, such as those described in Findings of Fact Paragraph II. Additionally, the Respondent accepted and transported residue-containing cylinders from the U.S. Army to be refilled with the aforementioned specialty gases. The Respondent does not have a permit and/or other authority from the Department to store, transport, and/or dispose of solid and/or hazardous waste at the Site.

VI.

The October 3, 2008, inspection and an ongoing investigation being conducted by the Department revealed the following Solid and Hazardous Waste violations:

- A. The Respondent disposed of regulated hazardous waste by abandoning it at the Site without obtaining a permit or interim status, in violation of LAC 33:V.303.B. Specifically, the Respondent disposed of hazardous wastes that include, but are not necessarily limited to, phosgene, hydrogen cyanide, cyanogen, cyanogen chloride, arsine pentafluoride, and cyanide and hydrogen cyanide salts
- B. The Respondent transported hazardous waste, which was not accompanied by a uniform manifest, from a generator or another transporter to the Site, in violation of LAC 33:V.1307.A. Specifically, according to a statement provided by the Respondent to Toni Evans of the Department's Enforcement Division on August 10, 2009, the Respondent transported cylinders from the facility formerly known as TL2 Gases, Inc., located at 3223 Metric Drive, Sulphur, Calcasieu Parish, Louisiana, after TL2 Gases, Inc. ceased operating in October 2006 due to bankruptcy.

COMPLIANCE ORDER

Based on the foregoing, the Respondent is hereby ordered:

I.

To perform, within fourteen (14) days of receipt of this **COMPLIANCE ORDER**, hazardous waste determinations for the contents of any and all of the unidentified, abandoned containers described in Findings of Fact Paragraph IV that are or have been owned, possessed or transported by the Respondent, in accordance with LAC 33:V.1103.

II.

To develop and submit, within fourteen (14) days after receipt of this **COMPLIANCE ORDER**, a work plan for Department approval addressing the safe transportation and treatment and/or disposal of the abandoned containers of hazardous waste and/or hazardous substances located at the Site that are or have been owned, possessed, or transported by the Respondent. The work plan shall provide for proper management of all containers storing waste and/or hazardous substances to prevent leakage and ensure that the containers are in good condition. The work plan shall require that all leaking and/or damaged containers shall be placed into an over-pack container or emptied and the contents transferred to a new container, or provide a safe alternative to handle these leaking containers. The work plan must also specify a proposed schedule for completion of the activities addressed under the work plan.

III.

To submit, within fourteen (14) days after receipt of this **COMPLIANCE ORDER**, the names, addresses and telephone numbers of any contractors whom the Respondent proposed to hire to implement the work plan required under Paragraph II of this **COMPLIANCE ORDER**.

IV

To implement the work plan referenced in Paragraph II of this **COMPLIANCE ORDER** within ten (10) days after the Respondent's receipt of the Department's written approval of the work plan. Prior to conducting any Department-approved activities at the Site the Respondent must:

- a) provide notice to, and obtain consent from, the owner of the Site, Crop Production Services, Inc. and;
- b) provide at least five (5) days advance notice to the Department's Office of Environmental Compliance and Southwest Regional Office.

V.

To submit, within thirty (30) days of receipt of this **COMPLIANCE ORDER**, copies of all records relating to specialty gas transactions in the possession of or accessible to the Respondent as a result of his employment with the entities referenced in Findings of Fact Paragraph I. These records include, but are not necessarily limited to, contracts between the Respondent and users of its specialty gases, sales receipts, bills of lading, and freight receipts for returned cylinders.

VI.

To submit to the Enforcement Division, within thirty (30) days of completing the activities required under Paragraphs I - IV of this **COMPLIANCE ORDER**, a closeout report summarizing: 1) site assessment; 2) remedial actions; and 3) the characterization, quantity, and final disposition of the wastes treated/removed from the Site. This report and all other reports or information required to be submitted to the Enforcement Division by this **COMPLIANCE ORDER** shall be submitted to:

Office of Environmental Compliance
Post Office Box 4312
Baton Rouge, Louisiana 70821-4312
Attention: Craig Easley
Enforcement Tracking No. HE-CN-09-0407
Agency Interest No. 162088

THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:

I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **COMPLIANCE ORDER**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **COMPLIANCE ORDER**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **COMPLIANCE ORDER** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the **Enforcement Tracking Number** and **Agency Interest Number**, which are located in the upper right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality
Office of the Secretary
Post Office Box 4302
Baton Rouge, Louisiana 70821-4302
Attn: Hearings Clerk, Legal Division
Re: Enforcement Tracking No. HE-CN-09-0407
Agency Interest No. 162088

III.

Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **COMPLIANCE ORDER** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Department's Rules of Procedure. The Department may amend or supplement this **COMPLIANCE ORDER** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **COMPLIANCE ORDER** shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violation(s) described herein.

V.

The Respondent's failure to request a hearing or to file an appeal or the Respondent's withdrawal of a request for hearing on this **COMPLIANCE ORDER** shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violation(s), although the Respondent is estopped from objecting to this **COMPLIANCE ORDER** becoming a permanent part of its compliance history.

VI.

Civil penalties of not more than twenty-seven thousand five hundred dollars (\$27,500) for each day of violation for the violation(s) described herein may be assessed. For violations which occurred on August 15, 2004, or after, civil penalties of not more that thirty-two thousand five hundred dollars (\$32,500) may be assessed for each day of violation. The Respondent's failure or refusal to comply with this **COMPLIANCE ORDER** and the provisions herein will subject the Respondent to possible enforcement procedures under La. R.S. 30:2025, which could result in the

assessment of a civil penalty in an amount of not more than fifty thousand dollars (\$50,000) for each day of continued violation or noncompliance.

VII.

For each violation described herein, the Department reserves the right to seek civil penalties in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties.

NOTICE OF POTENTIAL PENALTY

I.

Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be filed regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.

II.

Prior to the issuance of additional appropriate enforcement action(s), you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Craig Easley at (225) 219-3735 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

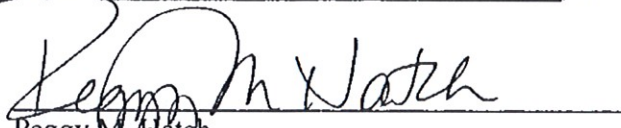
III.

The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**. Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement.

IV.

This **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 22nd day of October, 2009.



Peggy M. Hatch
Assistant Secretary
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
P.O. Box 4312
Baton Rouge, LA 70821-4312
Attention: Tyler Ginn