

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CAPITOL ULTRASONICS, LLC

AI # 12540, 26336

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

* Settlement Tracking No.
* SA-RE-19-0022
*
* Enforcement Tracking No.
* RE-PP-17-01168
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SETTLEMENT

The following Settlement is hereby agreed to between Capitol Ultrasonics, LLC (“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 a temporary jobsite located in Norco, St. Charles Parish, Louisiana (“the Facility”).

II

On July 6, 2018, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. RE-PP-17-01168 (Exhibit 1).

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 TWELVE THOUSAND AND NO/100 DOLLARS (\$12,000.00), of which Eight Hundred Fourteen and 07/100 Dollars (\$814.07) 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 St. Charles 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.

CAPITOL ULTRASONICS, LLC

BY: [Signature]
(Signature)

Brent Collinsworth
(Printed)

TITLE: Radiation Safety Officer

THUS DONE AND SIGNED in duplicate original before me this 10 day of JULY, 20 19, at Baton Rouge, Louisiana

[Signature]
NOTARY PUBLIC (ID # 07730)

J. Anton Smith, III
(stamped or printed)

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

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

THUS DONE AND SIGNED in duplicate original before me this 1st day of Oct, 20 19, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 19181)

Perry Theriot
(stamped or printed)

Approved: [Signature]
Lourdes Iturralde, Assistant Secretary

JOHN BEL EDWARDS
GOVERNOR



CHUCK CARR BROWN, PH.D.
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE
July 6, 2018

CERTIFIED MAIL 7005 0390 0006 1027 9685
RETURN RECEIPT REQUESTED

CAPITOL ULTRASONICS, LLC
c/o Rodney Bonvillain
Agent for Service of Process
3045 Choctaw Dr.
Baton Rouge, LA 70805

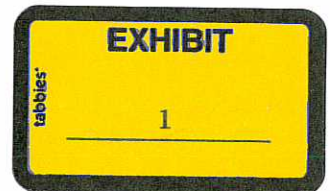
**RE: NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. RE-PP-17-01168
AGENCY INTEREST NO. 12540 & 26336**

Dear Sir:

On or about October 18, 2017, an inspection was performed at the Shell Chemical, LP Norco Chemical Plant-East Side (Agency Interest Number 26336), a temporary jobsite of **CAPITOL ULTRASONICS, LLC (RESPONDENT)**, an industrial radiography licensee, in order to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Radiation Protection Regulations. The temporary jobsite was located at 15536 River Road in Norco, St. Charles Parish, Louisiana. The Respondent operates under Radioactive Materials (RAM) License LA-5838-L01.

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 inspection:

- A. The Respondent failed to post the high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "Caution, High Radiation Area," in violation of LAC 33:XV.451.B. Specifically, a high radiation area with readings greater than one hundred fifty (150) mR/hr was observed by the Department's inspector and the Radiation Safety Officer (RSO) for the Shell Norco Refinery at the south side of the restricted area boundary. The area was posted with "Caution, Radiation Area" boundary tape and not as a high radiation area. Correspondence received on or about January 24, 2018, stated annual refresher training was conducted for all radiographic personnel at the jobsite, and documentation of barricade calculations are now turned in and reviewed by the Site Lead daily as an additional safety precaution.



- B. The Respondent failed to conduct operations to ensure that the dose in any unrestricted area from external sources does not exceed 0.02 mSv (0.002 rem) in any one (1) hour, and failed to use procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as reasonably achievable (ALARA), in violation of LAC 33:XV.406.B, and LAC 33:XV.421.A.2. Specifically, radiation survey readings of fifty (50) mR/hr to above one hundred fifty (150) mR/hr were observed along two (2) sections of the radiography crew's restricted area boundary. At the time of the inspection, the radiography crew had conducted three (3) of four (4) exposures planned to occur within a thirty (30) minute time period. The radiography crew's total exposure time was eight (8) minutes and twenty-five (25) seconds at the time the exposures were halted by the RSO for the Shell Norco Refinery. Therefore, the cumulative exposure during the thirty (30) minute period was seven (7) to twenty-one (21) mR, which is an exposure rate of more than three (3) to ten (10) times greater than two (2) mR in one (1) hour along sections of the restricted boundary that were surveyed by the Department's inspector. Correspondence received on or about January 24, 2018, stated annual refresher training was conducted for all radiographic personnel at the jobsite, the radiography crew was given additional on the job training, and the internal auditing frequency for each radiographer was increased.
- C. The Respondent failed to show compliance with the annual dose limit by demonstrating that if an individual were continuously present in an unrestricted area, the dose from external sources would not exceed 0.02 mSv (0.002 rem) in an hour and 0.5 mSv (0.05 rem) in a year, in violation of LAC 33:XV.422.B.2.b. Specifically, the radiography crew recorded radiography readings of "<2" for each side of the restricted area boundary on the radiation area survey sheet. However, radiation survey readings of fifty (50) mR/hr to above one hundred fifty (150) mR/hr were observed along the radiography crew's restricted area boundary by the Department's inspector. Correspondence received on or about January 24, 2018, stated annual refresher training was conducted for all radiographic personnel at the jobsite, the radiography crew was given additional on the job training, and the internal auditing frequency for each radiographer was increased.
- D. The Respondent failed to maintain records showing the results of surveys and calibrations, in violation of LAC 33:XV.472.A. Specifically, the radiography crew failed to accurately record the radiation levels observed by the crew during the radiation survey of the restricted area boundary. The radiography crew recorded radiography readings of "<2" for each side of the restricted area boundary on the radiation area survey sheet. However, radiation survey readings of fifty (50) mR/hr to above one hundred fifty (150) mR/hr were observed along the radiography crew's restricted area boundary by the Department's inspector. Correspondence received on or about January 24, 2018, stated documentation of barricade calculations are now turned in and reviewed by the Site Lead daily as an additional safety precaution, annual refresher training was conducted for all radiography personnel, and the radiography crew has been assigned to other crews for additional on the job training.

- E. The Respondent failed to ensure pocket dosimeters have a range of zero (0) to at least two hundred (200) millirems and are recharged at least daily or at the start of each shift, in violation of LAC 33:XV.577.B. Specifically, two (2) members of the radiography crew stated they had not recharged their direct-reading pocket dosimeters since last performing radiography. Correspondence received on or about January 24, 2018, stated annual refresher training was conducted for all radiographic personnel at the jobsite, the radiography crew was given additional on the job training, and the internal auditing frequency for each radiographer was increased.

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.

Prior to the issuance of any additional appropriate enforcement action, 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 Kelly O'Neal at (225) 219-3932 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

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 in order 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 violations 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 this statement. If the Respondent chooses not to submit the requested most current annual gross revenues statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.

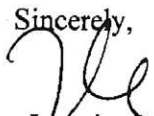
For each violation described herein, the Department reserves the right to seek civil penalties and the right to seek compliance with its rules and regulations in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties and compliance.

The Department assesses civil penalties based on LAC 33:I.Subpart1.Chapter7. To expedite closure of this **NOTICE OF POTENTIAL PENALTY**, the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violation(s) described herein. The Respondent may offer a settlement amount, but the Department is under no obligation to enter into settlement negotiations. The decision to proceed with a settlement is at the discretion of the Department. The settlement offer amount may be entered on the attached "**NOTICE OF POTENTIAL PENALTY REQUEST TO SETTLE**" form. The Respondent must include a justification of the offer. **DO NOT** submit payment of the offer amount with the form. The Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.

The **NOTICE OF POTENTIAL PENALTY** will not be closed if the Respondent owes outstanding fees to the Department. Please contact the Financial Services Division at 225-219-3865 or via email at _DEQ-WWWFinancialServices@la.gov to determine if you owe outstanding fees.

To reduce document handling, please refer to the Enforcement Tracking Number and Agency Interest Number on the front of this document on all correspondence in response to this action.

Sincerely,



Lourdes Iturralde
Assistant Secretary
Office of Environmental Compliance

LI/KAO/kao
Alt ID No. LA-5838-L01

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE
ENFORCEMENT DIVISION
POST OFFICE BOX 4312
BATON ROUGE, LOUISIANA 70821-4312

NOTICE OF POTENTIAL PENALTY
REQUEST TO SETTLE (OPTIONAL)



Enforcement Tracking No.	RE-PP-17-01168	Contact Name	Kelly O'Neal
Agency Interest (AI) No.	12540 & 26336	Contact Phone No.	(225) 219-3932
Alternate ID No.	LA-5838-L01		
Respondent:	CAPITOL ULTRASONICS, LLC	Facility Name:	Capitol Ultrasonics, LLC
	c/o Rodney Bonvillain	Physical Location:	3045 Choctaw Dr.
	Agent for Service of Process		
	3045 Choctaw Dr. Baton Rouge, LA 70805	City, State, Zip:	Baton Rouge, LA 70805
		Parish:	East Baton Rouge

SETTLEMENT OFFER (OPTIONAL)

(check the applicable option)

The Respondent is not interested in entering into settlement negotiations with the Department with the understanding that the Department has the right to assess civil penalties based on LAC 33:I.Subpart1.Chapter7.

In order to resolve any claim for civil penalties for the violations in **NOTICE OF POTENTIAL PENALTY (7017 2400 0000 7557 7529)**, the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.

In order to resolve any claim for civil penalties for the violations in **NOTICE OF POTENTIAL PENALTY (7017 2400 0000 7557 7529)**, the Respondent is interested in entering into settlement negotiations with the Department and offers to pay \$ _____ which shall include LDEQ enforcement costs and any monetary benefit of non-compliance.

- Monetary component = \$ _____
- Beneficial Environmental Project (BEP) component (optional)= \$ _____
- **DO NOT SUBMIT PAYMENT OF THE OFFER WITH THIS FORM-** the Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.

The Respondent has reviewed the violations noted in **NOTICE OF POTENTIAL PENALTY (7017 2400 0000 7557 7529)** and has attached a justification of its offer and a description of any BEPs if included in settlement offer.

CERTIFICATION STATEMENT

I certify, under provisions in Louisiana and United States law that provide criminal penalties for false statements, that based on information and belief formed after reasonable inquiry, the statements and information attached and the compliance statement above, are true, accurate, and complete. I also certify that I do not owe outstanding fees or penalties to the Department for this facility or any other facility I own or operate. I further certify that I am either the Respondent or an authorized representative of the Respondent.

Respondent's Signature	Respondent's Printed Name	Respondent's Title
Respondent's Physical Address	Respondent's Phone #	Date

MAIL COMPLETED DOCUMENT TO THE ADDRESS BELOW:

Louisiana Department of Environmental Quality
 Office of Environmental Compliance
 Enforcement Division
 P.O. Box 4312
 Baton Rouge, LA 70821
 Attn: Kelly O'Neal

SETTLEMENT AGREEMENTS

WHAT IS A SETTLEMENT AGREEMENT?

Once the Department has determined that a penalty is warranted for a violation, the Assistant Secretary of the Department, with the concurrence of the Attorney General, may enter into a settlement agreement with the Respondent as a means to resolve the Department's claim for a penalty.

HOW DOES THE SETTLEMENT AGREEMENT PROCESS WORK?

To begin the settlement agreement process, the Department must receive a written settlement offer. Once this offer is submitted, it is sent for approval by the Assistant Secretary of the Office of Environmental Compliance. The formal Settlement Agreement is drafted and sent to the Attorney General's office where the Attorney General has a 90 day concurrence period. During this time, the Respondent is required to run a public notice in an official journal and/or newspaper of general circulation in each affected parish. After which, a 45 day public comment period is opened to allow the public to submit comments. Once the Department has received concurrence, the settlement agreement is signed by both parties. The Department then forwards a letter to the responsible party to establish a payment plan and/or beneficial environmental project (BEP).

WHAT SHOULD I INCLUDE IN A SETTLEMENT AGREEMENT?

The Department uses the penalty determination method defined in LAC 33:1.705 as a guideline to accepting settlement offers. The penalty matrix is used to determine a penalty range for each violation based on the two violation specific factors, the nature and gravity of the violation and the degree of risk/impact to human health and property.

		NATURE AND GRAVITY OF THE VIOLATION		
		MAJOR	MODERATE	MINOR
DEGREE OF RISK OR IMPACT TO HUMAN HEALTH OR PROPERTY	MAJOR	\$32,500 to \$20,000	\$20,000 to \$15,000	\$15,000 to \$11,000
	MODERATE	\$11,000 to \$8,000	\$8,000 to \$5,000	\$5,000 to \$3,000
	MINOR	\$3,000 to \$1,500	\$1,500 to \$500	\$500 to \$100

Degree of Risk to Human Health or Property

Major: (actual measurable harm or substantial risk of harm) A violation of major impact to an environmental resource or a hazard characterized by high volume and/or frequent occurrence and/or high pollutant concentration.

Moderate: (potential for measurable detrimental impact) A violation of moderate impact and hazard may be one characterized by occasional occurrence and/or pollutant concentration that may be expected to have a detrimental effect under certain conditions

Minor: (no harm or risk of harm) A violation of minor impact are isolated single incidences and that cause no measurable detrimental effect or are administrative in nature.

Nature and Gravity of the Violation

Major: Violations of statutes, regulations, orders, permit limits, or permit requirements that result in negating the intent of the requirement to such an extent that little or no implementation of requirements occurred.

Moderate: Violations that result in substantially negating the intent of the requirements, but some implementation of the requirements occurred.

Minor: Violations that result in some deviation from the intent of the requirement; however, substantial implementation is demonstrated.

The range is adjusted using the following violator specific factors:

1. history of previous violations or repeated noncompliance;
2. gross revenues generated by the respondent;
3. degree of culpability, recalcitrance, defiance, or indifference to regulations or orders;
4. whether the Respondent has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the violation; and
5. whether the violation and the surrounding circumstances were immediately reported to the department, and whether the violation was concealed or there was an attempt to conceal by the Respondent.



SETTLEMENT AGREEMENTS

Given the previous information, the following formula is used to obtain a penalty amount.

$$\text{Penalty Event Total} = \text{Penalty Event Minimum} + (\text{Adjustment Percentage} \times (\text{Penalty Event Maximum} - \text{Penalty Event Minimum}))$$

After this, the Department adds any monetary benefit of noncompliance to the penalty event. In the event that a monetary benefit is gained due to the delay of a cost that is ultimately paid, the Department adds the applicable judicial interest. Finally, the Department adds all response costs including, but not limited to, the cost of conducting inspections, and the staff time devoted to the preparation of reports and issuing enforcement actions.

WHAT IS A BEP?

A BEP is a project that provides for environmental mitigation which the respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of the settlement agreement. Project categories for BEPs include public health, pollution prevention, pollution reduction, environmental restoration and protection, assessments and audits, environmental compliance promotion, and emergency planning, preparedness and response. Other projects may be considered if the Department determines that these projects have environmental merit and is otherwise fully consistent with the intent of the BEP regulations.

WHAT HAPPENS IF MY OFFER IS REJECTED?

If an offer is rejected by the Assistant Secretary, the Legal Division will contact the responsible party, or anyone designated as an appropriate contact in the settlement offer, to discuss any discrepancies.

WHERE CAN I FIND EXAMPLES AND MORE INFORMATION?

- Settlement Offers searchable in EDMS using the following filters
Media: Air Quality, Function: Enforcement; Description: Settlement
- Settlement Agreements Enforcement Division's website
specific examples can be provided upon request
- Penalty Determination Method LAC 33:I Chapter 7
- Beneficial Environmental Projects LAC 33:I Chapter 25
FAQs
- Judicial Interest provided by the Louisiana State Bar Association

