

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CAPITOL ULTRASONICS, LLC

AI # 2638, 210735

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

* Settlement Tracking No.
* SA-RE-19-0060
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* Enforcement Tracking No.
* RE-PP-19-00024
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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 operates a facility located in Baton Rouge, East Baton Rouge Parish, Louisiana (“the Facility”).

II

On March 1, 2019, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. RE-PP-19-00024 (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 SIXTEEN THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$16,100.00), of which Nine Hundred One and No/100 Dollars (\$901.00) 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 investigation, 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.

CAPITOL ULTRASONICS, LLC

BY: Stephane F. Elam
(Signature)

Stephane F. Elam
(Printed)

TITLE: Vice President of Operations

THUS DONE AND SIGNED in duplicate original before me this 6th day of December, 20 19, at East Baton Rouge Parish

[Signature]

NOTARY PUBLIC (ID # 155655)



VICTORIA STEPHENS
Notary Public
Notary ID No. 155655

ASCENSION Parish, Louisiana
(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 14th day of Feb., 20 20, 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
March 1, 2019

CERTIFIED MAIL (7017 2400 0000 7556 8732)
RETURN RECEIPT REQUESTED

CAPITOL ULTRASONICS, LLC
c/o Alan Castetter
Agent for Service of Process
1021 Margarita Drive
Breau Bridge, LA 70517

**RE: NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. RE-PP-19-00024
AGENCY INTEREST NOS. 2638 & 210735**

Dear Sir:

On or about October 25, 2018, an investigation was performed at the ExxonMobil Fuels & Lubricants Company – Baton Rouge Refinery (Agency Interest Number 2638), a temporary jobsite of **CAPITOL ULTRASONICS, LLC (RESPONDENT)**, an industrial radiography licensee, in response to a self-reported exposure incident, 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 4045 Scenic Highway in Baton Rouge, East Baton Rouge Parish, Louisiana. The Respondent operates under Radioactive Materials (RAM) License LA-5838-L01.

On October 22, 2018, at approximately 1:18 PM, Brenton Collinsworth, Corporate Radiation Safety Officer (RSO) for the Respondent notified the Department of a suspected excessive overexposure. The incident occurred at approximately 9:00 AM within the Recovery Gas Collection Unit (RGCU) at the ExxonMobil Baton Rouge Refinery. According to the Respondent's representative, a three-person radiography crew consisting of a radiography instructor, a radiographer, and a radiographer trainee conducted an initial radiographic exposure to a ¾ inch pipe located beneath a compressor deck within the RGCU.

On or about October 22, 2018, the Respondent conducted an internal investigation of the incident. Preliminary findings of the Respondent's internal investigation revealed the incident occurred after the crew completed the first exposure using an Amersham Model 880D, serial number D15404, containing an approximately 34.3 Ci sealed source of Ir-192. Certified Radiographer Long Hoang (Agency Interest Number 207578), retracted the source to what he believed to be the shielded position and then performed a survey with his survey meter set to the 10x scale, but did not observe an



unexpected high deflection of the survey instrument needle across the dial. Mr. Hoang did not visually inspect the autolock slide to determine whether it was illuminated green, indicating autolock engaged/source shielded, or red, indicating autolock disengaged and source unshielded. While retrieving the film, Radiography Instructor Kyle Lafleur (Agency Interest Number 786630) observed that the shutter on the exposure device outlet port was stuck in the open position. As Mr. Lafleur made several unsuccessful attempts to close the shutter, he observed that the autolock slide remained in the red position, indicating that the source was unshielded. Mr. Lafleur and Mr. Hoang immediately exited the area where the unshielded source was located. After releasing a bind in the source guide tube, Mr. Lafleur successfully retracted the source and locked it in the shielded position. Subsequent testing of Mr. Hoang's survey instrument by Darrell Atkinson, the Respondent's Assistant RSO (ARSO), revealed the instrument was functioning properly. Both Mr. Lafleur and Mr. Hoang observed their pocket dosimeters indicated off scale readings. Prior to leaving the temporary jobsite, the ARSO conducted a radiation survey of the crew's exposure device and determined that the source was shielded at the conclusion of the exposure incident.

On October 25, 2018, the Department's inspectors met with representatives of ExxonMobil Fuels and Lubricants Company, the Respondent's RSO, and the two (2) aforementioned radiographers at the ExxonMobil Refinery to plan and conduct a step-by-step reenactment of the incident within the RGCU using a demonstration camera and mock source. Department inspectors' observations of the reenactment observed at the original temporary job site location appeared to support the Respondent's internal investigation findings. The Department's investigation revealed the crew failed to recognize that the source guide tube was likely in a bind, which could restrict movement of the source assembly through the guide tube. The crew also failed to recognize warning signs that the source assembly was having difficulty returning to the shielded position within the exposure device. The RGCU is a dimly lit, double hearing protection zone, requiring the radiographers to wear head lamps, ear plugs, and ear muffs as part of their personal protective equipment (PPE). Both Mr. Lafleur and Mr. Hoang were wearing calibrated alarming rate meters; however, their hearing protection prevented them from hearing either the engagement of the exposure device's autolock or the activation of their alarming rate meters. The Respondent conducted several reenactments of the exposure incident with both crew members. A time-motion study was performed by the Respondent, focusing on distances, stay times for whole body and extremity exposure, and pertinent exposure rates. Both the Respondent and the Department calculated exposures to each radiographer and confirmed an occupational dose to Mr. Lafleur's hand that exceeded the radiation limits set forth in the regulations. The industrial radiography equipment used during the incident was sent to the manufacturer for a complete physical inspection. The manufacturer's inspection findings were that the Respondent's exposure device and associated equipment were functioning to design standard.

The Department issued **WARNING LETTER RE-L-19-00024** on or about January 7, 2019, for violations discovered during an investigation conducted on or about October 25, 2018. A response was received by the Department on or about January 15, 2019.

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 investigation:

- A. The Respondent failed to notify the Office of Environmental Compliance by telephone via the Radiation Hotline within twenty-four (24) hours of

discovery of an excessive exposure, in violation of LAC 33:XV.486.B.1.c. Specifically, on October 22, 2018, at approximately 1:17 PM, the Respondent's RSO notified the Department by contacting one of the Radiation Division's staff scientists directly via telephone regarding a suspected excessive exposure that occurred at approximately 9:00 AM. Although the suspected excessive exposure was reported to the Department within twenty-four (24) hours of discovery, the RSO did not notify the Office of Environmental Compliance using the phone number set forth in the regulations. The correspondence dated January 11, 2019, stated the Respondent conducted a review of proper notification procedures with all RSOs and ARSOs. On or about October 25, 2018, the Respondent updated their emergency response protocol to include the Office of Environmental Compliance phone number set forth in the regulations.

- B. The Respondent failed to perform a physical radiation survey after each radiographic exposure to ensure that the sealed source has been returned to its shielded position, in violation of LAC 33:XV.587.B. Specifically, the Respondent failed to do a proper radiation survey after initially attempting to retract the source to the shielded position. Following the incident, the Respondent conducted an internal investigation. Mr. Hoang stated that, at the time of the incident, he surveyed the exposure device with his survey instrument set to the 10x scale, which indicates a radiation field greater than one hundred (100) mR/hr, and did not observe a high deflection of the instrument needle across the dial at any time during his survey. The investigation revealed the source was displaced from the shielded position by approximately ten and three-fourths (10.75) inches and was likely lodged in the source guide tube approximately four (4) inches outside the bayonet. The Respondent's ARSO verified the survey meter's proper functionality and the RSO verified the survey meter's correct calibration; therefore, the Respondent's failure to perform a proper radiation survey was not due to instrument malfunction. Additionally, Mr. Lafleur and Mr. Hoang stated they did not perform a radiation survey of the exposure device after the source was successfully shielded and prior to breaking down the device in preparation for storage of the device in the crew's transport vehicle. The correspondence dated January 11, 2019, stated the Respondent trained all radiographers on proper use of survey meters, locking indicators, and equipment use. This training included a review of the incident's sequence of events, root causes, and lessons learned. Mr. Lafleur ceased any and all radiography operations immediately following his excessive exposure on October 22, 2018. On or about January 11, 2019, Mr. Lafleur was permanently moved into a non-radiography position and his film badge was terminated. As of November 1, 2018, Mr. Hoang is no longer employed by the Respondent.
- C. The Respondent failed to control the annual occupational dose to individual adults to a shallow dose equivalent to 0.5 Sv (50 rem) to the skin of the whole body or to the skin of any extremity, in violation of LAC 33:XV.410.A.2.b. Specifically, on October 25, 2018, the Respondent submitted their internal investigation findings. The Respondent's calculation of the extremity dose to

the right hand received by Mr. Lafleur was 50.81 rem, which is an extremity excessive dose. Additional information provided by Mr. Lafleur during the investigation interview indicated his hand may have received as much as 100 rem. The correspondence dated January 11, 2019, stated Mr. Lafleur ceased any and all radiography operations immediately following his excessive exposure on October 22, 2018. On or about January 11, 2019, Mr. Lafleur was permanently moved into a non-radiography position and his film badge was terminated.

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 Jennifer Boudreaux at (225) 219-3636 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.Chapter 7. 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.

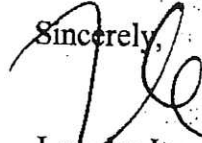
Capitol Ultrasonics, LLC

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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/JMB/jmb

Alt ID No. LA-5838-L01

c: **CAPITOL ULTRASONICS, LLC**

c/o Brenton Collinsworth

P.O. Box 53248

Baton Rouge, LA 70892

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-19-00024	Contact Name	Jennifer Boudreaux
Agency Interest (AI) Nos.	2638 & 210735	Contact Phone No.	(225) 219-3636
Alternate ID No.	LA-5838-L01		
Respondent:	Capitol Ultrasonics, LLC	Facility Name:	ExxonMobil Fuels & Lubricants Co. - Baton Rouge Refinery
	c/o Alan Casetetter	Physical Location:	4045 Scenic Highway
	Agent for Service of Process		
	1021 Margarita Drive	City, State, Zip:	Baton Rouge, LA 70805
	Breaux Bridge, LA 70517	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 33:1.Subpart1.Chapter7.

In order to resolve any claim for civil penalties for the violations in **NOTICE OF POTENTIAL PENALTY** («Tracking_»), 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** («Tracking_»), 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** («Tracking_») 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: Jennifer Boudreaux