

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

DATON CONTRACTING, L.L.C.

AI # 198829

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

* Settlement Tracking No.
* SA-MM-19-0023
*
* Enforcement Tracking No.
* MM-CN-15-01441
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* Docket No. 2017-2212-EQ
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SETTLEMENT

The following Settlement is hereby agreed to between Daton Contracting, 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 owns and/or operates a land clearing site located in Hammond, Tangipahoa Parish, Louisiana (“the Facility”).

II

On January 4, 2016, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. MM-CN-15-01441 (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 SEVEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (7,500.00), of which Seven Hundred Twenty-Six and 74/100 Dollars (\$726.74) 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 Tangipahoa 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.

DATON CONTRACTING, L.L.C.

BY: D. Clayton Fawcett
(Signature)

D. Clayton Fawcett
(Printed)

TITLE: MEMBER

THUS DONE AND SIGNED in duplicate original before me this 11th day of October, 20 19, at Baton Rouge, LA.



Darla Bourgeois
NOTARY PUBLIC (ID # 137021)

Darla Bourgeois
(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 18th day of Dec, 20 19, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 19181)

Perry Theriot
(stamped or printed)

Approved: [Signature]
Lourdes Iturralde, Assistant Secretary



BOBBY JINDAL
GOVERNOR

PEGGY M. HATCH
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

CERTIFIED MAIL (7004 2510 0005 5753 3960)
RETURN RECEIPT REQUESTED

DATON CONTRACTING, L.L.C.
c/o Darrell Fauntleroy
Agent for Service of Process
82221 Louisiana Highway 437
Covington, Louisiana 70435

**RE: CONSOLIDATED COMPLIANCE ORDER
& NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. MM-CN-15-01441
AGENCY INTEREST NO. 198829**

Dear Sir/Madam:

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 **DATON CONTRACTING, L.L.C. (RESPONDENT)** for the violation(s) described therein.

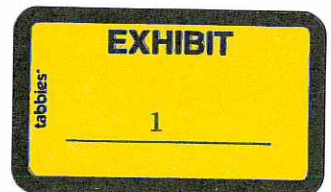
Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violation(s) cited in the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** could result in the issuance of a civil penalty or other appropriate legal actions.

Any questions concerning this action should be directed to Afton J. Bessix at (225) 219-3760.

Sincerely,

Celena J. Cage
Administrator
Enforcement Division

CJC/AJB/amh
Alt ID No. N/A
Attachment



c: Clayton Fauntleroy
P.O. Box 1510
Folsom, Louisiana 70437

STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

IN THE MATTER OF

DATON CONTRACTING, L.L.C.
TANGIPAHOA PARISH
ALT ID NO. N/A

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

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ENFORCEMENT TRACKING NO.

MM-CN-15-01441

AGENCY INTEREST NO.

198829

CONSOLIDATED
COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **DATON CONTRACTING, L.L.C. (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 owns and/or operates a Hammond land clearing site (the site), located at the east end of Kingland Drive in Hammond, Tangipahoa Parish, Louisiana. The Respondent does not have a Louisiana Pollutant Discharge Elimination System (LPDES) permit or other authority to discharge process area storm water to waters of the state. The facility is discharging process area storm water into an unnamed ditch, thence into Big Branch Marsh, thence into Tangipahoa River, all waters of the state.

II.

On or about October 12, 2015, November 25, 2015, and December 1, 2015, the Department received a citizen's complaint describing land clearing burning near residences and occurring at all hours of the day. The complainant also stated that the smoke was getting into their homes and making them ill. During the course of the inspections by the Department on or about October 16, 2015,

November 30, 2015, and December 2, 2015, several occurrences of burning land-clearing debris within 1,000 feet of a dwelling were observed. The inspection also revealed an unauthorized discharge of storm water runoff from the site. The Department also inspected the site on October 23, 2015; however, no burning was occurring and there were no burn piles on site. A representative of the Respondent was contacted by the Department on October 16, 2015 and October 29, 2015, and informed that the location of the burning must be at least 1,000 feet from any structure not located on the property and burning may not be conducted after 5:00 p.m. as per LAC 33:III.1109.D.

III.

On or about October 16, 2015, October 23, 2015, November 30, 2015, and December 2, 2015, the Department performed inspections of the Respondent's site to determine the degree of compliance with the Act, Air Quality, and Water Quality Regulations.

While the Department's investigation is not yet complete, the following violations were noted during the course of the inspections.

- A. During the course of the inspection on or about October 16, 2015, large land-clearing debris piles were noted smoldering and smoking less than 1,000 feet from the closest residence. At the time of the inspections on or about November 30, 2015 and December 2, 2015, the inspector observed several piles burning less than 1,000 feet from a private residence. Each failure to ensure that the location of the burn piles are at least 1,000 feet from any dwelling other than a dwelling located on the property on which the burning is conducted is a violation of LAC 33:III.1109.D.6.b and La.R.S. 30:2057(A)(2).
- B. During the course of the inspection on or about October 16, 2015, a facility representative stated that burning has continued after 5:00pm. The Respondent's failure to conduct burning only between the hours of 8:00 a.m. and 5:00 p.m. in piles of combustible material of such size to allow complete reduction in this time interval is a violation of LAC 33:III.1109.D.6.e and La. R.S. 30:2057(A)(2).
- C. An inspection conducted by the Department on or about December 2, 2015, revealed that the Respondent failed to submit a Notice of Intent to Discharge for coverage

under LPDES permit LAR100000. Failure to submit an application to discharge is a violation of La. R.S. 30:2076(A)(3), and LAC 33:IX.2511.C.1.

COMPLIANCE ORDER

Based on the foregoing, the Respondent is **hereby ordered**:

I.

To take, immediately upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to meet and maintain compliance with the Act, Air Quality, and Water Quality Regulations.

II.

To immediately develop and submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, a comprehensive best management plan (BMP) that includes measures to be taken to ensure compliance with the Air Quality Regulations including, but not limited to LAC 33:III.1109, at the site or any other current or future site/residence preparation, construction, maintenance and restoration activities. The plan shall also include specific detailed measures to be taken to ensure open burning is conducted at least 1,000 feet from any dwelling other than a dwelling or structure located on the property on which the burning is conducted, to ensure any outdoor burning is conducted and completed between the hours of 8:00 a.m. and 5:00 p.m., to develop alternate methods of debris removal when the requirements of LAC 33:III.1109 can not be complied with, to clearly establish documented communication of the comprehensive site plan to current or future contract employees, and procedures that will be implemented when wind speed and direction may adversely affect adjacent dwellings during site/residence preparation, construction, maintenance and restoration activities.

III.

To immediately cease, upon receipt of this **COMPLIANCE ORDER**, any unauthorized discharges from the Respondent's facility to waters of the state.

IV.

To submit, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, a completed LPDES Notice of Intent (NOI) to Discharge Storm Water Associated with Construction Activity Greater Than Five (5) Acres to the Permits Division. The completed LPDES Permit Application must follow all procedures and guidelines set forth in LAC 33:IX.Chapter 25. The three sets (the original and two copies) of the completed permit application should be submitted to the Permits Division at the address specified in this document:

Department of Environmental Quality
Office of Environmental Services
Post Office Box 4313
Baton Rouge, Louisiana 70821-4313
Attention: Water Permits Division

A copy of the completed application or notice of intent (NOI) must also be sent to the Enforcement Division. For help or questions concerning the application or notice of intent (NOI), you may contact LDEQ Small Business Assistance at 1-800-259-2890.

V.

To develop and implement, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, an adequate and complete SWP3 as required by the NOI, and submit a copy to the Enforcement Division within forty-five (45) days after receipt of this **COMPLIANCE ORDER**.

VI.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, a written report that includes a detailed description of the circumstances surrounding the cited violations and actions taken or to be taken to achieve compliance with the Order Portion of this **COMPLIANCE ORDER**. 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
Attn: Afton J. Bessix
Re: Enforcement Tracking No. MM-CN-15-01441
Agency Interest No. 198829

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. MM-CN-15-01441
Agency Interest No. 198829

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 than 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 Enforcement Contact Name at phone number 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 4 day of January, 2016.



D. Chance McNeely
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: Afton J. Bessix