

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

M.A. PATOUT & SON LIMITED, L.L.C.

AI # 1347

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

* Settlement Tracking No.
* SA-WE-20-0070
*
* Enforcement Tracking No.
* WE-PP-19-00057
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SETTLEMENT

The following Settlement is hereby agreed to between M.A. Patout & Son Limited, 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 raw cane sugar factory located in Jeanerette, Iberia Parish, Louisiana (“the Facility”).

II

On December 6, 2019, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. WE-PP-19-00057 (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 NINE THOUSAND AND NO/100 DOLLARS (\$9,000.00), of which Two Thousand One Hundred Twenty-Four and 88/100 Dollars (\$2,124.88) 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), permit record(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 Iberia 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.

M.A. PATOUT & SON LIMITED, L.L.C.

BY: Lance Weber
(Signature)

Lance Weber
(Printed)

TITLE: General Manager

THUS DONE AND SIGNED in duplicate original before me this 13th day of November, 20 20, at Jeanerette, Louisiana.

Gloria M. Gilmore
NOTARY PUBLIC (ID # 056449)

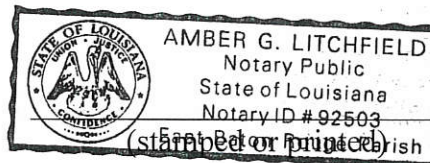
Gloria M. Gilmore
(stamped or printed)

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 February, 20 21, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 92503)



Approved: [Signature]
Lourdes Iturralde, Assistant Secretary

| | | | | |
|--|---|------------------------------------|--------------------------|--|
| LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF ENVIRONMENTAL COMPLIANCE ENFORCEMENT DIVISION POST OFFICE BOX 4312 BATON ROUGE, LOUISIANA 70821-4312 | | NOTICE OF POTENTIAL PENALTY | |  |
| Enforcement Tracking No. | WE-PP-19-00057 | Certified Mail No. | 7018 2290 0000 5826 2088 | |
| Agency Interest (AI) No. | 1347 | Contact Name | Jessie Canerday | |
| Alternate ID No. | LA0006033 | Contact Phone No. | (225) 219-3814 | |
| Respondent: | M. A. Patout & Son Limited, L.L.C. | Facility Name: | Enterprise Factory | |
| | c/o Jacques H. Hebert | Physical Location: | 3512 J Patout Burns Road | |
| | Agent for Service of Process | City, State, Zip: | Jeanerette, LA 70544 | |
| | 3512 J. Patout Burns Road Jeanerette, LA 70544 | Parish: | Iberia | |

This NOTICE OF POTENTIAL PENALTY is issued 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 30:2050.3(B).

FINDINGS OF FACT

An authorized representative of the Department inspected the abovementioned facility or conducted a file review of the facility to determine the degree of compliance with regulations promulgated in the Louisiana Administrative Code, Title 33. The State regulatory citations for the violation(s) identified during the inspection and/or file review are indicated below.

I. The Respondent owns and/or operates a raw cane sugar factory located at 3512 J. Patout Burns Road, Jeanerette, Iberia Parish, Louisiana. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) Permit LA0006033 on March 11, 2011, with an effective date of April 1, 2011, and expiration date of March 31, 2016. The Respondent submitted a renewal application on or about October 1, 2015, and LPDES Permit LA0006033 was administratively continued until it was reissued on March 27, 2018, with an effective date of May 1, 2018. LPDES Permit LA0006033 will expire on April 30, 2023. Under the terms and conditions of LPDES Permit LA0006033, the Respondent is permitted to discharge process wastewater, wastewater from filter mud and fly ash, cane washwater, floor washwater, steam condensate, belt filter washwater, boiler blowdown, spray pond overflow, and barometric condenser cooling water, process area stormwater runoff, vehicle/equipment washwater, treated sanitary wastewater, and non-process area stormwater runoff. Outfall 001 discharges into local drainage, thence into Patout Canal, and Outfalls 002 and 003 discharge into Weeks Canal, thence into Stumpy Bayou, all waters of the state.

The Respondent submitted responses dated March 5, 2019, October 10, 2019, and October 14, 2019, to WARNING LETTER WE-L-19-00057.

| | Date of Violation | Description of Violation |
|------|--|--|
| II. | Inspection(s) & File Review 10/30/2018 & 10/16/2019 | The Respondent failed to comply with LPDES permit LA0006033. Specifically, a review of Discharge Monitoring Reports (DMRs) revealed that the Respondent reported exceedances of permit effluent limitations for BOD and pH (see Table 1). (LA0006033 (before May 1, 2018, Part I, Effluent Limitations, page 2 of 4 and Part III, Section A.2; after May 1, 2018, Permit Requirements, page 1 of 8 and Standard Conditions for LPDES Permits, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.501.A) |
| III. | Inspection(s) & File Review 10/30/2018 & 10/16/2019 | The Respondent failed to sample the effluent from Outfall 001 on a monthly and semi-annual basis as required by LPDES Permit LA0006033. Specifically, the Respondent reported that analysis was not conducted for the following parameters and monitoring periods: oil and grease during May, June, and July 2018; total nitrogen during June 2018; and total phosphorus during June 2018. (LA0006033 (Permit Requirements, page 1 of 8 and Standard Conditions for LPDES Permits, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.501.A) |
| IV. | Inspection(s) 10/30/2018 | The Respondent failed to collect samples and analyze in accordance with Environmental Protection Agency (EPA) procedures. Specifically, pH samples exceeded the maximum holding time. In addition, pH samples were not refrigerated/cooled after collection. (LA0006033 (Standard Conditions for LPDES Permits, Sections A.2 and C.5.a), La. R.S. 30:2076(A)(3), LAC 33:IX.2701.J.4, and LAC 33:IX.2701.A) |
| V. | Inspection(s) 10/30/2018 | The Respondent failed to maintain an adequate Spill Prevention and Control (SPC) plan. Specifically, the SPC plan did not include the identity, amount, and location of substances stored at the facility. (La. R.S. 30:2076(A)(3) and LAC 33:IX.907.B.7) Additionally, the SPC plan did not include a prediction of the direction, rate of flow, and total quantity of applicable substances which could be spilled at the facility where experience indicates a reasonable potential for equipment failure and/or human error. (La. R.S. 30:2076(A)(3) and LAC 33:IX.907.C) The Department received a corrected SPC plan on or about October 10, 2019. |
| VI. | Inspection(s) 10/30/2018 | The Respondent failed to implement the Storm Water Pollution Prevention Plan (SWPPP). Specifically, a representative of the facility stated that storm water inspections have not been documented, and the SWPPP was not made available upon request. (LA0006033 (Permit Requirements, Narrative Requirements, N-8 and Standard Conditions for LPDES Permits, Section A.2), La. R.S. 2076(A)(3), and LAC 33:IX.2701.A) The Department received a current SWPPP on or about October 10, 2019, and received a copy of the documented 2019 annual storm water inspection on or about October 14, 2019. |
| VII. | Inspection(s) & File Review 10/30/2018 & 10/16/2019 | The Respondent caused and/or allowed the discharge of wastewater from a source or location not authorized by the permit and failed to maintain waters of the state in accordance with the Water Quality Regulations. Specifically, at the time of inspection, the inspector observed an unauthorized discharge or evidence of unauthorized discharge from the following four (4) locations: sump area for diffuser; "Old Pile" of bagasse; open ditch system approximately one (1) mile south of the facility; and the equipment wash rack. The water in the receiving stream at the sump area for diffuser and the "Old Pile" of bagasse was black in color with floating solids and foam present (see Table 2). The unauthorized discharge is in violation of La. R.S. 30:2076(A)(1)(a) and LAC 33:IX.501.D. The failure to maintain waters of the state in accordance with the Water Quality Regulations is in violation of La. R.S. 30:2076(A)(3) and LAC 33:IX.1113.B.1. In responses to WARNING LETTER WE-L-19-00057, dated March 5, 2019 and October 10, 2019, the Respondent provided documentation detailing how the violations were addressed (see Table 2). |



| 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 Jessie Canerday at (225) 219-3814 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. 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. |
| IV. | 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. |
| V. | 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. |

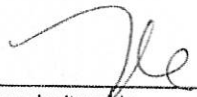
| CONTACTS AND SUBMITTAL OF INFORMATION | |
|---|--|
| Enforcement Division: | Physical Address (if hand delivered): |
| Louisiana Department of Environmental Quality Office of Environmental Compliance Water Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Jessie Canerday | Department of Environmental Quality 602 N Fifth Street Baton Rouge, LA 70802 |

HOW TO REQUEST CLOSURE OF THIS NOTICE OF POTENTIAL PENALTY

To expedite closure of the 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 Department assesses civil penalties based on LAC 33:I.Subpart1.Chapter7.
- The Respondent may offer a settlement amount but the Department is under no obligation to enter into settlement negotiations. It is decided upon on a discretionary basis.
- 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.
- Before requesting closure of this NOTICE OF POTENTIAL PENALTY, please contact the Financial Services Division at 225-219-3865 or email them at DEQ-WWWFinancialServices@la.gov to determine if you owe outstanding fees.

If you have questions or need more information, you may contact Jessie Canerday at (225) 219-3814 or jessie.canerday@la.gov.



 Lourdes Iturralde
 Assistant Secretary
 Office of Environmental Compliance

Date: 12-6-19

- Attachment(s)
- Request to Settle
 - Settlement Agreements Flyer
 - Tables 1 & 2

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. | WE-PP-19-00057 | Contact Name | Jessie Canerday |
| Agency Interest (AI) No. | 1347 | Contact Phone No. | (225) 219-3814 |
| Alternate ID No. | LA0006033 | | |
| Respondent: | M. A. Patout & Son Limited, L.L.C. | Facility Name: | Enterprise Factory |
| | c/o Jacques H. Hebert | Physical Location: | 3512 J Patout Burns Road |
| | Agent for Service of Process | | |
| | 3512 J. Patout Burns Road | City, State, Zip: | Jeanerette, LA 70544 |
| | Jeanerette, LA 70544 | Parish: | Iberia |

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 (WE-PP-19-00057), 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 (WE-PP-19-00057), 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 (WE-PP-19-00057) 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
 Post Office Box 4312
 Baton Rouge, LA 70821
 Attn: Jessie Canerday

If you have questions or need more information, you may contact Jessie Canerday at (225) 219-3814 or jessie.canerday@la.gov.

Table 1. Effluent Limit Exceedances

| Date | Outfall | Parameter | Permit Limit | Sample Value |
|------------|---------|---------------------------------------|--------------|--------------|
| 07/31/2015 | 001A | BOD, 5-day, 20 deg. C Daily Maximum | 15 mg/L | 20 mg/L |
| 07/31/2015 | 001A | BOD, 5-day, 20 deg. C Monthly Average | 10 mg/L | 13 mg/L |
| 06/30/2016 | 001A | BOD, 5-day, 20 deg. C Daily Maximum | 15 mg/L | 20 mg/L |
| 06/30/2016 | 001A | BOD, 5-day, 20 deg. C Monthly Average | 10 mg/L | 11 mg/L |
| 06/30/2016 | 001A | pH Instantaneous Maximum | 9 SU | 9.37 SU |
| 07/31/2016 | 001A | BOD, 5-day, 20 deg. C Daily Maximum | 15 mg/L | 16 mg/L |
| 08/31/2016 | 001A | pH Instantaneous Minimum | 6 SU | 5.99 SU |
| 09/30/2016 | 001A | pH Instantaneous Minimum | 6 SU | 5.95 SU |
| 08/31/2017 | 001A | BOD, 5-day, 20 deg. C Daily Maximum | 15 mg/L | 18 mg/L |
| 08/31/2017 | 001A | BOD, 5-day, 20 deg. C Monthly Average | 10 mg/L | 13 mg/L |
| 08/31/2018 | 001A | pH Instantaneous Minimum | 6 SU | 5.87 SU |

Table 2. Unauthorized Discharges

| Location | Description |
|--|---|
| Diffuser sump area* | <p>Inspector observed evidence of overflows to local drainage (Inspection report attachment #4, photos 1, 2, & 3 of 10). There was an erosion channel with grass laid down in the direction of the local drainage. This erosion channel was evident from Google Earth imagery (Inspection report attachment #5, image 1 of 8). The erosion channel was approximately five (5) feet deep at its deepest point. The local drainage was black in color with floating solids and foam (Inspection report attachment #4, photo 4 of 10).</p> <p>In a response dated March 5, 2019, the Respondent stated that the levee, between the sump and the local drainage, was built up by an additional eighteen (18) inches.</p> <p>On October 10, 2019, the Respondent submitted photos of the levee covered in vegetation and of the water in the receiving stream. The water in the receiving stream is clean with no indication of foam or solids.</p> |
| "Old Pile" of bagasse* | <p>Runoff from the bagasse storage area was actively discharging through a manmade ditch into the local drainage (Inspection report attachment #4, photos 5, 6, & 7 of 10). The discharge and receiving stream was black in color with foam and solids present. Another manmade ditch to divert water from the bagasse pile into local drainage (Inspection report attachment #4, photo 8 of 10) was observed, but was not actively discharging at the time. Additionally, multiple drainage points along the south and west boundaries of the "Old Pile" are present on Google Earth imagery (Inspection report attachment #5, image 3 of 8).</p> <p>In a response dated March 5, 2019, the Respondent stated that a berm along the south boundary of the bagasse storage area, which prevented storm water runoff from entering local drainage, was significantly eroded at the time of inspection. The berm was repaired immediately following inspection. Improvements were made to the ditch, which carries storm water from the bagasse storage area to the settling ponds. In addition, the newly updated SWPPP includes a requirement to inspect the integrity of the berm during facility inspections.</p> <p>On October 10, 2019, the Respondent submitted a photo of the repaired, vegetated levee between the bagasse storage area and the local drainage ditch. Additionally, the Respondent submitted a photo of the water in the local drainage ditch on the south side of the bagasse pile. No discoloration, foam, or solids are present in the photo.</p> |
| Open ditch system approximately one (1) mile south of the facility | <p>Inspector observed an earthen dam along the path of an internal ditch system. It was evident that the dam was placed within the last two (2) months. A facility representative stated that during grinding season, the dam is installed to direct the flow of wastewater from the factory to the treatment ponds; the dam is removed after grinding season ends. Time lapse Google Earth imagery (Inspection report attachment #5, images 4, 5, 6, & 7 of 8) supports this statement. However, the facility is partially staffed and is active all year. When the dam is removed, the facility has unauthorized discharge to waters of the state of storm water runoff, vehicle/equipment wash water, treated sanitary wastewater, non-process area storm water runoff, and residual process wastewater.</p> <p>In a response received October 10, 2019, the Respondent stated that procedures were changed to maintain the dam permanently/year-round. The Respondent submitted photos showing the dam in place.</p> |
| Equipment wash rack | <p>A tractor was being washed (Inspection report attachment #4, photo 9 of 10), and discharge was flowing from the south side of wash rack (Inspection report attachment #5, image 8 of 8). The discharge drained to the south side of the "Old Pile" of bagasse, and was actively discharging to local drainage (Inspection report attachment #4, photo 10 of 10).</p> <p>In a response received October 10, 2019, the Respondent stated that a portion of the subject drainage ditch was filled to remove any possibility of water flowing to the south into the local drainage. The Respondent submitted a photo of the ditch partially filled.</p> |

*Failed to maintain waters of the state in accordance with the Water Quality Regulations.

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 <u>EDMS</u> using the following filters Media: Air Quality, Function: Enforcement; Description: Settlement |
| Settlement Agreements | <u>Enforcement Division's website</u> specific examples can be provided upon request |
| Penalty Determination Method | <u>LAC 33:1 Chapter 7</u> |
| Beneficial Environmental Projects | <u>LAC 33:1 Chapter 25</u> <u>FAQs</u> |
| Judicial Interest..... | <u>provided by the Louisiana State Bar Association</u> |

