

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CUMMINS INC. (OF INDIANA)

AI # 9629

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

* Settlement Tracking No.
* SA-AE-22-0069
*
* Enforcement Tracking No.
* AE-PP-20-00287
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SETTLEMENT

The following Settlement is hereby agreed to between Cummins Inc. (Registered as a foreign corporation pursuant to La. R.S. 12:303(A)(3) to do business in the state of Louisiana as Cummins Inc. (of Indiana)), (“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 corporation that owns and/or operates a diesel engine repair and rebuild facility located in Kenner, Jefferson Parish, Louisiana (“the Facility”).

II

On April 1, 2021, the Department issued to Respondent a Notice of Potential Penalty, Enforcement Tracking No. AE-PP-20-00287 (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 TWO THOUSAND AND NO/100 DOLLARS (\$2,000.00), of which Five Hundred Fifty-Nine and 76/100 Dollars (\$559.76) 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 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 Jefferson 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.

CUMMINS INC. (Registered as a foreign corporation pursuant to La. R.S. 12:303(A)(3) to do business in the state of Louisiana as Cummins Inc. (of Indiana))

BY: [Signature]
(Signature)

JOSHUA P. O'ROURKE
(Printed)

TITLE: AREA VICE PRESIDENT

THUS DONE AND SIGNED in duplicate original before me this 14 day of FEBRUARY, 20 23, at KENNER, LOUISIANA.



[Signature]
NOTARY PUBLIC (ID # 160063)

FAITH E. ORSINI-CALIX
(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Roger W. Gingles, Secretary

BY: [Signature]
Celena J. Cage, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 31st day of May, 20 23, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 66881)

Jay L. Glorioso
(stamped or printed)

Approved: [Signature]
Celena J. Cage, 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. | AE-PP-20-00287 | Certified Mail No. | 7017 0530 0000 5978 5939 |
| Agency Interest (AI) No. | 9629 | Contact Name | Gabrielle Green |
| Alternate ID No. | 1340-00364 | Contact Phone No. | (225) 219-3468 |
| Respondent: | Cummins Inc. (of Indiana) | Facility Name: | Kenner Facility |
| | c/o Corporation Service Company | Physical Location: | 110 East Airline Drive |
| | Agent for Service of Process | | |
| | 501 Louisiana Avenue Baton Rouge, LA 70802 | City, State, Zip: | Kenner, LA 70062 |
| | | Parish: | Jefferson |

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).

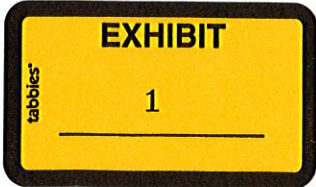
FINDINGS OF FACT

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 diesel engine repair and rebuild facility located at 110 East Airline Drive in Kenner, Jefferson Parish, Louisiana. The facility currently operates under Minor Source Air Permit No. 1340-00364-01, which was issued on February 27, 2020, and expires on February 27, 2030. | |
| | Date of Violation | Description of Violation |
| II. | File Review 12/17/2020 | The Respondent became the owner/operator of the aforementioned facility on January 1, 2017. The Respondent submitted a Notification of Change (NOC-1) Form to the Department on or about November 6, 2019. The failure to submit the NOC-1 form and associated documentation to the Department within forty-five (45) days after a change in owner/operator of a permitted facility is a violation of LAC 33:I.1907.B, LAC 33:III.517.G, and La. R.S. 30:2057(A)(2). |
| III. | File Review 12/17/2020 | The Respondent acquired ownership and/or operational control of the facility on January 1, 2017. The facility's air permit was transferred from Cummins Mid-South LLC to Cummins Inc. (of Indiana) on February 7, 2020. The unauthorized operation of the facility from the date the facility was acquired until the permit was transferred is a violation of LAC 33:III.501.C.2, La. R.S. 30:2057(A)(1), and La. R.S. 30:2057(A)(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 Gabrielle Green at (225) 219-3468 or Gabrielle.Green2@la.gov 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 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. |
| 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 Air Enforcement Division P.O. Box 4312 Baton Rouge, LA 70821 Attn: Gabrielle Green | 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.

If you have questions or need more information, you may contact Gabrielle Green at (225) 219-3468 or Gabrielle.Green2@la.gov.



Lourdes Iturralde
Assistant Secretary
Office of Environmental Compliance

Date:

4-1-2024

cc: Cummins Inc. (of Indiana)
Alexis M. Herman, Director
500 Jackson Street
Columbus, IN 47201

Attachment(s)

- Request to Settle
- Settlement Offer Brochure

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. | AE-PP-20-00287 | Contact Name | Gabrielle Green |
| Agency Interest (AI) No. | 9629 | Contact Phone No. | (225) 219-3468 |
| Alternate ID No. | 1340-00364 | Contact Email | Gabrielle.Green2@la.gov |
| Respondent: | Cummins Inc. (of Indiana) | Facility Name: | Kenner Facility |
| | c/o Corporation Service Company | Physical Location: | 110 East Airline Drive |
| | Agent for Service of Process | | |
| | 501 Louisiana Avenue | City, State, Zip: | Kenner, LA 70062 |
| | Baton Rouge, LA 70802 | Parish: | Jefferson |

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 (AE-PP-20-00287)**, 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 (AE-PP-20-00287)**, 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 (AE-PP-20-00287)** 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: Gabrielle Green

If you have questions or need more information, you may contact Gabrielle Green at (225) 219-3468 or Gabrielle.Green2@la.gov

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

