

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

ERGON – BATON ROUGE, INC.

AI # 3241

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT

LA. R.S. 30:2001, ET SEQ.

* Settlement Tracking No.

* SA-AE-11-0041

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* Enforcement Tracking No.

* AE-CN-08-0133

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SETTLEMENT

The following Settlement is hereby agreed to between ERGON – Baton Rouge, Inc. (“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 benzene and vinyl acetate storage and transfer facility including a barge unloading dock facility located in Baton Rouge, East Baton Rouge Parish, Louisiana (“the Facility”).

II

On September 17, 2010, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-08-0133, which was based upon the following findings of fact:

The Respondent owns and/or operates ERGON – Baton Rouge, a benzene and vinyl acetate storage and transfer facility including a barge unloading dock (the Facility) located at 390 West Thomas Road in Baton Rouge, East Baton Rouge Parish, Louisiana. The facility currently operates

under Air Permit No. 0840-00134-05, issued on or about March 24, 2000. The facility is subject to NESHAP 40 CFR 61, Subpart Y – National Emission Standards for Benzene Emissions From Benzene Storage Vessels, and to NESHAP 40 CFR 61, Subpart BB – National Emission Standard for Benzene Emissions From Benzene Transfer Operations.

On or about January 25, 2010, a file review of the facility was performed to determine the degree of compliance with the Act and the Air Quality Regulations.

The following violations were noted during the course of the file review:

- A. In a minor source permit modification application dated May 5, 2005, the Respondent requested that Air Permit No. 0840-00134-05 be modified to accommodate previously unlisted benzene emissions from deck fitting losses for Benzene Storage Tank 1, (Emission Point T-1). The failure to completely identify all emission sources in an Air Permit Application is a violation of LAC 33:III.501.C.1, LAC 33:III.501.C.4, LAC 33:III.919.B and La. R.S. 30:2057(A)(2).
- B. In a minor source permit modification application dated May 5, 2005, the Respondent requested that Air Permit No. 0840-00134-05 be modified to accommodate previously unlisted benzene emissions from deck fitting losses for Benzene Storage Tank 1, (Emission Point T-1). The Respondent has operated that source since the tank was put into service. Benzene emissions would rise from 0.27 tons per year (tpy) to 0.61 tpy, an increase of 0.34 tpy. The higher emissions had not been identified in Air Permit No. 0840-00134-05 or in previous operating permit. Operating any unpermitted source is a violation of LAC 33:III.501.C.2, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).
- C. In a minor source permit modification application dated May 5, 2005, the Respondent requested that Air Permit No. 0840-00134-05 be modified to add Particulate Matter (PM₁₀) and Sulfur Dioxide (SO₂) emissions for Barge Loading Dock Flare (Emission Point 1-80). Those emissions had not been identified when Emission Point 1-80 was listed as a replacement source when Air Permit 0840-00134-04 was issued on or about August 21, 1999. The failure to completely identify all emissions in an Air Permit Application is a violation of LAC 33:III.501.C.1, LAC 33:III.501.C.4, LAC 33:III.919.B, and La. R.S. 30:2057(A)(2).
- D. In a minor source permit modification application dated May 5, 2005, the Respondent requested that Air Permit No. 0840-00134-05 be modified to add

Particulate Matter (PM₁₀) and Sulfur Dioxide (SO₂) emissions and correct Nitrogen Oxides (NO_x) and Carbon Monoxide (CO) emissions for Barge Loading Dock Flare (Emission Point 1-80). Each emission rate in tpy is listed in the following table:

Pollutant	Previous	Modification	Change
PM ₁₀	0.00	0.12	+0.12
SO ₂	0.00	0.01	+0.01
NO _x	0.97	1.04	+0.07
CO	5.23	5.64	+0.41

The operation of each unidentified, and of each incorrectly identified, source, is a violation of LAC 33:III.501.C.2, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- E. The facility is subject to NESHAP 40 CFR 61, Subpart BB – National Emission Standard for Benzene Emissions From Benzene Transfer Operations. Each failure to ensure that benzene emissions from transfer operations are properly listed in the Emission Inventory Statement is a violation of LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2).

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 FOUR THOUSAND FIVE HUNDRED THIRTY-THREE AND 76/100 DOLLARS (\$4,533.76), of which Three Hundred Eighty-Three and 76/100 Dollars (\$383.76) 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 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.

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

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, wording, and size 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.

IX

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).

X

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement.

XI

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.

ERGON – BATON ROUGE, INC.

BY: _____
(Signature)

(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20_____, at _____.

NOTARY PUBLIC (ID # _____)

(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Peggy M. Hatch Secretary

BY: _____
Cheryl Sonnier Nolan, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20_____, at Baton Rouge, Louisiana.

NOTARY PUBLIC (ID # _____)

(stamped or printed)

Approved: CSN
Cheryl Sonnier Nolan, Assistant Secretary