

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

CERTAINTEED CORPORATION

AI # 3063

PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT

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

\* Settlement Tracking No.  
\* SA-WE-18-0074  
\*  
\* Enforcement Tracking No.  
\* WE-CN-18-00369  
\*  
\*  
\*  
\*

SETTLEMENT

The following Settlement is hereby agreed to between CertainTeed Corporation (“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 polymer plant located in Westlake, Calcasieu Parish, Louisiana (“the Facility”).

II

On August 7, 2018, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. WE-CN-18-00369 (Exhibit 1).

The following violations, although not cited in the foregoing enforcement action, are included within the scope of this settlement:

File reviews conducted by the Department on or about October 2, 2018, and November 8, 2018, revealed that the Respondent had effluent limitation exceedances. These effluent limitation exceedances, as reported by the Respondent on Discharge Monitoring Reports

(DMRs) and Non-Compliance Reports (NCRs) are summarized below:

<b>Monitoring Period End Date</b>	<b>Outfall</b>	<b>Parameter</b>	<b>Permit Limit</b>	<b>Reported Value</b>
09/30/2018	01A-A	BOD <sub>5</sub> Monthly Average - lb/d	32	45.4
		pH Instantaneous Minimum - SU	6	2.6

Each effluent exceedance is a violation of LPDES permit LA0041025 (Effluent Limitations and Monitoring Requirements, Page 2 of 9; and Standard Conditions for LPDES Permits, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.501.A.

### 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 SEVEN THOUSAND AND NO/100 DOLLARS (\$7,000.00), of which Six Hundred Fifty-One and 72/100 Dollars (\$651.72) 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 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

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 Calcasieu 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 twenty (20) 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.

**CERTAINTEED CORPORATION**

BY: [Signature]  
(Signature)

Andrew J. Esposito  
(Printed)

TITLE: Plant Manager

THUS DONE AND SIGNED in duplicate original before me this 4 day of April, 20 19, at Lake Charles LA.

[Signature]

NOTARY PUBLIC (ID # \_\_\_\_\_)

Lisa Desormeaux #65546  
Louisiana Notary Public  
Commissioned for Life

(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 2nd day of Aug, 20 19, 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  
August 7, 2018

CERTIFIED MAIL (7017 0530 0000 5978 9777)  
RETURN RECEIPT REQUESTED

**CERTAINT EED CORPORATION**  
c/o C T Corporation System  
3867 Plaza Tower Drive  
Baton Rouge, LA 70816

**RE: CONSOLIDATED COMPLIANCE ORDER  
& NOTICE OF POTENTIAL PENALTY  
ENFORCEMENT TRACKING NO. WE-CN-18-00369  
AGENCY INTEREST NO. 3063**

Dear Sir:

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 **CERTAINT EED CORPORATION (RESPONDENT)** for the violations described therein.

Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violations 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 Bernie Boyett at (225) 219-0783.

Sincerely,

Celena J. Cage  
Administrator  
Enforcement Division

CJC/BKB/bkb  
Alt ID No. LA0041025  
Attachments

c: e-copy-DHH/Office of Public Health



**STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF ENVIRONMENTAL COMPLIANCE**

<b>IN THE MATTER OF</b>	*	
	*	
<b>CERTAINEED CORPORATION</b>	*	<b>ENFORCEMENT TRACKING NO.</b>
<b>CALCASIEU PARISH</b>	*	
<b>ALT ID NO. LA0041025</b>	*	<b>WE-CN-18-00369</b>
	*	
	*	<b>AGENCY INTEREST NO.</b>
	*	
<b>PROCEEDINGS UNDER THE LOUISIANA</b>	*	<b>3063</b>
<b>ENVIRONMENTAL QUALITY ACT,</b>	*	
<b>La. R.S. 30:2001, <u>ET SEQ.</u></b>	*	

**CONSOLIDATED  
COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY**

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **CERTAINEED CORPORATION (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) and 30:2050.2.

**FINDINGS OF FACT**

I.

The Respondent owns and/or operates a polymer plant located at 3300 Pete Manena Road in Westlake, Calcasieu Parish, Louisiana. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0041025 on September 16, 2009, with an effective date of November 1, 2009, and an expiration date of October 31, 2014. The Respondent submitted a written request, dated July 30, 2014, to the Department to extend the deadline for the LPDES permit renewal application until September 1, 2014. The Department granted the extension on August 1, 2014. The Respondent submitted an LPDES permit renewal application to the Department on or about August 29, 2014, and LPDES permit LA0041025 was

administratively continued. LPDES permit LA0041025 was reissued on August 10, 2015, with an effective date of October 1, 2015, and an expiration date of September 30, 2020. LPDES permit LA0041025 authorizes the Respondent to discharge process wastewater and process area stormwater, firefighting activity water, utility water, wash water, cooling tower blowdown, boiler blowdown, conveyor blower air cooling water, air compressor condensate, water well test water, treated sanitary wastewater, and non-process area stormwater to the Axiall Silica Pigments Ditch, thence into the Calcasieu River, waters of the state.

## II.

A file review conducted by the Department on or about June 20, 2018, revealed that the Respondent had effluent limitation exceedances. These effluent limitation exceedances, as reported by the Respondent on Discharge Monitoring Reports (DMRs) and Non-Compliance Reports (NCRs), are summarized in attached Table A. Each effluent exceedance is a violation of LPDES permit LA0041025 (Effluent Limitations and Monitoring Requirements, Page 2 of 7 prior to October 1, 2015, Pages 2 and 8 of 9 after October 1, 2015; and Standard Conditions for LPDES Permits, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.501.A.

## III.

A file review conducted by the Department on or about June 20, 2018, revealed that the Respondent failed to submit DMRs in a timely manner. The Respondent is required to submit monthly DMRs no later than the 15<sup>th</sup> day of the month following each monthly monitoring period, quarterly DMRs no later than the 15<sup>th</sup> day of the month following each calendar quarter, and semiannual DMRs no later than 15<sup>th</sup> day of the month following each semiannual monitoring period. Specifically, the Respondent failed to submit the following DMRs by the due dates:

<b>Monitoring Period End Date</b>	<b>Outfall</b>	<b>Due Date</b>	<b>Date Received</b>
10/31/2015	01B-A	11/15/2015	02/22/2016
11/30/2015	01B-A	12/15/2015	02/22/2016
12/31/2015	01B-A	01/15/2016	02/22/2016
	01B-ME		
	01B-MY		
	01B-Q		
	01B-S		
04/30/2016	01A-A	05/15/2016	07/05/2016
	01B-A		
	101-A		
11/30/2016	101-A	12/15/2016	01/25/2017



Each failure to submit a DMR in a timely manner is a violation of LPDES permit LA0041025 (Other Requirements, Section L; and Part III, Sections A.2 and D.4), La. R.S. 30:2076 (A)(3), and LAC 33:IX.2701.L.4.

**COMPLIANCE ORDER**

Based on the foregoing, the Respondent is hereby ordered:

I.

To immediately take, upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to achieve and maintain compliance with LPDES permit LA0041025 and the Water Quality Regulations including, but not limited to, complying with all effluent limitations and submitting timely DMRs.

II.

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  
**Attention: Bernie Boyett**  
**Enforcement Tracking No. WE-CN-18-00369**  
**Agency Interest No. 3063**

**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. WE-CN-18-00369**  
**Agency Interest No. 3063**

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 Division of Administrative Law's (DAL) Procedural Rules. 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 Bernie Boyett at (225) 219-0783 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.

The Department assesses civil penalties based on LAC 33:I.Subpart1.Chapter7. To expedite closure of this **NOTICE OF POTENTIAL PENALTY** portion, 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 **“CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE”** 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.

V.

This **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 7<sup>th</sup> day of August, 2018.

  
\_\_\_\_\_  
Lourdes Iturralde  
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: Bernie Boyett

# 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 33:1 Chapter 7](#)
- Beneficial Environmental Projects ..... [LAC 33:1 Chapter 25](#)  
[FAQs](#)
- Judicial Interest..... [provided by the Louisiana State Bar Association](#)



LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
 OFFICE OF ENVIRONMENTAL COMPLIANCE  
 ENFORCEMENT DIVISION  
 POST OFFICE BOX 4312  
 BATON ROUGE, LOUISIANA 70821-4312

**CONSOLIDATED COMPLIANCE ORDER &  
 NOTICE OF POTENTIAL PENALTY  
 REQUEST TO CLOSE**



Enforcement Tracking No.	WE-CN-18-00369	Contact Name	Bernie Boyett
Agency Interest (AI) No.	3063	Contact Phone No.	(225) 219-0783
Alternate ID No.	LA0041025		
Respondent:	CERTAINT EED CORPORATION	Facility Name:	Lake Charles Polymer Plant
	c/o C T Corporation System	Physical Location:	3300 Pete Manena Road
	Agent for Service of Process		
	3867 Plaza Tower Drive	City, State, Zip:	Westlake, LA 70669
	Baton Rouge, LA 70816	Parish:	Plaquemines

**STATEMENT OF COMPLIANCE**

STATEMENT OF COMPLIANCE	Date Completed	Copy Attached?
A written report was submitted in accordance with Paragraph II of the "Order" portion of the <b>COMPLIANCE ORDER</b> .		
All items in the "Findings of Fact" portion of the <b>COMPLIANCE ORDER</b> were addressed and the facility is being operated to meet and maintain the requirements of the "Order" portion of the <b>COMPLIANCE ORDER</b> . Final compliance was achieved as of:		

**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 <b>NOTICE OF POTENTIAL PENALTY (WE-CN-18-00369)</b> , 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 <b>NOTICE OF POTENTIAL PENALTY (WE-CN-18-00369)</b> , 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. <ul style="list-style-type: none"> <li>• Monetary component = \$ _____</li> <li>• Beneficial Environmental Project (BEP) component (optional)= \$ _____</li> <li>• <b>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.</b></li> </ul>
	The Respondent has reviewed the violations noted in <b>NOTICE OF POTENTIAL PENALTY (WE-CN-18-00369)</b> and has attached a justification of its offer and a description of any BEPs if included in settlement offer.

<b>CERTIFICATION STATEMENT</b>		
<i>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.</i>		
Respondent's Signature	Respondent's Printed Name	Respondent's Title
Respondent's Physical Address	Respondent's Phone #	Date
<b>MAIL COMPLETED DOCUMENT TO THE ADDRESS BELOW:</b>		
Louisiana Department of Environmental Quality Office of Environmental Compliance Enforcement Division P.O. Box 4312 Baton Rouge, LA 70821 Attn: Bernie Boyett		



**CERTAINTED CORPORATION - AI 3063**  
**Table A - Effluent limitation Exceedances**

Monitoring Period End Date	Outfall	Parameter	Permit Limit	Sample Value	Units
09/30/2015	001-A	pH Instantaneous Maximum	9	9.6	SU
02/29/2016	01A-A	pH Instantaneous Minimum	6	3.7	SU
07/31/2016	01A-A	BOD, 5-day, 20 deg. C Monthly Average	32	37.72	lb/d
12/31/2016	01A-Q	Vinyl chloride Daily Maximum	.12	.21	lb/d
		Vinyl chloride Monthly Average	.07	.21	lb/d
02/28/2017	01A-A	pH Instantaneous Maximum	9	9.8	SU
03/31/2017	101-A	Coliform, fecal general Daily Maximum	400	>6000	#/100mL
04/30/2017	101-A	Coliform, fecal general Daily Maximum	400	1550	#/100mL
05/31/2017	01A-A	pH Instantaneous Maximum	9	11.1	SU
12/31/2017	01A-Q	Vinyl chloride Daily Maximum	.12	1.98	lb/d
		Vinyl chloride Monthly Average	.07	1.98	lb/d
	01A-Y	Acrylonitrile Daily Maximum	.16	<.33	lb/d
		Acrylonitrile Monthly Average	.07	<.33	lb/d
01/31/2018	01A-A	pH Instantaneous Maximum	9	9.3	SU
		pH Instantaneous Minimum	6	2.5	SU
02/28/2018	01A-A	pH Instantaneous Maximum	9	9.5	SU
	101-A	Coliform, fecal general Daily Maximum	400	512	#/100mL
03/31/2018	01A-Q	Vinyl chloride Daily Maximum	.12	.15	lb/d
		Vinyl chloride Monthly Average	.07	.15	lb/d

# 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.

DEGREE OF RISK OR IMPACT TO HUMAN HEALTH OR PROPERTY	NATURE AND GRAVITY OF THE VIOLATION			
		MAJOR	MODERATE	MINOR
MAJOR	\$32,500 to \$20,000	\$20,000 to \$15,000	\$15,000 to \$11,000	\$11,000 to \$8,000
MODERATE	\$8,000 to \$5,000	\$5,000 to \$3,000	\$3,000 to \$1,500	\$1,500 to \$500
MINOR	\$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.

