STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:  

NEW ORLEANS COLD STORAGE AND WAREHOUSE COMPANY LTD.  

AI # 103877

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

SETTLEMENT

The following Settlement is hereby agreed to between New Orleans Cold Storage and Warehouse Company Ltd. ("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 business corporation that owns and/or operates a refrigerated cold storage facility located in New Orleans, Orleans Parish, Louisiana ("the Facility").

II

On October 16, 2017, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-16-00034 (Exhibit 1).

III

In response to the Consolidated Compliance Order & Notice of Potential Penalty, Respondent made a timely request for a hearing.
IV

Respondent denies it committed any violations or that it is liable for any fines, forfeitures and/or penalties.

V

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($2,500.00), of which Six Hundred Five and 59/100 Dollars ($605.59) represents the Department’s enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

VI

Respondent further agrees that the Department may consider the 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.

VII

This agreement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such review as may be required for interpretation of this agreement in any action by the Department to enforce this
agreement.

VIII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set forth in La. R. S. 30:2025(E) of the Act.

IX

As required by law, the Department has submitted this Settlement Agreement to the Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

X

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Orleans Parish, Louisiana. The advertisement, in form and wording approved by the Department, announced the availability of this settlement for public view and comment and the opportunity for a public hearing. Respondent has submitted an original proof-of-publication affidavit and an original public notice to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

XI

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department
of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form (Exhibit A).

XII

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

XIII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her respective party, and to legally bind such party to its terms and conditions.
NEW ORLEANS COLD STORAGE AND WAREHOUSE COMPANY LTD.

BY: 

(Signature)

Mark Blanchard
(Printed)

TITLE: President/CEO

THUS DONE AND SIGNED in duplicate original before me this 14th day of October, 2014, at New Orleans, LA.

NOTARY PUBLIC (ID # 35-5305)

(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Chuck Carr Brown, Ph.D., Secretary

BY:

Lourdes Iturralde, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 14th day of October, 2020, at Baton Rouge, Louisiana.

NOTARY PUBLIC (ID # 19181)

(stamped or printed)

Approved:

Lourdes Iturralde, Assistant Secretary

SA-AE-19-0038
CERTIFIED MAIL (7016 0910 0000 2672 6562)  
RETURN RECEIPT REQUESTED

NEW ORLEANS COLD STORAGE AND WAREHOUSE COMPANY LTD.  
c/o Larry M. Roedel  
Roedel Parsons Koch Blanche Balhoff & McCollis  
Agent for Service of Process  
8440 Jefferson Hwy., Ste. 301  
Baton Rouge, LA 70809

RE: CONSOLIDATED COMPLIANCE ORDER  
& NOTICE OF POTENTIAL PENALTY  
ENFORCEMENT TRACKING NO. AE-CN-16-00034  
AGENCY INTEREST NO. 103877

Dear Sir(s):

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 NEW ORLEANS COLD STORAGE AND WAREHOUSE COMPANY, LTD. (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 Dr. Jacqueline Prudente at (225) 219-3347 or at jackie.prudente@la.gov.

Sincerely,

[Signature]

Cefina J. Cage  
Administrator  
Enforcement Division

CIC/JAP/jap  
Alt ID No. n/a  
Attachment
c: New Orleans Cold Storage and Warehouse Company Ltd.
3411 S. Jourdan Rd.
New Orleans, LA 70126
STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

IN THE MATTER OF

NEW ORLEANS COLD STORAGE AND
WAREHOUSE COMPANY LTD.
ORLEANS PARISH
ALT ID NO. N/A

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT,

ENFORCEMENT TRACKING NO.
AE-CN-16-00034

AGENCY INTEREST NO.
103877

CONSOLIDATED

COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY

The following CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY is issued to NEW ORLEANS COLD STORAGE AND WAREHOUSE COMPANY LTD. (RESPONDENT) by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C), 30:2050.2 and 30:2050.3(B).

FINDINGS OF FACT

I.

The Respondent owns and/or operates the Jourdan Road Facility (facility), a refrigerated cold storage facility located at 3411 South Jourdan Road in New Orleans, Orleans Parish, Louisiana. The facility is registered as Program Level 3 under the Chemical Accident Prevention Provisions program.

II.

On or about October 28, 2015, the Department conducted a full compliance audit at the facility for the Chemical Accident Prevention Provisions set forth in LAC 33:III.5901. Additionally, the Department conducted a file review for the facility on or about September 5, 2017.

While the Department’s investigation is not yet complete, the following violations were discovered during the course of the audit and file review:
A. The Respondent failed to update and revalidate the process hazard analysis (PHA) at least every five (5) years after completion of the initial PHA. Specifically, the inspection revealed that the PHA revalidation was due in January 2015, but was not conducted by the time of the inspection. This is a violation of LAC 33:III.5901.A, which incorporates by reference 40 CFR 68.67(f), and La. R.S. 30:2057(A)(2). The facility conducted and submitted a PHA revalidation with a beginning date of on or about October 30, 2015.

B. The Respondent failed to provide refresher training at least every three (3) years to each employee involved in operating a process. Specifically, the inspection noted that an employee did not receive the most recent refresher training in 2013. This is a violation of LAC 33:III.5901.A, which incorporates by reference 40 CFR 68.71(b), and La. R.S. 30:2057(A)(2).

C. The Respondent failed to perform inspections and tests on process equipment that follow recognized and generally accepted good engineering practices. Specifically, compressors B1, C1 and C5 were tested with the wrong high pressure cutout set point. Each failure is a violation of LAC 33:III.5901.A, which incorporates by reference 40 CFR 68.73(d)(2), and La. R.S. 30:2057(A)(2).

**COMPLIANCE ORDER**

Based on the foregoing, the Respondent is hereby ordered:

I.

To take, immediately upon receipt of this COMPLIANCE ORDER, any and all steps necessary to meet and maintain compliance with the Air Quality Regulations, including, but not limited to, LAC 33:III.5901.

II.

To submit to the Enforcement Division, within thirty (30) days after receipt of this COMPLIANCE ORDER, a written report that includes evidence that refresher training was conducted for all employees involved in operating a covered process.

III.

To submit to the Enforcement Division, within thirty (30) days after receipt of this COMPLIANCE ORDER, a written report that includes evidence that compressors, specifically, B1, C1 and C5, were tested according to recognized and generally accepted good engineering practices.
IV.

To submit to the Enforcement Division, within thirty (30) days after receipt of this COMPLIANCE ORDER, a written report that includes a detailed description of the circumstances surrounding the cited violations and actions taken or to be taken to achieve compliance with the Order Portion of this COMPLIANCE ORDER. This report and all other reports or information required to be submitted to the Enforcement Division by this COMPLIANCE ORDER shall be submitted to:

Office of Environmental Compliance
Post Office Box 4312
Baton Rouge, Louisiana 70821-4312
Attn: Dr. Jacqueline Prudente
Re: Enforcement Tracking No. AE-CN-16-00034
Agency Interest No. 103877

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. AE-CN-16-00034
Agency Interest No. 103877

III.

Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this COMPLIANCE ORDER may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S.
49:950, et seq.), and the Department’s Rules of Procedure. The Department may amend or supplement this COMPLIANCE ORDER prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This COMPLIANCE ORDER shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the Respondent’s right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violation(s) described herein.

V.

The Respondent’s failure to request a hearing or to file an appeal or the Respondent’s withdrawal of a request for hearing on this COMPLIANCE ORDER shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violation(s), although the Respondent is estopped from objecting to this COMPLIANCE ORDER becoming a permanent part of its compliance history.

VI.

Civil penalties of not more than twenty-seven thousand five hundred dollars ($27,500) for each day of violation for the violation(s) described herein may be assessed. For violations which occurred on August 15, 2004, or after, civil penalties of not more than thirty-two thousand five hundred dollars ($32,500) may be assessed for each day of violation. The Respondent’s failure or refusal to comply with this COMPLIANCE ORDER and the provisions herein will subject the Respondent to possible enforcement procedures under La. R.S. 30:2025, which could result in the assessment of a civil penalty in an amount of not more than fifty thousand dollars ($50,000) for each day of continued violation or noncompliance.

VII.

For each violation described herein, the Department reserves the right to seek civil penalties in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties.

NOTICE OF POTENTIAL PENALTY

I.

Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be filed
regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.

II.

Prior to the issuance of additional appropriate enforcement action(s), you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Dr. Jacqueline Prudente at (225) 219-3347 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 33:1.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.

The NOTICE OF POTENTIAL PENALTY will not be closed if the Respondent owes outstanding fees to the Department. Please contact the Financial Services Division at 225-219-3865 or via email at _DEQ-WWWFiscalServices@la.gov to determine if you owe outstanding fees.

VI.

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

Baton Rouge, Louisiana, this \text{10th day of October}, 2017.

\begin{center}
\begin{tabular}{c}
Lourdes Iturralde  \\
Assistant Secretary  \\
Office of Environmental Compliance
\end{tabular}
\end{center}

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: Dr. Jacqueline Prudente
STATEMENT OF COMPLIANCE

A written report was submitted in accordance with Paragraph IV of the "Order" portion of the COMPLIANCE ORDER.

All necessary documents were submitted to the Department within 30 days of receipt of the COMPLIANCE ORDER in accordance with Paragraph(s) II and III of the "Order" portion of the COMPLIANCE ORDER.

All necessary documents were submitted to the Department within 45 days of receipt of the COMPLIANCE ORDER in accordance with Paragraph(s) of the "Order" portion of the COMPLIANCE ORDER.

All necessary documents were submitted to the Department within 90 days of receipt of the COMPLIANCE ORDER in accordance with Paragraph(s) of the "Order" portion of the COMPLIANCE ORDER.

All items in the "Findings of Fact" portion of the COMPLIANCE ORDER were addressed and the facility is being operated to meet and maintain the requirements of the "Order" portion of the COMPLIANCE ORDER. 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 NOTICE OF POTENTIAL PENALTY (AE-CN-16-00034), 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-CN-16-00034), the Respondent is interested in entering into settlement negotiations with the Department and offers to pay $_____________ which shall include DEQ 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-CN-16-00034) 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.

<table>
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<tr>
<th>Respondent's Signature</th>
<th>Respondent's Printed Name</th>
<th>Respondent's Title</th>
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<tr>
<th>Respondent's Physical Address</th>
<th>Respondent's Phone #</th>
<th>Date</th>
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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: Dr. Jacqueline Prudente