

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

VARTER, INC.

AI # 166230, 198483

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

* Settlement Tracking No.
* SA-MM-20-0060
*
* Enforcement Tracking No.
* MM-CN-15-01219
*
*
*
*

SETTLEMENT

The following Settlement is hereby agreed to between Varter, 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 property located in Livingston Parish, Louisiana (“the Site”).

II

On February 22, 2017, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. MM-CN-15-01219 (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 THREE THOUSAND FIFTY AND N0/100 DOLLARS (\$3,050.00), of which One Thousand Four Hundred Twelve and 51/100 Dollars (\$1,412.51) 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), 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 Livingston 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.

VARTER, INC.

BY: [Signature]
(Signature)

Timmy Terral
(Printed)

TITLE: owner

THUS DONE AND SIGNED in duplicate original before me this 5th day of November, 20 20, at 8:35 AM.

[Signature]
NOTARY PUBLIC (ID # 87442)

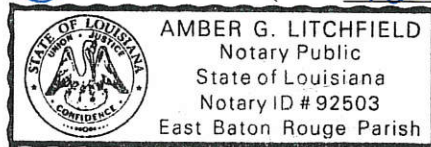
ANTHONY J. BROWN
(stamped or printed)

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)



(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
February 22, 2017

CERTIFIED MAIL (7014 0510 0002 3595 3564)
RETURN RECEIPT REQUESTED

VARTER, INC.
c/o Thomas W. Terral
Agent for Service of Process
7305 Sutton Rd.
Denham Springs, LA 70726

**RE: CONSOLIDATED COMPLIANCE ORDER
& NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. MM-CN-15-01219
AGENCY INTEREST NO. 166230 & 198483**

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 **VARTER, INC. (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 Heather Brown at (225) 219-3792 or Heather.Brown@la.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Celena J. Cage".

Celena J. Cage
Administrator
Enforcement Division

CJC/HMB/RDL
Alt ID No. T166148
Attachment



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

IN THE MATTER OF

**VARTER, INC.
LIVINGSTON PARISH
ALT ID NO. T166148**

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

*
*
* **ENFORCEMENT TRACKING NO.**
*
* **MM-CN-15-01219**
*
* **AGENCY INTEREST NO.**
*
* **166230 & 198483**
*

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

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **VARTER, INC. (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 Tommy Terral Property located at 7305 Sutton Road, Denham Springs, Livingston Parish, Louisiana (the Site). The agency interest number for the Site is 166230. The Respondent does not have a permit and/or authority from the Department to operate a solid waste disposal facility or to discharge wastes to waters of the state. The Site has a Best Management Practice (BMP) for wood waste only.

II.

On or about September 15, 2015, the Department received a citizen complaint, incident number T166148, about the demolition of an old grocery store that produced solid waste which was being piled on property near the Amite River.

III.

During the course of the September 21, 2015, and September 25, 2015 inspections, the Department's inspectors observed an old grocery store, former Live Oak Supermarket, that was located at 35015 Louisiana Highway 16 in Denham Springs, Louisiana, had been demolished. This location will be referred to as the Watson Plaza Property and the agency interest (AI) number for this location is 198483. According to the owner of the Watson Plaza Property, the owner conducted the demolition activity but an asbestos inspection of the old grocery store was not conducted prior to the demolition activity. Additionally, the Department has no record of receiving an Asbestos Notification of Demolition Form (AAC-2) prior to the demolition of the old grocery store located on the Watson Plaza Property. According to the owner of the Watson Plaza Property, some of the debris from the demolition of the old grocery store was taken to Waste Management's Woodside Landfill located in Walker, Louisiana and the Site.

IV.

During the course of the September 21, 2015 inspection at the Site, the inspector observed approximately twenty (20) piles of construction and demolition (C & D) debris. The Respondent informed the inspector that the debris observed was deposited by the owner of the Watson Plaza Property.

V.

According to LAC 33:III.5151.F.1.d, if a facility is demolished prior to an asbestos inspection or notification, then all the debris located at the site is categorized as asbestos-contaminated debris (ACD), which contains regulated asbestos-containing material (RACM), unless the owner/operator affirmatively demonstrates there is no asbestos-containing material (ACM) in the debris. Under these circumstances, the Department has determined the debris located on the Site from the Watson Plaza Property to be ACD.

VI.

The Site is not a recognized asbestos landfill (RAL) and is not authorized to receive ACD.

VII.

On or about September 21, 2015, an inspection of the Site conducted by the Department revealed the following violations:

- A. The Respondent caused or allowed the disposal of regulated solid waste without a permit and/or other authority from the Department, in violation of La R.S. 30:2155

and LAC 33:VII.315.C. Specifically, the Respondent allowed approximately twenty (20) piles of construction and demolition (C & D) debris including painted wood, unpainted wood, shingles, pipes, insulation, and electrical wiring to be disposed of on the Site. The Site has a BMP for wood waste only.

- B. The Respondent caused and/or allowed open burning of regulated solid waste, in violation of LAC 33:VII.315.M. Specifically, two (2) piles of vegetative material located near the front of the facility were smoldering.

COMPLIANCE ORDER

Based on the foregoing, the Respondent is **hereby ordered**:

I.

To take, upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to meet and maintain compliance with the Louisiana Solid Waste Regulations and the Louisiana Air Quality Regulations, including but not limited to, LAC 33:III.5151.

II.

To immediately cease, upon receipt of this **COMPLIANCE ORDER**, depositing or allowing the deposit of regulated waste of any kind at the Site or any other site that is not permitted to receive such waste.

III.

To immediately cease, upon receipt of this **COMPLIANCE ORDER**, the open burning of solid waste at this Site.

IV.

To remove and dispose of all ACD and regulated solid waste from the Site within sixty (60) days after receipt of this **COMPLIANCE ORDER**, by transporting debris to a RAL and/or permitted solid waste disposal facility, respectively.

V.

The Respondent shall submit a complete AAC-2 Form to the Permit Support Division, in accordance with LAC 33:III.5151.F.2. The Respondent shall submit a copy of the AAC-2 Form to the Enforcement Division for the ACD located at the Site. Each load of ACD that is transported off the Site shall be accompanied by an Asbestos Disposal Verification Form (ADVF), in accordance with LAC 33:III.5151.F.2.f.

VI.

To adequately wet the ACD located at the Site, as referenced in Findings of Fact paragraph V, at all times after demolition and keep wet during handling and loading for transport to a disposal site, in accordance with LAC 33:III.5151.J.1.c.

VII.

To use an individual, or company, that is recognized by the Louisiana Licensing Board for Contractors to perform removal of ACD from the Site to a RAL, in accordance with LAC 33:III.5151.F.1.h.

VIII.

To use personnel accredited and/or authorized by the Department for all removal and transportation of the ACD to a RAL, including but limited to, Asbestos Abatement Workers and Asbestos Abatement Contractor/Supervisor, in accordance with LAC 33:III.5151.F.3.h and LAC 33:III.5151.P.2.

IX.

To use a waste transporter that is recognized by the Department to transport ACD and Asbestos-Containing Waste Material (ACWM) from the Site, in accordance with LAC 33:III.5151.J. The ACWM transported off-site shall be handled as described in LAC 33:III.5151.J.4.

X.

To remove all loose debris in and adjacent to the Site, whether or not it is RACM, within sixty (60) days after receipt of this **COMPLIANCE ORDER**, in accordance with LAC 33:III.5151.F.3.l.

XI.

To notify the Department through written correspondence, in accordance with LAC 33:III.5151.F.3.m, within twenty-four (24) hours after the debris has been removed and the work area has been cleaned in accordance with LAC 33:III.5151.F.3.l.

XII.

To submit to the Enforcement Division, within fifteen (15) days of disposal, receipts documenting the proper disposal of the waste at a permitted disposal facility. The removal and disposal of this waste shall be in accordance with all applicable Solid Waste Regulations, and Air Quality Regulations, including but not limited to, LAC 33:III.5151.

XIII.

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: Heather Brown
Re: Enforcement Tracking No. MM-CN-15-01219
Agency Interest No. 166230 & 198483

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. MM-CN-15-01219
Agency Interest No. 166230 & 198483

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 Heather Brown at (225) 219-3792 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.

IV.

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

Baton Rouge, Louisiana, this 20th day of February, 2017.



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: Heather Brown