STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

ARCOSA LW BR, LLC

AI # 1272

PROCEEDINGS UNDER THE LOUISIANA
ENVIRONMENTAL QUALITY ACT

SETTLEMENT

The following Settlement is hereby agreed to between Arcosa LW BR, LLC ("Respondent") and the Department of Environmental Quality ("DEQ" or "the Department"), under authority granted by the Louisiana Environmental Quality Act, L.A. R.S. 30:2001, et seq. ("the Act").

I

Respondent is a limited liability company that owns and/or operates a lightweight aggregate manufacturing facility located in Erwinville, Pointe Coupee Parish, Louisiana ("the Facility").

II

On August 16, 2019, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. MM-CN-19-00569 (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 SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($6,500.00), of which Five Hundred Fifty-Four and 56/100 Dollars ($554.56) 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 inspection report(s), 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 Pointe Coupee 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 thirty (30) 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.
ARCOSA LW BR, LLC

BY: __________________________
   (Signature)
   Brian Dowden
   (Printed)

TITLE: Vice President - Operations

THUS DONE AND SIGNED in duplicate original before me this 15th day of October, 2021, at Port Allen, LA.

Ericka H. George
NOTARY PUBLIC (ID # 60472)

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 30th day of December, 2021, at Baton Rouge, Louisiana.

AMBER G. LITCHFIELD
NOTARY PUBLIC (ID # 93503)

Approved: __________________________
           Lourdes Iturralde, Assistant Secretary

SA-MM-21-0035
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 lightweight aggregate manufacturing facility located at 12652 US Highway 190 in Erwinville, Pointe Coupee Parish, Louisiana. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) Permit LA0090387 on September 22, 2015, with an effective date of November 1, 2015. LPDES Permit LA0090387 will expire on October 31, 2020. Under the terms and conditions of LPDES Permit LA0090387, the Respondent is permitted to discharge stormwater runoff, kiln scrubber water, fugitive emission damping water, non-contact cooling water, wastewater, and treated sanitary wastewater into an effluent pipe, thence into Bayou Poydras, all waters of the state.

The Respondent also operates under Title V Permit No. 226000022-V-3 issued December 5, 2014 and PSD Permit No. PSD-LA-713 (M-1) issued September 19, 2008.

ORDER

Based on the foregoing, the Respondent is hereby ordered to comply with the requirements that are indicated below:

I. To take, immediately upon receipt of this COMPLIANCE ORDER, any and all steps necessary to meet and maintain compliance with the Water Quality Regulations. This shall include, but not be limited to: correcting all of the violations described in the “FINDINGS OF FACT” portion.

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 violation(s) 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 the Department at the address specified in this document.

III. To immediately cease, upon receipt of this COMPLIANCE ORDER, any unauthorized discharges from the Respondent’s facility to waters of the state.

IV. To submit a completed LPDES Permit Application to the Water Permits Division, within thirty (30) days after receipt of this COMPLIANCE ORDER. The completed LPDES Permit Application for modification of LA0090387 must address all outfalls at the facility and must follow all procedures and guidelines set forth in LAC 33:IX Chapter 25. The three sets (the original and two copies) of the completed permit application should be submitted to the Permits Division at the address specified in this document.

A copy of the permit application should also be sent to the Enforcement Division.

RIGHT TO APPEAL

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 left-hand corner of the first page of this document and should be directed to the address specified in this document.

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 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(8), 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 Melissa Sherman at 225-219-3770 within ten (10) days of receipt of this NOTICE OF POTENTIAL PENALTY.

III. The Department is required by La. R.S. 30:2025(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. This CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY is effective upon receipt.

CONTACTS AND SUBMITTAL OF INFORMATION

Enforcement Division:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Water Enforcement Division
Post Office Box 4312
Baton Rouge, LA 70821
Attn: Melissa Sherman

Hearing Requests:

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-19-00569
Agency Interest No. 1272

Water Permits Division (if necessary):

Department of Environmental Quality
Office of Environmental Services
Post Office Box 4313
Baton Rouge, LA 70821-4313
Attn: Water Permits Division

Physical Address (if hand delivered):

Department of Environmental Quality
602 N Fifth Street
Baton Rouge, LA 70802

HOW TO REQUEST CLOSURE OF THIS CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY

- To appeal the CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY, the Respondent must follow the guidelines set forth in the "Right to Appeal" portion of this CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY.

- To request closure of the COMPLIANCE ORDER portion, the Respondent must demonstrate compliance with the "Order" portion of this COMPLIANCE ORDER by completing the attached "CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE" form and returning it to the address specified.

  - Before requesting closure of the COMPLIANCE ORDER portion, please contact the Financial Services Division at 225-219-3865 or email them at DEQ-WWWFinancialServices@la.gov to determine if you owe outstanding fees.

- To expedite closure of the 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 Department assesses civil penalties based on LAC 33:1 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 "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.

Before requesting closure of the NOTICE OF POTENTIAL PENALTY portion, please contact the Financial Services Division at 225-219-3865 or email them at DQF-WWWFinancialServices@la.gov to determine if you owe outstanding fees.

If you have questions or need more information, you may contact Melissa Sherman at 225-219-3770 or melissa.sherman@la.gov.

Lourdes Huraide
Assistant Secretary
Office of Environmental Compliance

Attachment(s)
- Request to Close

CC: Scott C. Beasley
2525 N. Stemmons Freeway
Dallas, TX 75207

Date: 8/4/19
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. MM-CN-19-00569
Agency Interest (AJ) No. 1272
Alternate ID No. LA090387

Respondent: Arcosa LW BR, LLC (formerly TRN L W BR LLC)
Facility Name: Arcosa Lightweight Erwinville (Trinity ESC- Erwinville)
C/o C T Corporation System
Agent for Service of Process
3867 Plaza Tower Dr
City, State, Zip: Erwinville, LA 70762
Baton Rouge, LA 70816
Parish: Pointe Coupée

STATEMENT OF COMPLIANCE

A written report was submitted in accordance with Paragraph II 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 331: Subpart 1. Chapter 7.

In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (MM-CN-19-00569), 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 (MM-CN-19-00569), 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 (BE) 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 (MM-CN-19-00569) 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
Post Office Box 4312
Baton Rouge, LA 70821
Attn: Melissa Sherman

If you have questions or need more information, you may contact Melissa Sherman at 225-219-3770 or melissa.sherman@la.gov.
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 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 (SEP).

WHAT SHOULD I INCLUDE IN A SETTLEMENT AGREEMENT?

The Department uses the penalty determination method defined in LAC 33:1.7.05 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.

<table>
<thead>
<tr>
<th>Degree of Risk to Human Health or Property</th>
<th>Nature and Gravity of the Violation</th>
<th>Major</th>
<th>Moderate</th>
<th>Minor</th>
</tr>
</thead>
<tbody>
<tr>
<td>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.</td>
<td>Major</td>
<td>Moderate</td>
<td>Minor</td>
<td></td>
</tr>
<tr>
<td>$32,500 to $20,000</td>
<td>$20,000 to $15,000</td>
<td>$15,000 to $11,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$20,000 to $15,000</td>
<td>$15,000 to $11,000</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$11,000 to $8,000</td>
<td>$8,000 to $5,000</td>
<td>$5,000 to $3,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>$3,000 to $1,500</td>
<td>$1,500 to $500</td>
<td>$500 to $100</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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.
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
- Settlement Agreements
- Penalty Determination Method
- Beneficial Environmental Projects
- Judicial Interest

Searchable in FDMS using the following filters:
- Media: Air Quality, Function: Enforcement, Discipline: Settlement
- Enforcement Division’s website
- Specific examples can be provided upon request
- LAC 33: Chapter 7
- LAC 33: Chapter 25
- FAQs
- Provided by the Louisiana State Bar Association