

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

ELMWOOD MARINE REPAIR LLC

AI # 17131

PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT

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

\* Settlement Tracking No.  
\* SA-AE-20-0004  
\*  
\* Enforcement Tracking No.  
\* AE-CN-16-00089  
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SETTLEMENT

The following Settlement is hereby agreed to between Elmwood Marine Repair LLC (“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 limited liability company that owned and/or operated a ship repair and maintenance facility located in Belle Chasse, Plaquemines Parish, Louisiana (“the Facility”). At the time of the Consolidated Compliance Order & Notice of Potential Penalty, and violation noted during the course of the inspection on or about February 3, 2016, Respondent was wholly-owned by ACBL River Operations, LLC.

II

On May 11, 2016, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-16-00089 (Exhibit 1).

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

During the course of the inspection on or about February 3, 2016, the Department's inspector conducted a survey of the area for paint/ sandblasting overspray. At the time, the facility was observed with dust outside of the screens. The Respondent's failure to contain sandblasting/ overspray within containment is a violation of LAC 33:III.1305.A.3, and La. R.S. 30:2057(A)(2).

### III

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

### IV

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of TWELVE THOUSAND SIX HUNDRED SEVENTY-THREE AND NO/100 DOLLARS (\$12,673.00), of which One Thousand Five Hundred Sixty-Eight and 36/100 Dollars (\$1,568.36) 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 Plaquemines 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.

ELMWOOD MARINE REPAIR LLC

BY: Jeff L. James  
(Signature)  
Jeff L. James  
(Printed)

TITLE: Manager

THUS DONE AND SIGNED in duplicate original before me this 28<sup>th</sup> day of June, 20 21, at 11:40 a.m., Paducah, Ky.

Sarah Perry McGee  
NOTARY PUBLIC (ID # 595516)

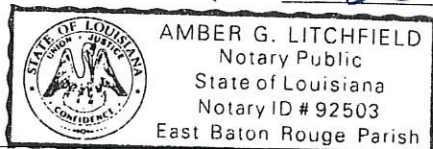
Sarah Perry McGee  
(stamped or printed)

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 10<sup>th</sup> day of August, 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

May 11, 2016

CERTIFIED MAIL (7012 3460 0001 0423 4182)  
RETURN RECEIPT REQUESTED

ELMWOOD MARINE REPAIR LLC (formerly known as AEP Elmwood LLC)  
c/o C T Corporation System  
Agent for Service of Process  
3867 Plaza Tower Drive  
Baton Rouge, Louisiana 70816

RE: **CONSOLIDATED COMPLIANCE ORDER  
& NOTICE OF POTENTIAL PENALTY  
ENFORCEMENT TRACKING NO. AE-CN-16-00089  
AGENCY INTEREST NO. 17131**

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 **ELMWOOD MARINE REPAIR LLC (RESPONDENT)** for the violations described therein.

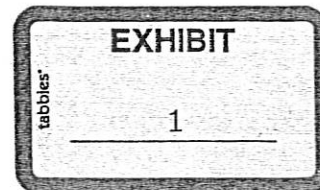
Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violations cited in the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** could result in the issuance of a civil penalty or other appropriate legal actions.

Any questions concerning this action should be directed to Afton J. Bessix at (225) 219-3760 or via email at [Afton.Bessix@la.gov](mailto:Afton.Bessix@la.gov).

Sincerely,

Celena J. Cage  
Administrator  
Enforcement Division

CJC/AJB/ajb  
Alt ID No. 2240-00136  
Attachment



c: Elmwood Marine Repair LLC  
P.O. Box 1148  
Harvey, LA 70059-1148

STATE OF LOUISIANA  
DEPARTMENT OF ENVIRONMENTAL QUALITY  
OFFICE OF ENVIRONMENTAL COMPLIANCE

IN THE MATTER OF

ELMWOOD MARINE REPAIR LLC  
PLAQUEMINES PARISH  
ALT ID NO. 2240-00136

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\* ENFORCEMENT TRACKING NO.  
\*  
\* AE-CN-16-00089  
\*  
\* AGENCY INTEREST NO.  
\*  
\* 17131  
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PROCEEDINGS UNDER THE LOUISIANA  
ENVIRONMENTAL QUALITY ACT,  
La. R.S. 30:2001, ET SEQ.

CONSOLIDATED  
COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **ELMWOOD MARINE REPAIR LLC (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 Elmwood Drydock & Repair (the site), a ship repair and maintenance facility. Welding, sandblasting, and painting (spray and roll on) activities are performed onsite as part of ship repair and maintenance. The site is located at 222 Bayou Road in Belle Chasse, Plaquemines Parish, Louisiana. The facility currently operates under Air Permit No. 2240-00136-01, issued November 17, 1990. On September 30, 2015, AEP Elmwood LLC, previous company name, submitted a Minor Source Permit Renewal. Effective November 12, 2015, the company name was changed from AEP Elmwood LLC to Elmwood Marine Repair LLC.

II.

On or about May 19, 2015, the Department received a citizen's complaint, Incident No. T-163855, describing a paint overspray on his vehicle from the site at the end of April. The complainant



also stated that he witnessed a tugboat being sprayed with no screens or other containment. The Department's inspector conducted surveillance around the facility on or about June 19, 2015, and observed no dust or paint emissions. During the course of an inspection by the Department on or about June 26, 2015, a facility representative stated that the blasting screens/plastic paint tarps were removable and placed in front and back of the ship when a job began. He stated that no screens or tarps were used on the sides due to metal separator walls of dry dock. The screens/tarps remained in place until the project was complete.

### III.

During subsequent site investigations by the Department's inspectors on or about June 19, 2015, July 15, 2015, August 7, 2015, and August 14, 2015, no dust or paint emissions were observed around or leaving the site (See Incident Report No. T-163855). On or about August 18, 2015, the Department performed an inspection of the Respondent's facility to determine the degree of compliance with the Louisiana Environmental Quality Act and the Air Quality Regulations.

While the Department's investigation is not yet complete, the following violations were noted during the course of the inspection:

- A. During the course of the inspection, a facility representative stated that blast media was calculated by the amount of disposal records and paint usage was estimated based on the size of the project. The inspector noted that actual paint inventories were not kept for the usage amounts. The Respondent's failure to maintain records as required at the facility to verify compliance for at least two (2) years is a violation of LAC 33:III.2123.F, and La. R.S. 30:2057(A)(2).
- B. A review of the facility's permit application, received September 30, 2015, indicated that the facility is emitting sulfur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>). However, the current permit does not authorize the facility to emit SO<sub>2</sub> and NO<sub>x</sub>. The Respondent's failure to submit a permit application and receive approval from the permitting authority prior to construction, modification, or operation of a facility which ultimately may result in an initiation or increase in air contaminants is a violation of LAC 33:III.501.C.2 and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

IV.

On or about November 4, 2015, November 14, 2015 and November 17, 2015, the Department received four (4) citizen complaints (Incident Nos. T-167153, T-167154, T-167385, and T-167391) concerning the release of overspray onto neighboring properties, citing AEP as the source. On or about November 17, 2015, an inspection of the Respondent's facility was performed to determine the degree of compliance with the Louisiana Environmental Quality Act and Air Quality Regulations.

While the Department's investigation is not yet complete, the following violations were noted during the course of the inspection:

- A. During the course of the inspection on or about November 17, 2015, the Department's inspectors performed surveillance outside of the site prior to entering. The inspectors observed that containment tarps were improperly installed on dry dock Bob Averite and visible emissions were seen leaving the containment area. The inspectors also noted that upon entry of the site, sand blasting activities ceased and facility personnel began to properly hang containment tarps. During the site visit, it was noted that tarps were hanging loose, not overlapping and did not fully enclose the Kittywake Vessel. The Respondent's failure to ensure that the tarps have overlapping seams to prevent leakage of particulate matter is a violation of LAC 33:III.1329.A, LAC 33:III.1329.C.1, LAC 33:III.905.A, and La. R.S. 30:2057(A)(2).
- B. During the course of the inspection on or about November 17, 2015, the Respondent's Abrasive Blasting Best Management Practices (BMP) Plan was reviewed. While onsite, the facility representative was unable to convey when sandblasting began or provide a daily BMP Inspection Checklist. According to a later email from the facility's representative on November 17, 2015, sandblasting began at 8:30 a.m. and was expected to continue until 4:30p.m; however, the BMP Inspection Checklist listed an end time of 2:30 p.m. Also, the Department performed a follow-up inspection at the facility on December 2, 2015. At the time of inspection, spray painting was being performed on dry dock Terence Gomez; however, the BMP Inspection Checklist incorrectly stated that abrasive blasting was being performed. Each failure to accurately complete a BMP Inspection Checklist is a violation of LAC 33:III.1333.A.7, and La. R.S. 30:2057(A)(2).
- C. The facility's BMP Inspection Checklists were reviewed from October 1, 2015 through December 2, 2015. During the file review, the Department's inspectors noted that the checklists were not being completed every four (4) hours for operations greater than four (4) hours in duration.

The Respondent's failure to record visual observations of particulate matter emissions, every four (4) hours for operations greater than four (4) hours in duration is a violation of LAC 33:III.1333.A.7, and La. R.S. 30:2057(A)(2).

- D. The inspector noted that the BMP Inspection Checklists for the following dates were inaccurate: October 8, 9, 15, 16, 21, 22, and 23, 2015; November 10, 11, 12, 14, 17, 18, 19, 20, and 30, 2015; December 1, 2015. Each failure to fully and accurately complete a BMP Inspection Checklist is a violation of LAC 33:III.1333.A.7, and La. R.S. 30:2057(A)(2).
- E. The BMP Inspection Checklists from October 30, 2015, November 14, 2015, and November 20, 2015, stated that tears were noted in the tarps during sandblasting, but were not repaired prior to use. This is concurrent with the November 14, 2015 citizen's complaint (See Incident Report # 167385), describing overspray onto neighboring properties from the site. The Respondent's failure to repair tarps prior to use to minimize emissions is a violation of LAC 33:III.1329.A, LAC 33:III.1329.C.3, LAC 33:III.905.A, and La. R.S. 30:2057(A)(2).
- F. The BMP Inspection Checklist from November 20, 2015, states that the tarp seams were not overlapping during sandblasting in the Abrasive Blast Area. Failure to ensure that tarps have overlapping seams to prevent leakage of particular matter is a violation of LAC 33:III.1329.C.1, LAC 33:III.905.A, and La. R.S. 30:2057(A)(2).
- G. In the review of Sandblasting Annual Training records for the previous three (3) years, the Respondent was only able to provide a record of training conducted on July 8, 2014. Failure to properly train personnel is a violation LAC 33:III.1331.G, LAC 33:III.1331.H, LAC 33:III.1333.B, 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 Air Permit No. 2240-00136-01, and control emissions as required by the facility's air permit, LAC 33:III.1305.A, and LAC 33:III.905.

II.

To submit to the Enforcement Division, within thirty (30) days upon receipt of this **COMPLIANCE ORDER**, a written report that includes steps or actions taken or to be taken to reduce emissions from the dry docks while working on vessels, including but not limited to, tarp repairs and/or proper installation, measures to ensure compliance with LAC 33:III.1329, measures taken to ensure that each BMP Inspection Checklist is accurately and fully completed, to maintain proper records during abrasive blasting operations, and to ensure that personnel training is completed and records of training are maintained in accordance with the regulations.

III.

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, including but not limited to an updated BMP plan, 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: Afton J. Bessix  
Re: Enforcement Tracking No. AE-16-00089  
Agency Interest No. 17131

**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-16-00089**  
**Agency Interest No. 17131**

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 Afton J. Bessix at (225) 219-3760 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

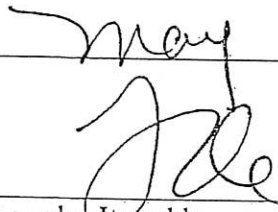
III.

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 11<sup>th</sup> day of May, 2016.

  
\_\_\_\_\_  
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: Afton J. Bessix