

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

ARCOSA AGGREGATES, INC.

AI # 208421

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

* Settlement Tracking No.
* SA-WE-22-0066
*
* Enforcement Tracking Nos.
* WE-CN-20-00705
* WE-CN-21-00526
*
*
* Docket No. 2022-4515-DEQ
*

SETTLEMENT

The following Settlement is hereby agreed to between Arcosa Aggregates, 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 a gravel pit operation located in Pearl River, St. Tammany Parish, Louisiana (“the Facility”).

II

On February 24, 2021, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. WE-CN-20-00705 (Exhibit 1).

On September 10, 2021, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. WE-CN-21-00526 (Exhibit 2).

III

In response to the Consolidated Compliance Order & Notice of Potential Penalty (WE-CN-20-00705), 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 TEN THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$10,500.00), of which One Thousand Four Hundred Seventy-Four and 58/100 Dollars (\$1,474.58) 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 Orders & Notices 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 St. Tammany 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 AGGREGATES, INC.

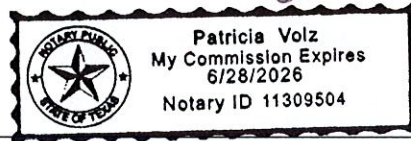
BY: [Signature]
(Signature)

Cory Danner
(Printed)

TITLE: President

THIS DONE AND SIGNED in duplicate original before me this 13 day of February, 20 23, at Arlington, Texas

[Signature]
NOTARY PUBLIC (ID # 11309504)



(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Roger W. Gingles., Secretary


BY: [Signature]
Celena J. Cage, Assistant Secretary
Office of Environmental Compliance

THIS DONE AND SIGNED in duplicate original before me this 17th day of May, 20 23, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 28050)

Jay L. Glorioso
(stamped or printed)

Approved: [Signature]
Celena J. Cage, Assistant Secretary

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			
Enforcement Tracking No.	WE-CN-20-00705	Certified Mail No.	7018 1130 0002 1720 4692				
Agency Interest (AI) No.	208421	Contact Name	Melissa Sherman				
Alternate ID No.	LAU008305	Contact Phone No.	(225) 219-3770				
Respondent:	Arcosa Aggregates Inc.	Facility Name:	Arcosa Aggregates Inc.				
	c/o CT Corporation System	Physical Location:	69690 LA Industries Pit Road				
	Agent for Service of Process						
	3867 Plaza Tower Dr. Baton Rouge, LA 70816	City, State, Zip: Parish:	Pearl River, LA 70452 St. Tammany				
This CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY is issued 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							
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 gravel pit operation located at 69690 LA Industries Pit Road in Pearl River, St. Tammany Parish, Louisiana. The Respondent does not have a Louisiana Pollutant Discharge Elimination System (LPDES) permit or any other authority to discharge pollutants to waters of the state.						
	Date of Violation	Description of Violation					
II.	Inspection(s) 5/22/2020, 7/13/2020	The Respondent caused and/or allowed the discharge of wastewater without a permit and/or other authority from the Department. Specifically, a breach in the internal levee between pond 2 and 3 discharged process wastewater into Maple Slough, thence into wetlands that flow into the West Pearl River, all waters of the state. During a site visit conducted on May 22, 2020, the inspector was informed by a facility representative that there had been a breach in the levee in conjunction with a heavy rain event. An email received on June 9, 2020, from a facility consultant indicated an overflow had occurred over the weekend of June 6, 2020. A subsequent site visit conducted on July 13, 2020, revealed the main levee breach was not stabilized and repairs were not fully completed. The lowest areas were being repaired as road conditions allowed. (La. R.S. 30:2075)					
III.	File Review 11/17/2020	The Respondent failed to submit a complete application to discharge to waters of the state. Specifically, on May 11, 2020, June 1, 2020, and June 8, 2020, the Department received complaints regarding runoff from the gravel pit and breaches in the levee. (See Inspection Report- T197093 and T196778 pages 6 - 8 and pages 17 and 18.) These discharges are subject to permitting. (La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, and LAC 33:IX.2501.A)					
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 <u>all</u> 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.	If the Respondent demonstrates a need to discharge to waters of the state, the Respondent shall submit, within thirty (30) days after receipt of this COMPLIANCE ORDER , all necessary documents to the Water Permits Division for the Department's consideration of proper coverage and permitting of any discharge of pollutants from the facility to waters of the state. If the Respondent is issued an LPDES permit, the Respondent shall notify the Enforcement Division within fifteen (15) days of obtaining permit coverage. The Respondent shall not discharge pollutants to waters of the state prior to obtaining permit coverage or other authorization from the Department.						
V.	If the Respondent does not choose to discharge to waters of the state, the Respondent shall, within thirty (30) days after receipt of this COMPLIANCE ORDER , provide written documentation to the Department that no activities exist at the Respondent's facility resulting in any unauthorized discharges to waters of the state.						
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(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 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(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 you: 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:		Hearing Requests:	
Louisiana Department of Environmental Quality Office of Environmental Compliance Water Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Melissa Sherman		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-20-00705 Agency Interest No. 208421	
Water Permits Division (if necessary):		Physical Address (if hand delivered):	
Department of Environmental Quality Office of Environmental Services Post Office Box 4313 Baton Rouge, LA 70821-4313 Attn: Water Permits Division		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.

o Before requesting closure of the NOTICE OF POTENTIAL PENALTY 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.

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




Lourdes Iturralde
Assistant Secretary
Office of Environmental Compliance

Date: 2/24/2021


cc: Michael Crawford, Plant Manager
69690 LA Industries Pit Road
Pearl River, LA 70452

Attachment(s)

- Request to Close

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF ENVIRONMENTAL COMPLIANCE ENFORCEMENT DIVISION CONSOLIDATED COMPLIANCE ORDER & POST OFFICE BOX 4312 NOTICE OF POTENTIAL PENALTY BATON ROUGE, LOUISIANA 70821-4312 REQUEST TO CLOSE			
			
Enforcement Tracking No.	WE-CN-20-00705	Contact Name	Melissa Sherman
Agency Interest (AI) No.	208421	Contact Phone No.	(225) 219-3770
Alternate ID No.	LAU008305		
Respondent:	Arcosa Aggregates, Inc.	Facility Name:	Arcosa Aggregates, Inc.
	c/o CT Corporation System	Physical Location:	69690 LA Industries Pit Road
	Agent for Service of Process		
	3867 Plaza Tower Dr.	City, State, Zip:	Pearl River, LA 70452
	Baton Rouge, LA 70816	Parish:	St. Tammany
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 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)			
<i>(check the applicable option)</i>			
<input type="checkbox"/>	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.		
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-CN-20-00705), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.		
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-CN-20-00705), 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"> • 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.		
<input type="checkbox"/>	The Respondent has reviewed the violations noted in NOTICE OF POTENTIAL PENALTY (WE-CN-20-00705) 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 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.

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	
Enforcement Tracking No.	WE-CN-21-00526	Certified Mail No.	7016 0910 0000 2673 0224		
Agency Interest (AI) No.	208421	Contact Name	Sharron Crayton		
Alternate ID No.	LAU008305/LAG490246	Contact Phone No.	(225) 219-3729		
Respondent:	Arcosa Aggregates, Inc.	Facility Name:	Pearl River Gravel Pit		
	c/o CT Corporation System	Physical Location:	69690 LA Industries Pit Road		
	Agent for Service of Process	City, State, Zip:	Pearl River, LA 70452		
	3867 Plaza Tower Baton Rouge, LA 70816	Parish:	St. Tammany		
This CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY is issued 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					
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 gravel pit operation located at 69690 LA Industries Pit Road in Pearl River, St. Tammany Parish, Louisiana. The Respondent was granted authorization under Louisiana Pollutant Discharge Elimination System (LPDES) General Permit LAG490246 effective August 16, 2021. LPDES Permit LAG490246 will expire on March 14, 2026. Under the terms and conditions of LPDES General Permit LAG490246, the Respondent is permitted to discharge process wastewater and process area storm water to Hickory Creek via an unnamed tributary in Subsegment 090202, all waters of the state.				
	The Department issued COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY WE-CN-20-00705 to the Respondent on February 24, 2021. A hearing request was submitted by the Respondent on April 5, 2021. The Department and the Respondent entered into Informal Dispute Resolution (IDR) on April 13, 2021. The IDR agreement was modified on July 20, 2021, and extended through April 13, 2022.				
	On June 9, 2021, the Department issued WARNING LETTER WE-L-21-00447 to the Respondent regarding violations noted during an inspection conducted at the above-referenced facility on March 15, 2021. On July 14, 2021, the Respondent submitted a written response to the Department regarding WE-L-21-00447.				
	On July 6, 2021, the Department received a Notice of Intent (NOI) to File Citizen Suit against Respondent (alleged violator) regarding alleged violations of the Federal Water Pollution Control Act (a/k/a Clean Water Act).				
	Date of Violation	Description of Violation			
II.	Inspection(s) & File Review 3/15/2021 & 8/17/2021	The Respondent caused and/or allowed the discharge of wastewater without a permit and/or other authority from the Department. Specifically, the March 15, 2021 inspection revealed a breach in the internal levee allowed process wastewater to be discharged into Maple Slough, thence into wetlands that flow into the West Pearl River, all waters of the state. Prior to the inspection conducted on March 15, 2021, the inspector was informed by a representative of the Respondent, via a telephone call that there had been a breach in the levee in conjunction with a heavy rain event the prior weekend. (La. R.S. 30:2075)			
		Per written correspondence received on July 14, 2021 in response to WE-L-21-00447, the Respondent indicated that the unintended discharges of process wastewater have been the result of recent Acts of God, including excessive rainfall and flooding events in the area, and that facility operations have ceased during such weather events to avoid or to mitigate discharges.			
III.	Inspection(s) 3/15/2021	A file review conducted by the Department on August 17, 2021 disclosed that the Respondent submitted a Sand and Gravel Extraction Facilities NOI for discharges related to extraction, mining or dredging of dirt, sand, gravel, shell and similar materials, which was signed June 29, 2021, and received by the Department on July 2, 2021. Subsequently and as previously mentioned, the Respondent was granted authorization under LPDES General Permit LAG490246 with an effective date of August 16, 2021.			
		The Respondent failed to properly implement and maintain the facility's Spill Prevention & Control (SPC) Plan. During the inspection conducted on March 15, 2021, a representative of the Respondent provided the inspector with a copy of the facility's Spill Prevention Control & Countermeasure (SPCC) Plan and SPC Plan. Specifically, Section 7.7 of the facility's SPC/SPCC Plan states that Arcosa Aggregates, Inc. will promptly implement corrective actions for visible discharges discovered during inspections, or during regular visits to the facility, and promptly remove any accumulations of oil-containing liquids from diked areas. However, during the inspection, stained soil and heavy hydrocarbon odors were noted near the fueling stations and at the rear of the secondary containment. Stained pine needles and leaves were also observed inside the secondary containment, and an area of staining was observed running downhill into the bank that led to Pond #2. Upon further investigation, it was discovered that the check valve for the secondary containment area was underneath the pile of stained leaves, and had been left in the open position. According to the Respondent's representative, the valve was only cracked and not fully opened. The representative subsequently adjusted the valve to the closed position. In addition, the exterior of the secondary containment was heavily damaged. Per the Respondent's representative, the damage occurred on March 3, 2021 after a piece of equipment crashed into it, and that a contractor had been scheduled to repair the damaged secondary containment. The SPC/SPCC Plan also states that monthly checklists will be completed and maintained electronically or as a hard copy with the SPC/SPCC Plan retained on site. Copies of the December 2020, January 2021, and February 2021 monthly checklists were requested for review at the time of the inspection. The Respondent only provided one (1) checklist, which was unsigned and not dated. (La. R.S. 30:2076(A)(3), LAC 33:IX.905.B)			



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 and LPDES General Permit LAG490246. This shall include, but not be limited to; correcting all of the violations described in the "Findings of Fact" portion, implementing and maintaining an adequate Spill Prevention and Control (SPC) Plan as outlined in LAC 33:IX.907, and preventing breaches and/or overflows from levees during heavy rain events.
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 submit a completed NetDMR Subscriber Agreement to the Department for approval to submit DMRs electronically using NetDMR, within thirty (30) days after receipt of this COMPLIANCE ORDER . The Subscriber Agreement shall be signed and dated with an original signature and submitted to the Enforcement Division. (NetDMR is accessed through: www.epa.gov/netdmr . For assistance establishing and maintaining a NetDMR account or for NetDMR training, see attached instructions or contact the Permit Compliance Unit at deqnetdmr@la.gov .)
IV.	To submit DMRs and associated reports electronically using NetDMR beginning with the first monitoring period after approval of the NetDMR Subscriber Agreement unless otherwise notified in writing by the Department.
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(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 Sharron Crayton at (225) 219-3729 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.	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: Sharron Crayton	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. WE-CN-21-00526 Agency Interest No. 208421
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	
<ul style="list-style-type: none"> • 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. <ul style="list-style-type: none"> ○ 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. <ul style="list-style-type: none"> ○ 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 _DEQ-WWWFinancialServices@la.gov to determine if you owe outstanding fees. 	


If you have questions or need more information, you may contact Sharron Crayton at (225) 219-3729 or Sharron.Crayton@la.gov.



 Lourdes Iturralde
 Assistant Secretary
 Office of Environmental Compliance

Date: 9-10-2021

Attachment
 - Request to Close

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF ENVIRONMENTAL COMPLIANCE ENFORCEMENT DIVISION CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY POST OFFICE BOX 4312 BATON ROUGE, LOUISIANA 70821-4312 REQUEST TO CLOSE				
Enforcement Tracking No.	WE-CN-21-00526	Contact Name	Sharron Crayton	
Agency Interest (AI) No.	208421	Contact Phone No.	(225) 219-3729	
Alternate ID No.	LAG490246			
Respondent:	Arcosa Aggregates, Inc.	Facility Name:	Arcosa Aggregates, Inc.	
	c/o CT Corporation System	Physical Location:	69690 Industries Pit Road	
	Agent for Service of Process			
	3867 Plaza Tower	City, State, Zip:	Pearl River, LA 70452	
	Baton Rouge, LA 70816	Parish:	St. Tammany	
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 COMPLIANCE ORDER .				
All necessary documents were submitted to the Department within 30 days of receipt of the COMPLIANCE ORDER in accordance with Paragraph III 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)				
<i>(check the applicable option)</i>				
<input type="checkbox"/>	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. Subpart 1.A. Chapter 7.			
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-CN-21-00526) , the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.			
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-CN-21-00526) , 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"> • 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 (WE-CN-21-00526) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.			
CERTIFICATION STATEMENT				
<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	
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: Sharron Crayton				

If you have questions or need more information, you may contact Sharron Crayton at (225) 219-3729 or Sharron.Crayton@la.gov.

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 violation specific factors, the nature and gravity of the violation and the degree of risk/impact to human health and property.

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



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 <u>EDMS</u> using the following filters Media: Air Quality, Function: Enforcement; Description: Settlement
Settlement Agreements	<u>Enforcement Division's website</u> specific examples can be provided upon request
Penalty Determination Method	<u>LAC 33:1 Chapter 7</u>
Beneficial Environmental Projects	<u>LAC 33:1 Chapter 25</u>
Judicial Interest.....	<u>FAQs</u> provided by the Louisiana State Bar Association

