

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

BRENT BROWNING L.L.C.

AI # 200984

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

* Settlement Tracking No.
* SA-WE-21-0102
*
* Enforcement Tracking No.
* WE-CN-19-01055
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SETTLEMENT

The following Settlement is hereby agreed to between Brent Browning L.L.C. (“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 owns and/or operates a sand and gravel extraction facility located in East Baton Rouge Parish, Louisiana (“the Facility”).

II

On February 14, 2020, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. WE-CN-19-01055 (Exhibit 1).

III

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

IV

Nonetheless, Respondent, without making any admission of liability under state or federal

statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00), of which One Thousand Sixty and 27/100 Dollars (\$1,060.27) 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), 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.

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 East Baton Rouge 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.

BRENT BROWNING L.L.C.

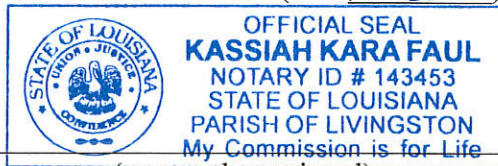
BY: [Signature]
(Signature)

Brent Browning
(Printed)

TITLE: Owner

THUS DONE AND SIGNED in duplicate original before me this 24th day of March, 20 22, at Baton Rouge.

Kassiah Kara Faul
NOTARY PUBLIC (ID # 143453)



(stamped or printed)

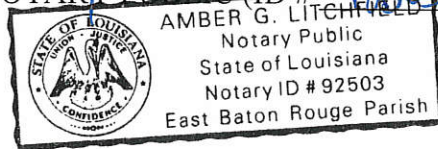
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Chuck Carr Brown, Ph.D., Secretary

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


THUS DONE AND SIGNED in duplicate original before me this 8th day of June, 20 22, at Baton Rouge, Louisiana.

NOTARY PUBLIC (ID # 92503)



(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-19-01055 | Certified Mail No. | 7018 0680 0000 1999 6064 | | | | |
| Agency Interest (A) No. | 200984 | Contact Name | Kevin Foy | | | | |
| Alternate ID No. | LAR10L520 | Contact Phone No. | (225) 219-3485 | | | | |
| Respondent: | Brent Browning L.L.C. | Facility Name: | Watkins Mining Site | | | | |
| | c/o Brent E. Browning | Physical Location: | East of Greenwell Springs Rd. and Wax Rd. | | | | |
| | Agent for Service of Process | | | | | | |
| | 11812 Gurney Rd. Baker, LA 70714 | City, State, Zip: | Greenwell Springs, LA 70739 | | | | |
| | | Parish: | East Baton Rouge Parish | | | | |

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 sand and gravel extraction facility located East of Greenwell Springs Rd. and Wax Rd., Greenwell Springs, East Baton Rouge Parish, Louisiana. The Respondent was granted authorization under Louisiana Pollutant Discharge Elimination System (LPDES) Large Construction General Permit LAR10L520 effective on May 18, 2016 with a termination date of April 17, 2018. The Department received an extension request from the Respondent on March 13, 2018 and the Respondent was reauthorized under LPDES Large Construction General Permit LAR10L520 effective April 10, 2018 with an expiration date of September 30, 2019. LPDES Large Construction General Permit LAR10L520 expired on September 30, 2019, but was reissued effective on October 1, 2019. In accordance with Part I, Section E.5 of the reissued LPDES Large Construction General Permit LAR100000, the Respondent was reauthorized under LPDES Large Construction General Permit LAR10L520 for a period of 180 days. The Respondent's authorization to discharge under LPDES Large Construction General Permit LAR10L520 will expire on March 28, 2020. Under the terms and conditions of LPDES Large Construction General Permit LAR10L520, the Respondent is permitted to discharge stormwater associated with construction activities into the Amite River (Subsegment 040302), all waters of the state.

On or about September 20, 2019, the Respondent submitted a Notice of Intent (NOI) to discharge wastewater and stormwater related to extraction, mining, or dredging of dirt, sand, gravel, shell, and similar materials. The Respondent did not receive approval from the US Fish and Wildlife Service (USFWS) prior to submitting the NOI. For subsegment 040302, the Department requires submittal of the NOI to the USFWS before permit coverage is automatically granted. The Respondent is not authorized to discharge wastewater or stormwater related to extraction, mining, or dredging of dirt, sand, gravel, shell, or similar materials to waters of the state.

| | Date of Violation | Description of Violation |
|-------------|--|---|
| II. | Inspection(s) & File Review 9/6/2019 9/11/2019 12/17/2019 | The Respondent failed to comply with LPDES Large Construction General Permit LAR10L520. Specifically, the Respondent failed to implement the Storm Water Pollution Prevention Plan (SWPPP) at the time of the inspection, as no storm water controls were observed at the facility and the Respondent failed to keep inspection records following November 20, 2017. The Respondent also failed to update their SWPPP to reflect that water is no longer contained in the ponds as shown in inspection photos 3-6 and 11. The Respondent informed the inspector that the last update to the SWPPP occurred on November 20, 2017. (LAR10L520 (Part IV, Section C, Part IV, Section D.2.a, D.2.b, and D.4, and Part VI, Section A.1), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.A) |
| III. | Inspection(s) 9/6/2019 | The Respondent caused and/or allowed the discharge of wastewater from a source or location not authorized by LPDES Large Construction General Permit LAR10L520. Specifically, the inspector observed evidence of discharge from sand and gravel operations from the north pit being pumped into a wetland area. A portable pump was observed connected to hard piping running under the levee and into a trench that leads eastward into the wetland between the facility and the Amite River. The inspector also observed a drainage canal leading south from the pond on the south end of the property, which is connected to the south pit, leading to a larger pond in the adjacent property. (La. R.S. 30:2076(A)(1)(a) and LAC 33:IX.501.D) |
| IV. | Inspection(s) & File Review 9/6/2019 9/11/2019 12/17/2019 | The Respondent failed to apply for a permit to discharge to waters of the state. Specifically, at the time of the inspection, the facility was operating as a sand and gravel extraction facility without submitting an appropriate Notice of Intent (NOI). The Respondent stated that extraction processes began in May of 2016. (La. R.S. 30:2076(A)(3), LAC 33:IX.501.A, and LAC 33:IX.2501.A) A permit application was received by the Department on September 24, 2019. |

ORDER

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

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| 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. |

EXHIBIT

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| III. | If the Respondent plans to renew coverage under LAR10L520, to develop and implement, within thirty (30) days after receipt of this COMPLIANCE ORDER , an adequate and complete SWP3 as outlined in Part IV of LAR10L520 and submit a copy to the Enforcement Division within forty-five (45) days after receipt of this COMPLIANCE ORDER . |
| IV. | According to Appendix A of the LAG490000 permit application, the water body that the Respondent discharges into is listed as sensitive and requires US Fish and Wildlife Service (USFWS) approval. The Respondent is ordered to submit to the USFWS, within fifteen (15) days after receipt of this COMPLIANCE ORDER , a copy of the NOI submitted to the Department on or about September 20, 2019, in accordance with Section I, Part G of NOI form SCC3-G. Within fifteen (15) days of approval by the USFWS, the Respondent shall submit a copy of the approval letter to the Water Permits Division. |

RIGHT TO APPEAL

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| 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

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| 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 Kevin Foy at (225) 219-3485 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

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| <p>Enforcement Division: Louisiana Department of Environmental Quality Office of Environmental Compliance Water Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Kevin Foy</p> | <p>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-19-01055 Agency Interest No. 200984</p> |
| <p>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</p> | <p>Physical Address (if hand delivered): Department of Environmental Quality 602 N Fifth Street Baton Rouge, LA 70802</p> |

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 _DEQ-WWWFinancialServices@la.gov to determine if you owe outstanding fees.


If you have questions or need more information, you may contact Kevin Foy at (225) 219-3485 or Kevin.Foy@la.gov.



 Lourdes Iturralde
 Assistant Secretary
 Office of Environmental Compliance

Date: 2-14-2020

Attachment(s)
- Request to Close

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| 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. | WE-CN-19-01055 | Contact Name | Kevin Foy | |
| Agency Interest (AI) No. | 200984 | Contact Phone No. | (225) 219-3485 | |
| Alternate ID No. | LAR10L520 | | | |
| Respondent: | Brent Browning L.L.C. | Facility Name: | Watkins Mining Site | |
| | c/o Brent E. Browning | Physical Location: | East of Greenwell Springs Rd. and Wax Rd. | |
| | Agent for Service of Process | City, State, Zip: | Greenwell Springs, LA 70739 | |
| | 11812 Gurney Rd. Baker, LA 70714 | Parish: | East Baton Rouge Parish | |
| 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 45 days of receipt of the COMPLIANCE ORDER in accordance with Paragraph III of the "Order" portion of the COMPLIANCE ORDER. | | | | |
| Approval by the US Fish and Wildlife Service was submitted to the Department in accordance with Paragraph IV 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> | | | | |
| _____ | 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:I.Subpart1.Chapter7. | | | |
| _____ | In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-CN-19-01055), 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 (WE-CN-19-01055), 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-19-01055) 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: Kevin Foy | | | | |

If you have questions or need more information, you may contact Kevin Foy at (225) 219-3485 or Kevin.Foy@la.gov.