

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

UNION CARBIDE CORPORATION

AI # 2083

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

* Settlement Tracking No.
* SA-MM-24-0044
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* Enforcement Tracking No.
* AE-PP-21-00156
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SETTLEMENT AGREEMENT

The following Settlement Agreement is hereby agreed to between Union Carbide Corporation (“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 chemical manufacturing operation located in Taft, St. Charles Parish, Louisiana (“the Facility”).

II

On June 12, 2023, the Department issued to Respondent a Notice of Potential Penalty, Enforcement Tracking No. AE-PP-21-00156 (Exhibit 1).

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

The Respondent failed to diligently maintain an air pollution control device in proper working order. Specifically, on or about April 21, 2023, the Respondent reported an unauthorized discharge (Incident No. T-213833). The unauthorized discharge occurred at Acrylics II Plant on

April 21, 2023, through April 23, 2023, for approximately four (4) hours and 32 minutes, releasing an estimated 9,628 pounds of 2-Ethylhexyl Acrylate (EHA) vapor from Tank 3506 (EQT0386) and Tank 3507 (EQT0387). In correspondence dated April 27, 2023, the Respondent stated an onsite odor alerted operations personnel of a leak and actions were taken to locate the source of the odor and discovered tank decant valves were open on EQT0386 and EQT0387. Upon identifying the open decant valves, operations immediately closed the valves to stop the release. Additionally, the Respondent stated area monitors were placed along the fenceline during Incident No. T-213833, of which EHA was not detected. The Respondent reported no offsite impact or injuries associated with the event. In correspondence dated June 22, 2023, a Root Cause Investigation (RCI) was completed to evaluate the circumstances that led to the release and the appropriate preventative measures. The RCI concluded the release was caused by tank decant valves that were not properly closed and upstream valves that were lined up to isolate the decant valves. Prior to feeding material from the tanks back to the process, the upstream valves were re-aligned allowing material to flow through the decant line. Additionally, material in the decant line had polymerized and formed a plug in the line. Pressure from normal plant operations eventually pushed the polymerized material out of the decant line and material released through the open decant valves to the process sewer. The Respondent determined the incident was preventable. The failure to diligently maintain an air pollution control device in proper working order is a violation of LAC 33:III.905.A, La. R.S. 30:2057(A)(1), and La. R.S. 30:2057(A)(2). As a corrective action, the facility has taken steps to car seal close all vents and drains. Work processes have been implemented to manage removal of car seals, opening, closing, and re-securement of valves. Additionally, valves used for routine sampling and tank decanting now require operator sign-off and verification to ensure valves are returned to the closed position.

An inspection on or about May 19, 2023, conducted by the Department revealed that the

Respondent caused and/or or allowed an unauthorized discharge of a pollutant not specifically authorized by LPDES Permit LA0000191. Specifically, the inspection revealed that on or about April 21, 2023, the Respondent reported a discharge of an estimated 9,629 pounds of ethyl hexyl acrylate (EHA) into an adjacent drain that feeds into their wastewater treatment ponds, internally monitored at Outfall 402 with an ultimate discharge at Outfall 001. The unauthorized discharge of EHA is a violation of La. R.S. 30:2076(A)(3), and LAC 33:IX.501.C.

A file review on or about July 8, 2024, conducted by the Department revealed that the Respondent failed to conduct 1st Quarter 2023 effluent sampling of Oil & Grease and Total Organic Carbon at internal Outfall 103. Per comments provided on Discharge Monitoring Reports (DMRs), the Respondent stated, “Outfall 103 discharges storm water after First-Flush conditions are met in the UCC SCO Olefins Operating Unit. On January 1, 2023, an alarm came in indicating First-Flush had been met. This alarm was in error, as it had not rained. Operations responded according to procedure and sampled the Outfall 103 Sump. Then it was recorded that the Quarterly Sampling requirement had been met. This sample was invalid, as no discharge had occurred. On February 8, 2023, a significant rain event occurred allowing First-Flush conditions to be met. This time there was actual discharge through the outfall. Operators checked the sampling record which had been met for the Quarter. So no sample was collected. It was later realized that there had been an error in the sampling. UCC is working to improve the alarming protocol as well as coordination of sample collection in an effort to prevent future events of discharge with no sample collection.” Each failure to sample at internal Outfall 103 is a violation of LPDES Permit LA0000191 (Effluent Limitation and Monitoring Requirements, pg. 5 of 14, and Standard Conditions, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.501.A.

A file review on or about July 8, 2024, conducted by the Department revealed that the

Respondent failed to comply with LPDES Permit LA0000191. Specifically, a review of DMRs between September 2019 and April 2024, revealed that the Respondent reported exceedances of permit effluent limitations as follows:

MP End Date	Outfall	Parameter	Limit	DMR Value	Units
05/31/2020	102-A	Oil & Grease --- DAILY MX	15	410	mg/L
01/31/2021	601-A	Solids, total suspended --- MO AVG	237	349	lb/d
01/31/2021	601-A	Solids, total suspended --- DAILY MX	770	1078	lb/d
01/31/2022	402-A	Solids, total suspended --- DAILY MX	16155	18170	lb/d
04/30/2022	601-A	pH --- INST MAX	9	9.1	SU
02/28/2023	601-A	pH --- INST MAX	9	9.1	SU
03/31/2023	601-A	pH --- INST MAX	9	9.2	SU
06/30/2023	601-A	pH --- INST MAX	9	9.1	SU
12/31/2023	601-Y	Chloroform --- MO AVG	.66	1.2	lb/d

Each exceedance of permit effluent limitations is a violations of LPDES Permit LA0000191 (Effluent Limitation and Monitoring Requirements, pgs. 4, 7, & 10 of 14, and Standard Conditions, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.501.D.

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 TWENTY-ONE THOUSAND AND NO/100 DOLLARS (\$21,000.00), of which Two Thousand Seven Hundred Fifty-Five and 50/100 Dollars (\$2,755.50) represents the Department's enforcement costs, in settlement of the claims set forth in this Settlement 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 Notice of Potential Penalty and this Settlement Agreement 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 Settlement 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 Settlement Agreement in any action by the Department to enforce this Settlement Agreement.

VII

This Settlement Agreement 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 Agreement, 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 St. Charles Parish, Louisiana. The advertisement, in form and wording approved by the Department, announced the availability of this Settlement Agreement 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 Agreement 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 thirty (30) days from notice of the Secretary's signature. If payment is not received within that time, this Settlement Agreement is voidable at the option of the Department. The Respondent shall provide its tax identification number when submitting payment. 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 attached hereto.

XI

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement Agreement.

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.

UNION CARBIDE CORPORATION

BY: _____
(Signature)

(Printed)

TITLE: _____

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20_____, at _____.

NOTARY PUBLIC (ID # _____)

(stamped or printed)


LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Aurelia S. Giacometto, Secretary

BY: _____
Jerrie "Jerry" Lang, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this _____ day of _____, 20_____, at Baton Rouge, Louisiana.

NOTARY PUBLIC (ID # _____)

(stamped or printed)

Approved: 

Jerrie "Jerry" Lang, Assistant Secretary

JOHN BEL EDWARDS
GOVERNOR

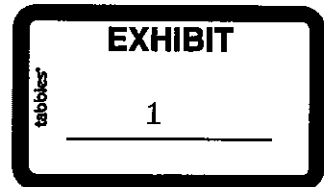


ROGER W. GINGLES
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

JUN 1 2 2023

CERTIFIED MAIL (7021 1970 0000 3974 0358)
RETURN RECEIPT REQUESTED



UNION CARBIDE CORPORATION
c/o C T Corporation System
Agent for Service of Process
3867 Plaza Tower Drive
Baton Rouge, LA 70816

**RE: NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. AE-PP-21-00156
AGENCY INTEREST NO. 2083**

Dear Sir/Madam:

On or about June 24, 2019 – July 10, 2019, August 22, 2019, September 18, 2020, and January 31, 2021, inspections of **ST. CHARLES OPERATIONS**, a chemical manufacturing operation, owned and/or operated by the **UNION CARBIDE CORPORATION (RESPONDENT)**, were performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Air Quality Regulations, followed by a subsequent file review conducted on April 11, 2023. The facility is located at 355 Louisiana Highway 3142 in Taft, St. Charles Parish, Louisiana. The Respondent operates or has operated under the authority of the following Title V Air Quality Permits:

PERMIT NO.	PERMIT NO.	ISSUANCE DATE	PERMIT EXPIRATION DATE
LP3-LP6 Plant	2214-V5	January 24, 2019	January 24, 2024
Site Logistics	2656-V6	July 19, 2019	July 19, 2024
	2656-V7	January 10, 2020	July 19, 2024
	2656-V8	March 19, 2020	July 19, 2024
	2656-V9	July 6, 2020	July 19, 2024
	2656-V10	January 26, 2021	July 19, 2024
	2656-V11	January 10, 2023	July 19, 2024
Acrylics I	513-V6	December 9, 2020	October 4, 2023
	513-V6AA	March 8, 2021	October 4, 2023
	513-V7	January 14, 2022	October 4, 2023
	513-V8	December 1, 2022	October 4, 2023
EPARK	2446-V6	May 22, 2019	September 4, 2023

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Higher Glycol Unit	1909-V3	March 19, 2020	March 19, 2025
Specialty Products Unit	1912-V8	November 9, 2020	November 13, 2024
	1912-V9	January 26, 2022	November 13, 2024
Environmental Operations Unit	2104-V6	October 20, 2020	October 20, 2025
Acrylics II	2254-V5	January 26, 2021	December 27, 2023
	2254-V6	August 12, 2021	December 27, 2023
Butanol (TB1 & TB2) Plants	2257-V8	January 28, 2022	August 6, 2023
	PSD-LA-583 (M-2)	February 8, 2017	February 8, 2027
Energy Systems Plant	2343-V6	January 20, 2021	January 7, 2021
	PSD-LA-590 (M-2)	November 16, 2017	November 16, 2027
	PSD-LA-590 (M-3)	January 7, 2021	January 7, 2031
Amines Plant	2421-V7	December 9, 2021	March 11, 2025
	2421-V8	June 3, 2022	March 11, 2025
	2421-V9	November 4, 2022	March 11, 2025
Olefins 1 & 2 Plants	2422-V9	December 9, 2020	August 2, 2023
	2422-V10	March 4, 2022	August 2, 2023
	PSD-LA-598 (M-1)	August 2, 2018	August 2, 2028
Methyl Glycol Ethers (MGE) Plant	2814-V4	June 27, 2019	June 27, 2024
Marine and Terminal Operations	3175-V0	January 26, 2021	July 19, 2024
Oxide Plant	476-V9	January 12, 2023	June 9, 2026

While the investigation by the Louisiana Department of Environmental Quality (the Department) is not yet complete, the following violations were noted during the course of the inspections and file review:

- A. The Respondent failed to perform inspections of filter element bags every six (6) months. Specifically, during the inspection on or about June 24, 2019, there were no filter element inspection records for the first half of 2019 for LP-6 Line 3 Hopper Car Filter (EQT 0423), LP-6 Line 4 Hopper Car Filter (EQT 0424), and LP-6 Non-Aim Hopper Car Filter (EQT 0425). Each failure to conduct semiannual inspections is a violation of Specific Requirement (SR) 87 of Title V Permit No. 2214-V5, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2). Correspondence dated August, 13, 2019, indicated that EQT 0423, EQT 0424, and EQT 0425 were not added to the check sheets after the issuance of Title V Permit No. 2214-V5 on January 24, 2019, and that they have since been added to the check sheets.
- B. The Respondent failed to perform weekly inspections of filter vents for visible emissions. Specifically, during the inspection on or about June 24, 2019, there were no weekly visible

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emission filter vent inspection records for the first half of 2019 for EQT 0423, EQT 0424, and EQT 0425. Each failure to conduct weekly visible emission inspections for each emission source is a violation of Specific Requirement (SR) 89 of Title V Permit No. 2214-V5, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(2). Correspondence dated August, 13, 2019, indicated that EQT 0423, EQT 0424, and EQT 0425 were not added to the check sheets after the issuance of Title V Permit No. 2214-V5 on January 24, 2019, and that they have since been added to the check sheets.

- C. The Respondent failed to diligently maintain an air pollution control device in proper working order. Specifically, the Respondent reported an unauthorized discharge (Incident No. T-192915), which occurred at the Site Logistics Plant on August 22, 2019, at 12:08 PM and lasted for approximately 57 minutes, releasing 260.8 pounds of butadiene. On or about September 5, 2019, the Respondent submitted an Unauthorized Discharge Notification Written Report, which disclosed that the material was inadvertently transferred from a distillation column to an external floating roof tank (EQT0195), which was equipped with primary and secondary seals. The butadiene vapors released into the atmosphere through the primary and secondary seals. The unit was in startup mode at the time of the release and upon detection of the release, the facility immediately stopped the transfer, which stopped the release. The Unauthorized Discharge Notification Written Report disclosed that the release was preventable. The failure to diligently maintain an air pollution control device in proper working order is a violation of LAC 33:III.905.A, La. R.S. 30:2057(A)(1), and La. R.S. 30:2057(A)(2). In correspondence dated November 12, 2019, the Respondent stated the facility updated operating procedures to include additional guidance on material disposition during startup operations. The Respondent has also stated department training programs have been updated to include additional information regarding the hazards of sending vapors/gas to floating roof tanks and low-pressure tanks.
- D. The Respondent failed to diligently maintain an air pollution control device in proper working order. Specifically, on or about September 18, 2020, the Respondent reported an unauthorized discharge (Incident No. T-199011). The unauthorized discharge occurred at the EPARK Plant on September 13, 2020, through September 18, 2020, for approximately 120 hours, releasing of 859 pounds of ethylene oxide from Reactor C-1101 (EQT 479). The leak was identified via online monitors located on EQT 479. Upon receiving an alarm indicating a pressure loss in the reactor, the plant immediately cut off feeds to the reactor and stopped the leak. The incident report disclosed the root cause of the release was a failed agitator seal. A key that secures the agitator shaft to the agitator sleeve backed out, allowing the shaft to rotate inside the sleeve and damage the sleeve O-ring. The Respondent determined the incident was preventable. At the time of the inspection, the Respondent's representative stated, if the changes that were made after the incident to prevent the key from backing out had been done as preventative measures, it would have prevented the incident from occurring. The failure to diligently maintain an air pollution control device in proper working order is a violation of LAC 33:III.905.A, La. R.S. 30:2057(A)(1) and La. R.S. 30:2057(A)(2). As a corrective and preventative action, the Respondent replaced the O-ring and installed a split collar around the shaft above the keyway as a secondary protection to prevent the key from backing out.
- E. The Respondent failed to diligently maintain an air pollution control device in proper working order. Specifically, on or about January 31, 2021, the Respondent reported an unauthorized

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discharge (Incident No. T-200847). The unauthorized discharge occurred at the Acrylics 1 Plant on January 24, 2021, through January 31, 2021, for approximately 155 hours, releasing an estimated 11,271 pounds of isopropyl ether (IPE) from RLP 0061, Column B. Additionally, a citizen's complaint was filed on or about January 30, 2021, stating an unknown chemical odor was present in the cemetery adjacent to the facility during the timeframe of the incident. In correspondence dated May 24, 2021, the Respondent stated the root cause for the release was an inadvertent transfer of IPE from an extractor column to the wastewater treatment plant. Additionally, an isolation valve was not closed during start up following a planned outage. The procedure to startup the extractor and water column included a step that allowed the extractor tails to bypass the water column when the water column was not ready for startup, but did not include a subsequent step to verify the extractor tails were lined up correctly prior to introducing IPE to the system. The Respondent determined this incident was preventable. The failure to diligently maintain an air pollution control device in proper working order is a violation of LAC 33:III.905.A, La. R.S. 30:2057(A)(1), and La. R.S. 30:2057(A)(2). As a corrective and preventative action, the Respondent updated the startup procedure by removing the option to bypass the water column and adding steps to ensure all valves are in the correct position prior to introducing IPE to the system.

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 violations described herein. Written comments may be filed regarding the violations 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.

Prior to the issuance of any additional appropriate enforcement action, you may request a meeting with the Department to present any mitigating circumstances concerning the violations. If you would like to have such a meeting, please contact Courtney Tolbert at (225) 219-3347, or Courtney.Tolbert@la.gov within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

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 in order 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 violations 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 this 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.

For each violation described herein, the Department reserves the right to seek civil penalties and the right to seek compliance with its rules and regulations in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties and compliance.

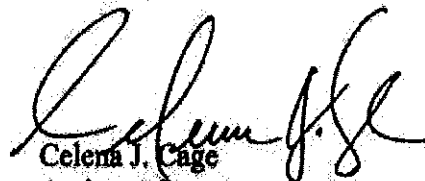
The Department assesses civil penalties based on LAC 33:I.Subpart1.Chapter 7. To expedite closure of this **NOTICE OF POTENTIAL PENALTY**, the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violations described herein. The Respondent may offer a

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settlement amount, but the Department is under no obligation to enter into settlement negotiations. The decision to proceed with a settlement is at the discretion of the Department. The settlement offer amount may be entered on the attached "NOTICE OF POTENTIAL PENALTY REQUEST TO SETTLE" form. The Respondent may submit the settlement offer within one hundred and eighty (180) days of receipt of this NOTICE OF POTENTIAL PENALTY. 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.

To reduce document handling, please refer to the Enforcement Tracking Number and Agency Interest Number on the front of this document on all correspondence in response to this action.

Sincerely,



Celena J. Cage
Assistant Secretary
Office of Environmental Compliance

CJC/CJT/ejt
Alt ID No. 2520-00001

c: Union Carbide Corporation
c/o Zenille Saunders, Regulatory Services Leader
21255 La 1, Plaquemine, LA 70710

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE
ENFORCEMENT DIVISION
POST OFFICE BOX 4312
BATON ROUGE, LOUISIANA 70821-4312

NOTICE OF POTENTIAL PENALTY
REQUEST TO SETTLE (OPTIONAL)



Enforcement Tracking No.	AE-PP-21-00156	Contact Name	Courtney Tolbert
Agency Interest (AI) No.	2083	Contact Phone No.	(225) 219-3347
Alternate ID No.	2520-00001		
Respondent:	Union Carbide Corporation	Facility Name:	St. Charles Operations
	c/o C T Corporation System	Physical Location:	355 Louisiana Highway 3142
	Agent for Service of Process	City, State, Zip:	Taft, LA 70057
	3867 Plaza Tower Drive	Parish:	St. Charles
Baton Rouge, LA 70816			

(check the applicable option)

- The Respondent is not interested in entering into settlement negotiations with the Department with the understanding that the Department has the right to assess civil penalties based on LAC 33:1.Subpart1.Chapter7.
- In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY AE-PP-21-00156, 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 AE-PP-21-00156, the Respondent is interested in entering into settlement negotiations with the Department and offers to pay \$ _____ which shall include LDEQ enforcement costs and any monetary benefit of non-compliance.
 - Monetary component = \$ _____
 - Beneficial Environmental Project (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 AE-PP-21-00156, and has attached a justification of its offer and a description of any BEPs if included in settlement offer.

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
 P.O. Box 4312
 Baton Rouge, LA 70821
 Attn: Courtney Tolbert

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 two 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
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.



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> <u>FAQs</u>
Judicial Interest.....	<u>provided by the Louisiana State Bar Association</u>

