

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**DIVERSIFIED FOODS AND SEASONINGS,
L.L.C.**

AI # 90971

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

* **Settlement Tracking No.**

* **SA-AE-25-0073**

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* **Enforcement Tracking Nos.**

* **AE-P-23-00836**

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* **Docket No. 2025-6486-DEQ**

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SETTLEMENT AGREEMENT

The following Settlement Agreement is hereby agreed to between Diversified Foods and Seasonings, 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 food manufacturing facility located in Madisonville, St. Tammany Parish, Louisiana (“the Facility”).

II

On December 20, 2023, the Department issued to Respondent a Penalty Assessment, Enforcement Tracking No. AE-P-23-00836 (Exhibit 1).

III

In response to the Penalty Assessment, 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 AND NO/100 DOLLARS (\$10,000.00), of which Three Thousand Four Hundred Sixty-Nine and 13/100 Dollars (\$3,469.13) 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).

VI

Respondent further agrees that the Department may consider the inspection report(s), permit record(s), the Penalty Assessment 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.

VII

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.

VIII

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.

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 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.

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 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 Accounts Receivable, Financial Services Division, Department of

Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303 or by Electronic Funds Transfer (EFT) to the Department of Environmental Quality, in accordance with instructions provided to Respondent by the Financial Services Division. Each payment shall be accompanied by a completed Settlement Payment Form attached hereto.

XII

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

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.

**DIVERSIFIED FOODS AND
SEASONINGS, L.L.C.**

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**
Courtney J. Burdette, 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

DEC 20 2023

CERTIFIED MAIL (7022 2410 0000 7120 1342)
RETURN RECEIPT REQUESTED



DIVERSIFIED FOODS AND SEASONINGS, L.L.C.

c/o Len Brignac
Agent for Service of Process
King & Jurgens LLC
201 St. Charles Ave., Ste. 4500
New Orleans, LA 70170

**RE: PENALTY ASSESSMENT
ENFORCEMENT TRACKING NO. AE-P-23-00836
AGENCY INTEREST NO. 90971**

Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **PENALTY ASSESSMENT** is hereby served on **DIVERSIFIED FOODS AND SEASONINGS, L.L.C. (RESPONDENT)** for the violations described therein.

Any questions concerning this action should be directed to James "Bailey" Macmurdo at (225) 219-2141 or bailey.macmurdo@la.gov.

Sincerely,

A handwritten signature in black ink that reads "Angela Marse".

Angela Marse
Administrator
Enforcement Division

AM/IBM/jbm
Alt ID No. 2680-00080
Attachment

c: Diversified Foods and Seasonings, L.L.C.
c/o Mr. Darren James, Vice President of Operations
1404 Greengate Drive, Suite 300
Covington, LA 70433

Jones Walker LLP
c/o Mr. Robert E. Holden
201 St. Charles Avenue
New Orleans, LA 70170-5100

**STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE**

IN THE MATTER OF

**DIVERSIFIED FOODS AND
SEASONINGS, L.L.C.
ST. TAMMANY PARISH
ALT ID NO. 2680-00080**

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ENFORCEMENT TRACKING NO.

AE-P-23-00836

AGENCY INTEREST NO.

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

90971

PENALTY ASSESSMENT

The following **PENALTY ASSESSMENT** is issued to **DIVERSIFIED FOODS AND SEASONINGS, L.L.C. (RESPONDENT)** by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(E) and 30:2050.3.

FINDINGS OF FACT

I.

The Respondent owns and/or operates Diversified Foods & Seasonings, LLC, a food manufacturing facility, located at 109 Louisiana Highway 1085 in Madisonville, St. Tammany Parish, Louisiana (the Facility). The Facility is subject to Program Level Three (3) Chemical Accident Prevention Provisions (CAPP) in 40 CFR Part 68, which has been incorporated into the Louisiana Administrative Code (LAC) in LAC 33:III.5901.A.

II.

On or about January 6 – 8, 2015, the Department conducted a CAPP inspection at the Facility. The Department issued Warning Letter, Enforcement Tracking No. AE-L-15-00544, on or about May 8, 2015, to the Respondent. In correspondence dated June 10, 2015, the Respondent submitted a response to the Warning Letter, Enforcement Tracking No. AE-L-15-00544. A follow-

up inspection was conducted on December 17, 2015, after two release incidents occurred at the Facility in October and December 2015. On or about January 6 – 8, 2016, the Department conducted a CAPP inspection at the Facility. In correspondence dated August 26, 2016, the Respondent submitted a response letter to the Department. On or about December 18, 2017, the Department conducted a file review of the Facility. While the investigation is not yet complete, the following violations were noted during the course of the inspections and subsequent file review:

- A. The Respondent failed to include relief system design and design basis in the safety process information. During the January 2015 inspection, the Facility did not have sizing calculations for relief valves on process equipment. This is a violation of 40 CFR 68.65(d)(iv), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the relief system design was completed on December 4, 2015.
- B. The Respondent failed to promptly address action items, including documenting what actions were to be taken, completing actions as soon as possible, and developing a written schedule of when the actions were to be completed. During the January 2015 inspection, the inspector noted that no action had been taken on any of the approximately 25 recommendations from the Process Hazard Analysis (PHA). Specifically, no action had been taken to correct the items, and the Respondent had not assigned responsibility or completion dates to the items. The inspector noted approximately 90% of the action items had been ranked as an A, B, or C, which the International Institute of Ammonia Refrigeration (IIAR) calls for immediate action to correct. This is a violation of 40 CFR 68.67(e), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that action items from the 2012 PHA were completed on October 29, 2015.
- C. As noted during the January 2015 inspection, the Respondent's operating procedures did not address safety or health considerations. This is a violation of 40 CFR 68.69(a)(3), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated

August 26, 2016, the Respondent stated that all SOPs were up-to-date and due to be re-certified in October 2016.

- D. The Respondent failed to certify that operating procedures were current and accurate. During the January 2015 inspection, the inspector noted that procedures were not certified in the years 2011, 2012, or 2013. This is a violation of 40 CFR 68.69(c), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that all standard operating procedures (SOPs) were up-to-date and due to be re-certified in October 2016.
- E. The Respondent failed to provide initial training that included information on safety, health hazards, and emergency operations. During the January 2015 inspection, the Respondent's newest employee did not have the required training at the time. This is a violation of 40 CFR 68.71(a)(1), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated an operator training program was in development and would be completed and implemented by September 16, 2016. In correspondence dated December 18, 2017, the Respondent submitted documentation demonstrating that the employee noted during the January 2015 inspection, has been trained.
- F. The Respondent failed to conduct inspections for mechanical integrity at a frequency consistent with good engineering practices. During the January 2015 inspection, it was noted that all of the five (5) year visual checks for vessels and piping were over a year late, though the visual checks are specified in the facility's mechanical integrity policy and procedure requirements and good engineering practices developed by the IIAR. This is a violation of 40 CFR 68.73(d)(3), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the annual Mechanical Integrity (MI) inspection was conducted, and they plan to continue to use third party service providers to conduct the required five-year inspections according to the schedule.

- G. The Respondent failed to perform inspections and tests on process equipment. During the January 2015 inspection, it was noted that the facility was not performing inspections on pressure safety valves (PSVs) as required. This is a violation of 40 CFR 68.73(d)(1), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the annual MI inspection included relief valve inspections and that these inspections will be documented.
- H. The Respondent failed to document the results of inspections on process equipment. During the January 2015 inspection, it was noted that the facility conducted inspections on the emergency stop button, ammonia detection, and safety controls, but the results of these inspections were not identified. This is a violation 40 CFR 68.73(d)(4), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that all safety controls and emergency stops were tested and verified in the annual MI inspection.
- I. The Respondent failed to correct deficiencies to assure safe operation. The 5-year inspection conducted in 2013 identified four (4) items that needed urgent attention. At the time of the CAPP inspection in January 2015, none of these items had been addressed. Specifically, the 2013 inspection revealed that the emergency stop button was not working. The facility has not resolved the inability to shut down the process since that time. This is a violation 40 CFR 68.73(e), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the emergency stop function was corrected in 2015 and that four (4) more emergency stop stations were added to the system.
- J. The Respondent failed to implement procedures to manage changes to equipment. During the January 2015 inspection, it was noted that the Facility added new valves, elbows, and modified piping on June 20, 2011, and this change in process equipment would have required a Management of Change (MOC) procedure, which was not performed. This is a violation 40 CFR 68.75(a), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2).

In a response letter dated August 26, 2016, the Respondent stated that the Facility implemented proper MOC procedures for any system change going forward.

- K. The Respondent failed to conduct a Pre-Startup Safety Review (PSSR) when modifications required a change in process safety information. During the January 2015 inspection, it was noted that the piping modifications performed on June 30, 2011, constituted a change in process information, triggering the requirements for a PSSR prior to using the changes, but the PSSR was not performed. This is a violation 40 CFR 68.77(a), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that a PSSR would be conducted for any required system change going forward.
- L. The Respondent failed to document responses to findings from compliance audits and failed to correct deficiencies. During the January 2015 inspection, the inspector noted that the audit findings from 2009 and 2012 were not acted on. The inspector also noted that a relief valve study was needed to ensure there was adequate relief capability. This is a violation 40 CFR 68.79(d), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that, in addition to completing the action items from the 2012 PHA on October 29, 2015, the relief system design basis was completed on December 4, 2015.
- M. The Respondent failed to periodically evaluate the performance of the contract employees in fulfilling the requirements of 68.87(c). This is a violation 40 CFR 68.87(b)(5), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that contractor evaluations would be conducted for any on-site work and that two employees had been trained to complete these evaluations.
- N. On October 16, 2015, the unauthorized release of an estimated 27,000 pounds (lbs.) of anhydrous ammonia occurred at the Facility between 8:25 AM and 11:14 AM. The Respondent submitted a notification report to the Department dated October 21, 2015 with details of the incident (T-166763). The discharge occurred

from the ammonia refrigeration system and was reportedly caused by hydraulic shock to the main suction head pipe on the roof of the Facility, where the welded end cap failed. The pressurized ammonia formed a vapor cloud at the south side of the Facility. The local fire department sprayed the cloud to prevent vapors from further leaving the site, and a portion of I-12 was closed in both directions as a precaution. Water contaminated by the anhydrous ammonia affected the soil and vegetation to the south side of the Facility and flowed into a ditch and retention pond. The Department responded to the incident and performed air monitoring. Three (3) Facility employees were taken to the hospital for observation and were released later that day. On October 17, 2015, the Respondent developed a remediation plan. The failure to design and maintain a safe facility and to minimize off-site impact is a violation of LAC 33:III.5907.A, La. R.S. 30:2057(A)(1) and La. R.S. 30:2057(A)(2). In the unauthorized discharge notification report dated October 23, 2015, the Respondent stated that the end cap will be replaced with a new end cap meeting the industrial engineering standards for ammonia refrigeration processes and procedures, and that two additional isolation valves will be installed to reduce the quantity of a future leak, if one were to occur.

- O. On December 3, 2015, the unauthorized release of an estimated 400 lbs. of anhydrous ammonia occurred at the Facility between 7:23 AM and 7:50 AM. The Respondent submitted a notification dated December 7, 2015 with details of the incident (T-167622). The discharge occurred when a motor above the evaporator fan of Spiral Freezer No. 2 broke loose, shattering the evaporator fan blades. Shrapnel then pierced the coil piping of the evaporator. The failure to control air emissions or procedures by diligently maintaining air pollution control facilities 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 the unauthorized discharge notification report dated December 7, 2015, the Respondent stated that the damaged evaporator was removed from service and would be replaced in 2016. The Respondent also hired a third party company to inspect the equipment within the freezer, and a safety chain was installed to connect the motor to the frame of the freezer.

- P. The Respondent failed to document initial operating procedure training of operators. During the January 2016 inspection, it was noted that the Facility's previous ammonia engineer, who was in charge of conducting training, did not leave documentation of any procedure training for the current operators. The inspector also noted that there were no written training plans for the training of new operators relative to ammonia system standard operating procedures (SOPs). The failure to ascertain that each employee involved in operating a process has received and understood the required training, and the failure to prepare a record of the training, is a violation 40 CFR 68.71(c), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the new operator training program would be implemented by September 16, 2016.
- Q. The Respondent failed to train employees affected by a change prior to start-up of the affected part of the process. After the ammonia release that occurred in October 2015, the Facility's ammonia leak system design modifications were implemented, which included significant equipment changes and updated operating procedures. During the January 2016 inspection, it was noted that there were changes in the process safety information, process diagrams, pipe modifications, new valves, and modifications of the control system. The changes required a management of change (MOC) procedure to be implemented, as well as training on the new procedures for operators and maintenance personnel. The Respondent did not conduct training on the changes made. The failure to train employees on a change prior to the start-up of the process is a violation 40 CFR 68.75(c), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the MOC 2015-2 was created on October 19, 2015 as a result of the first release and training for it was conducted on December 3, 2015.
- R. The Respondent failed to perform a PSSR for MOC 2015-2. During the January 2016 inspection, it was noted that the changes implemented in response to the October 2015 ammonia release required a PSSR to be performed. The failure to conduct a PSSR for new or modified stationary sources when the modification is

significant enough to require a change in the process safety information is a violation 40 CFR 68.77(a), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that a PSSR for MOC 2015-2 was completed on October 31, 2015.

- S. The Respondent failed to perform training for employees in relevant procedures. During the ammonia release in October 2015, the on-scene incident commander determined that a valve on a critical ammonia vessel needed to be closed. Facility employee Mr. Rominal Coleman suited up in Level A gear to enter the hot zone and close the valve; however, his Hazard Waste Operations and Emergency Response (HAZWOPER) certification expired in 2011. The failure to provide relevant emergency response training is a violation 40 CFR 68.95(a)(3), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the Facility's personnel no longer respond in emergencies. The Respondent identified the local fire department Hazardous Material (HAZMAT) personnel as the emergency responders, eliminating the need for Facility personnel to be HAZWOPER trained. However, the Respondent will conduct emergency response drills with the fire department or HAZMAT Team and document those drills as recommended.

III.

On or about December 21, 2018, the Department issued a Notice of Potential Penalty (NOPP), Enforcement Tracking No. AE-PP-16-00694 to the Respondent.

IV.

A civil penalty under Section 2025(E) and 2050.3 of the Act may be assessed for the violations described herein.

V.

Having considered the factors set forth in Section 2025(E)(3) of the Act, and in light of all facts and circumstances presently known, a civil penalty would be appropriate, equitable, and justified.

ASSESSMENT

I.

A penalty in the amount of **FIFTY THOUSAND ONE HUNDRED THIRTY-NINE DOLLARS AND THIRTEEN CENTS (\$50,139.13)** is hereby assessed together with legal interest as allowed by law and all costs of bringing and prosecuting this enforcement action accruing after the date of issuance.

THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:

I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **PENALTY ASSESSMENT**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **PENALTY ASSESSMENT**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **PENALTY ASSESSMENT** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the Enforcement Tracking Number and Agency Interest Number, which are located in the upper right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality
Office of the Secretary
Post Office Box 4302
Baton Rouge, Louisiana 70821-4302
Attn: Hearings Clerk, Legal Division
Re: Enforcement Tracking No. AE-P-23-00836
Agency Interest No. 90971

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 **PENALTY ASSESSMENT** 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 (DAL) Procedural Rules. The Department may amend or supplement this **PENALTY ASSESSMENT**

prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **PENALTY ASSESSMENT** shall become a final enforcement action unless the request for a 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 violations described herein and the assessed penalty.

V.

The Respondent must make full payment of the civil penalty assessed herein no later than fifteen (15) days after the assessment becomes final. Penalties are to be made payable to the Department of Environmental Quality, and mailed to:

Department of Environmental Quality
Office of Management and Finance
Post Office Box 4303
Baton Rouge, Louisiana 70821-4303
Attn: Rhonda Mack, Accountant
Re: Enforcement Tracking No. AE-P-23-00836
Agency Interest No. 90971

Enclose with your payment the attached Penalty Payment form.

VI.

Upon the penalty assessed herein becoming final due to the Respondent's failure to timely file a request for a hearing, and upon the Respondent's failure to pay the civil penalty provided herein or failure to make arrangements satisfactory to the Department for such payment, this matter shall be referred to the Department's Legal Affairs Division for collection of the penalty, plus all costs associated with the collection. Failure of the Legal Affairs Division to collect the penalty and associated costs shall result in the transfer of the debt to the Louisiana Office of Debt Recovery (ODR) where it will be subject to an additional collection fee of up to twenty-five percent (25%) of the total debt liability, as provided for in La R.S. 47:1676 (E).

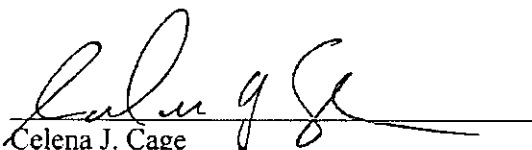
VII.

For each violation described herein, the Department reserves 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 compliance.

VIII.

This **PENALTY ASSESSMENT** is effective upon receipt.

Baton Rouge, Louisiana, this 28th day of December, 2023.


Celena J. Cage
Assistant Secretary
Office of Environmental Compliance

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
P.O. Box 4312
Baton Rouge, LA 70821-4312
Attention: James "Bailey" Macmurdo

PENALTY PAYMENT FORM

Please attach this form to your penalty payment
and submit to:

Department of Environmental Quality
Office of Management and Finance
P. O. Box 4303
Baton Rouge, Louisiana 70821-4303
Attn: Rhonda Mack, Accountant

**Respondent: DIVERSIFIED FOODS AND
SEASONINGS, L.L.C.**

Enforcement Tracking Number: AE-P-23-00836

Penalty Amount: \$50,139.13

AI Number: 90971

Alternate ID Number: 2680-00080

TEMPO Activity Number: ENF20230003

**For Official Use Only.
Do Not write in this Section.**

Check Number:

Check Date:

Check Amount:

Received Date:

PIV Number:

PIV Date:

**Stamp "Paid" in the box to the right
and initial.**

Route Completed form to:

**Celena J. Cage
Assistant Secretary
Office of Environmental Compliance**

Enforcement Tracking #: AE-P-23-00836
AI #: 90971
Page 1 of 59

PENALTY CALCULATION WORKSHEET

Penalty Event #1 – Paragraph II.A - The Respondent failed to include relief system design and design basis in the safety process information. During the January 2015 inspection, the Facility did not have sizing calculations for relief valves on process equipment. This is a violation of 40 CFR 68.65(d)(iv), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the relief system design was completed on December 4, 2015.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that substantial risk of harm to the environment or public health occurred due to this violation. The violation does not directly present actual harm or substantial risk of harm to the environment or public health. Specifically, the failure to include one (1) of the eight (8) categories of information pertaining to the equipment in the process, namely the relief system design and design basis, does not directly present actual harm or substantial risk of harm to the environment or public health.

Nature and Gravity of the Violation: Minor

Justification: The violation deviated somewhat from the regulation; however, substantial implementation of the requirements occurred. Specifically, one (1) of the eight (8) categories of information pertaining to the equipment in the process, namely the relief system design and design basis, was not included in the process safety information at the time of the inspection. According to correspondence dated February 11, 2019, the Respondent stated that the design basis calculations were present at the time of the January 2015 inspection; however, the sizing calculations for the relief valves on process equipment could not be located by the Respondent for review by the Department. In the February 11, 2019, correspondence, the Respondent stated that the design basis was re-evaluated and revised on December 4, 2015.

Enforcement Tracking #: AE-P-23-00836

AI #: 90971

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of Notice of Potential Penalty (NOPP) Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, and/or indifference to the regulations.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$100.00
Maximum (C) \$500.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.10

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_1 = A + (B \times [C - A])$$

$$P_1 = \$100.00 + (0.10 \times [\$500.00 - \$100.00])$$

$$P_1 = \$140.00$$

Penalty Amount for Penalty Event = \$140.00

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Penalty Event #2 – Paragraph II.B - The Respondent failed to promptly address action items, including documenting what actions were to be taken, completing actions as soon as possible, and developing a written schedule of when the actions were to be completed. During the January 2015 inspection, the inspector noted that no action had been taken on any of the approximately 25 recommendations from the Process Hazard Analysis (PHA). Specifically, no action had been taken to correct the items, and the Respondent had not assigned responsibility or completion dates to the items. The inspector noted approximately 90% of the action items had been ranked as an A, B, or C, which the International Institute of Ammonia Refrigeration (IIAR) calls for immediate action to correct. This is a violation of 40 CFR 68.67(e), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that action items from the 2012 PHA were completed on October 29, 2015.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Moderate

Justification: The violation has the potential for measurable detrimental impact on the environment, property, and/or public health. The failure to resolve approximately 25 known hazards associated with the process in a timely manner poses the potential for hazards. Specifically, 90 percent of the hazards identified in the 2012 PHA called for immediate action to correct; however, these were not complete at the time of the inspection in January of 2015. The Department considers the risk of this violation to be moderate.

Nature and Gravity of the Violation: Major

Justification: The violation deviated substantially from the regulation, and little to no implementation of the requirements occurred. Specifically, 90 percent of the hazards identified in the 2012 PHA called for immediate action to correct; however, these were not complete at the time of the inspection in January of 2015, nor were completion dates or responsibility assigned to the items. Little to no implementation of the requirement occurred at the time of the inspection. As a corrective action, the entirety of the PHA recommendations were completed on October 29, 2015, or approximately three (3) years late. The Department considers the nature and gravity of this violation to be major. According to correspondence dated February 11, 2019, correspondence, the Respondent made personnel changes and contracted a third-party consultant to assure compliance.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 20%
Justification: The Respondent is culpable for the violation; however, the Respondent did not display recalcitrance or defiance. The Respondent showed indifference as the recommendations from the 2012 PHA were not resolved until October 29, 2015; 90 percent of the recommendations from the 2012 PHA should have been resolved immediately.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 20%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$8,000.00
Maximum (C) \$11,000.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.20

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_2 = A + (B \times [C - A])$$

$$P_2 = \$8,000.00 + (0.20 \times [\$11,000.00 - \$8,000.00])$$

$$P_2 = \$8,600.00$$

Penalty Amount for Penalty Event = \$8,600.00

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Penalty Event #3 – Paragraph II.C - As noted during the January 2015 inspection, the Respondent's operating procedures did not address safety or health considerations. This is a violation of 40 CFR 68.69(a)(3), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that all SOPs were up-to-date and due to be re-certified in October 2016.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that substantial risk of harm to the environment or public health occurred due to this violation. Specifically, 40 CFR 68.69(a) requires that written operating procedures contain three elements: steps for each operating phase, operating limits, and safety and health considerations. The Respondent did not have one (1) of the three (3) elements in the operating procedures, namely safety and health considerations. Although the lack of safety and health considerations in written operating procedures could pose a potential for measurable detrimental impact on the environment, property, and/or public health; the Department considers that there is no measurable or quantifiable effect to the environment or public health for this violation. The Department considers the risk of this violation to be minor.

Nature and Gravity of the Violation: Minor

Justification: The violation deviated somewhat from the regulation; however, substantial implementation of the requirements occurred. Specifically, the Respondent had written operating procedures in place; however, the written operating procedures were lacking safety and health considerations, showing some deviation from the requirement at the time of the inspection. The Department considers the nature and gravity of this violation to be minor. As stated in the February 11, 2019, letter, as a corrective action, all SOPs were updated in 2015 to include a section on safety and health considerations. The Respondent stated that it updated the safety and health considerations within one (1) year of the inspection.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, and/or indifference to the regulations.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$100.00
Maximum (C) \$500.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.10

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_3 = A + (B \times [C - A])$$

$$P_3 = \$100.00 + (0.10 \times [\$500.00 - \$100.00])$$

$$P_3 = \$140.00$$

Penalty Amount for Penalty Event = \$140.00

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Penalty Event #4 – Paragraph II.D - The Respondent failed to certify that operating procedures were current and accurate. During the January 2015 inspection, the inspector noted that procedures were not certified in the years 2011, 2012, or 2013. This is a violation of 40 CFR 68.69(c), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that all standard operating procedures (SOPs) were up-to-date and due to be re-certified in October 2016.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that substantial risk of harm to the environment or public health occurred due to this violation. The Respondent's failure to annually certify the operating procedures for three (3) years did not cause measurable detrimental effect on the environment, property, and/or public health.

Nature and Gravity of the Violation: Major

Justification: The violation deviated significantly from the regulation, and little to no implementation of the requirements occurred. Specifically, the Respondent failed to annually certify the SOPs for three (3) years, showing little to no implementation of the requirements. The Department considers the nature and gravity of this violation to be major. As a corrective action, in the letter dated February 11, 2019, the Respondent stated all SOPs were up-to-date at the time of the August 26, 2016, letter. The operating procedures were updated between three (3) and five (5) years late.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 20%
Justification: The Respondent is culpable for the violation; however, the Respondent did not display recalcitrance or defiance. The Respondent displayed indifference to the regulations given that the SOPs were updated between three (3) and five (5) years late.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 20%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$1,500.00
Maximum (C) \$3,000.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.20

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_4 = A + (B \times [C - A])$$

$$P_4 = \$1,500.00 + (0.20 \times [\$3,000.00 - \$1,500.00])$$

$$P_4 = \$1,800.00$$

$$\text{Penalty Amount for Penalty Event} = \underline{\$1,800.00}$$

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Penalty Event #5 – Paragraph II.E - The Respondent failed to provide initial training that included information on safety, health hazards, and emergency operations. During the January 2015 inspection, the Respondent's newest employee did not have the required training at the time. This is a violation of 40 CFR 68.71(a)(1), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated an operator training program was in development and would be completed and implemented by September 16, 2016. In correspondence dated December 18, 2017, the Respondent submitted documentation demonstrating that the employee noted during the January 2015 inspection, has been trained.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Moderate

Justification: The violation has the potential for measurable detrimental impact on the environment and/or public health. Specifically, the untrained operator presented a potential hazard to the public and/or the environment. The Facility has more than the threshold quantity of anhydrous ammonia (a regulated substance) in a process, which establishes the applicability of 40 CFR Part 68. Operating the process prior to being trained could potentially lead to the failure to properly follow operating procedures and unsafe work practices being conducted, which has the potential to cause accidental releases of anhydrous ammonia to the atmosphere. Such releases have the potential to cause measurable detrimental impact on the environment and/or public/human health. The acute effects of anhydrous ammonia exposure include, but are not limited to, chemical burns, eye, ear, nose and skin irritation, coughing and airway obstruction due to swelling. Additionally, anhydrous ammonia is flammable, and there is a potential explosion risk when released. Untrained operators could potentially cause measurable detrimental impact on the environment and/or public/human health; therefore, the Department considers the risk to be moderate.

Nature and Gravity of the Violation: Moderate

Justification: The violation deviated from the regulation; however, some implementation of the requirements occurred. As mentioned in the correspondence dated December 18, 2017, the untrained employee had received training. In an email (EDMS Document 13753067) dated December 12, 2017, the Respondent provided records of the training for Van Showers and other employees. The documentation showed that the employees had been trained on equipment on November 14, 2014, prior to the January 2015 inspection, but the records were not available during the inspection. On November 7, 2016, Van Showers was trained on Ammonia Accident Prevention and First Aid, and on October 7, 2015, he was trained on SOPs for emergency shutdown. The Department considers the nature and gravity for this violation to be moderate.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, and/or indifference to the regulations.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$5,000.00
Maximum (C) \$8,000.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.10

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_5 = A + (B \times [C - A])$$

$$P_5 = \$5,000.00 + (0.10 \times [\$8,000.00 - \$5,000.00])$$

$$P_5 = \$5,300.00$$

Penalty Amount for Penalty Event = \$5,300.00

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Penalty Event #6 – Paragraph II.F - The Respondent failed to conduct inspections for mechanical integrity at a frequency consistent with good engineering practices. During the January 2015 inspection, it was noted that all of the five (5) year visual checks for vessels and piping were over a year late, though the visual checks are specified in the Facility's mechanical integrity policy and procedure requirements and good engineering practices developed by the IIAR. This is a violation of 40 CFR 68.73(d)(3), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the annual Mechanical Integrity (MI) inspection was conducted, and they plan to continue to use third party service providers to conduct the required five-year inspections according to the schedule.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that this violation directly presented actual harm or substantial risk of harm to the environment or public health. The Department has no evidence that the Respondent's failure to timely conduct visual checks for vessels and process piping in accordance with good engineering practices had a detrimental effect to the environment, property, and/or public health. The Department considers the risk of this violation to be minor.

Nature and Gravity of the Violation: Moderate

Justification: The violation deviated from the regulation; however, some implementation of the requirements occurred. Specifically, the visual checks/inspections were over one (1) year late for all the five (5) year required checks. The Respondent had been conducting visual checks and included them in its mechanical integrity policy; however, the inspections were over one (1) year late. The Department considers the nature and gravity of this violation to be moderate. As a corrective action, as stated in the February 11, 2019, letter, the majority of piping had been replaced to reduce the risk of corrosion and increase the life of the piping.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification:
The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, and/or indifference to the regulations.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification:
The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification:
The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$500.00
Maximum (C) \$1,500.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.10

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_6 = A + (B \times [C - A])$$

$$P_6 = \$500.00 + (0.10 \times [\$1,500.00 - \$500.00])$$

$$P_6 = \$600.00$$

Penalty Amount for Penalty Event = \$600.00

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Penalty Event #7 – Paragraph II.G - The Respondent failed to perform inspections and tests on process equipment. During the January 2015 inspection, it was noted that the Facility was not performing inspections on pressure safety valves (PSVs) as required. This is a violation of 40 CFR 68.73(d)(1), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the annual MI inspection included relief valve inspections and that these inspections will be documented.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that this violation directly presented actual harm or substantial risk of harm to the environment or public health. The Department considers the risk of this violation to be minor.

Nature and Gravity of the Violation: Major

Justification: The violation deviated significantly from the regulation such that little to no implementation of the requirements occurred. Specifically, as stated in the January 2015 inspection report, the Respondent was not conducting inspections on PSVs. The International Institute of Ammonia Refrigeration (IIR) recommends that inspections be completed on an annual basis. The Department considers the nature and gravity of this violation to be major. As a corrective action, as stated in the August 26, 2016, letter, the Respondent will document the last time a PSV was changed in their master list for MI inspections. Also, as stated in the February 11, 2019, correspondence, the Respondent conducted the MI inspection in 2016, and included inspection of PSVs.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, and/or indifference to the regulations.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$1,500.00
Maximum (C) \$3,000.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.10

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_7 = A + (B \times [C - A])$$

$$P_7 = \$1,500.00 + (0.10 \times [\$3,000.00 - \$1,500.00])$$

$$P_7 = \$1,650.00$$

Penalty Amount for Penalty Event = \$1,650.00

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Penalty Event #8 – Paragraph II.H - The Respondent failed to document the results of inspections on process equipment. During the January 2015 inspection, it was noted that the facility conducted inspections on the emergency stop button, ammonia detection, and safety controls, but the results of these inspections were not identified. This is a violation 40 CFR 68.73(d)(4), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that all safety controls and emergency stops were tested and verified in the annual MI inspection.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that substantial risk of harm to the environment or public health occurred due to this violation. The failure to document the results of inspections on process equipment, in this instance, did not cause a measurable, or quantifiable, detrimental effect to the environment, property, and/or public health. The Department considers the risk of this violation to be minor.

Nature and Gravity of the Violation: Minor

Justification: The violation deviated somewhat from the regulation; however, substantial implementation of the requirements occurred. Specifically, at the time of the January 2015 inspection, the Respondent was conducting inspections; however, the results were not documented. The Respondent had been conducting inspections on process equipment, such as the emergency stop button, but did not document the results. The Department considers the nature and gravity of this violation to be minor. The Respondent also stated that tests will be conducted annually to include all safety systems and emergency shut-downs.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, or indifference.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event (using the Violation Specific Factors and the Penalty Matrix)	Minimum (A) <u>\$100.00</u> Maximum (C) <u>\$500.00</u>
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Sum of the Percentages for the Penalty Event (using the Violator Specific Factors)	Sum of %s (B) <u>0.10</u>
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Formula(s) to obtain a penalty amount for each Penalty event	$P = A + (B \times [C - A])$
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$$P_8 = A + (B \times [C - A])$$

$$P_8 = \$100.00 + (0.10 \times [\$500.00 - \$100.00])$$

$$P_8 = \$140.00$$

$$\text{Penalty Amount for Penalty Event} = \underline{\$140.00}$$

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Penalty Event #9 – Paragraph II.I - The Respondent failed to correct deficiencies to assure safe operation. The five-year inspection conducted in 2013 identified four (4) items that needed urgent attention. At the time of the CAPP inspection in January 2015, none of these items had been addressed. Specifically, the 2013 inspection revealed that the emergency stop button was not working. The Facility has not resolved the inability to shut down the process since that time. This is a violation 40 CFR 68.73(e), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the emergency stop function was corrected in 2015 and that four (4) more emergency stop stations were added to the system.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Moderate

Justification: This violation posed a potential for measurable detrimental impact on the environment, property, and/or public health. Specifically, the inability to shut down the process with the emergency stop button may potentially have a detrimental effect under certain conditions, and may result in a malfunction wherein a release could not be stopped and/or the process could not be shut down. The violation is moderate in hazard and may be expected to have a detrimental effect under certain conditions. For these reasons, the Department considers the risk of this violation to be moderate.

Nature and Gravity of the Violation: Major

Justification: The violation deviated significantly from the regulation, and little to no implementation of the requirements occurred. Specifically, at the time of the January 2015 inspection, the four (4) items identified as needing urgent attention had not been resolved from the 2013 inspection. The Department considers the nature and gravity of this violation to be major. As a corrective action, in correspondence dated February 11, 2019, the Respondent stated that the emergency stop functions were fixed in April 2015 (approximately four (4) months after the January 2015 inspection), and ammonia detectors are calibrated and tested every six (6) months. The four (4) items that needed urgent attention after the five (5) year inspection in 2013 were not remedied until April 2015, approximately two (2) years later.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, or indifference.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event (using the Violation Specific Factors and the Penalty Matrix)	Minimum (A) <u>\$8,000.00</u> Maximum (C) <u>\$11,000.00</u>
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Sum of the Percentages for the Penalty Event (using the Violator Specific Factors)	Sum of %s (B) <u>0.10</u>
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Formula(s) to obtain a penalty amount for each Penalty event	$P = A + (B \times [C - A])$
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$P_9 = A + (B \times [C - A])$

$P_9 = \$8,000.00 + (0.10 \times [\$11,000.00 - \$8,000.00])$

$P_9 = \$8,300.00$

Penalty Amount for Penalty Event = \$8,300.00

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Penalty Event #10 – Paragraph II.J - The Respondent failed to implement procedures to manage changes to equipment. During the January 2015 inspection, it was noted that the Facility added new valves, elbows, and modified piping on June 20, 2011, and this change in process equipment would have required a Management of Change (MOC) procedure, which was not performed. This is a violation 40 CFR 68.75(a), which language has been incorporated by reference in LAC 33:III.5901.A. and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the Facility implemented proper MOC procedures for any system change going forward.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that substantial risk of harm to the environment or public health occurred due to this violation. Specifically, this failure to establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures for the changes made to the process on June 20, 2011, caused no measurable detrimental effect to the environment, property, and/or public health. The Respondent had modified piping and added new valves and elbows. The Department considers the risk of this violation to be minor.

Nature and Gravity of the Violation: Major

Justification: The violation deviated significantly from the regulation, and little to no implementation of the requirements occurred. Specifically, 40 CFR 68.75(a) requires that the Respondent "establish and implement written procedures to manage changes (except for "replacements in kind") to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process." 40 CFR 68.75(b) requires MOCs be updated prior to a change in the process. This was not implemented prior to the June 20, 2011, change to the piping and associated equipment. As stated in the June 10, 2015, letter, the Respondent had documented the MOC on or about June 30, 2011, (20 days after the change was introduced) but only located the documentation on June 10, 2015. The Department considers the nature and gravity of this violation to be major. As a corrective action, as stated in the February 11, 2019, letter, the Respondent has implemented proper MOC procedures for any system change, and has a training program which assures operators are trained on the effects of and the change itself.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, and/or indifference to the regulations.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$1,500.00
Maximum (C) \$3,000.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.10

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_{10} = A + (B \times [C - A])$$

$$P_{10} = \$1,500.00 + (0.10 \times [\$3,000.00 - \$1,500.00])$$

$$P_{10} = \$1,650.00$$

$$\text{Penalty Amount for Penalty Event} = \underline{\$1,650.00}$$

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Penalty Event #11 – Paragraph II.K - The Respondent failed to conduct a Pre-Startup Safety Review (PSSR) when modifications required a change in process safety information. During the January 2015 inspection, it was noted that the piping modifications performed on June 30, 2011, constituted a change in process information, triggering the requirements for a PSSR prior to using the changes, but the PSSR was not performed. This is a violation 40 CFR 68.77(a), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that a PSSR would be conducted for any required system change going forward.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that substantial risk of harm to the environment or public health occurred due to this violation. Specifically, the failure to conduct a PSSR in this case did not cause measurable detrimental effect to the environment, property, and/or public health. The Department considers the risk of this violation to be minor.

Nature and Gravity of the Violation: Major

Justification: The violation deviated substantially from the regulation, and little to no implementation of the requirements occurred. Specifically, at the time of the January 2015 inspection, the June 20, 2011 change would have required a PSSR; however, this was not performed. The Department considers the nature and gravity of the violation to be major. As a corrective action, the Respondent stated in correspondence dated February 11, 2019, that it will conduct a PSSR for future changes, and has conducted a PSSR for changes to the new refrigeration system in 2018 or 2019. The Respondent also stated, in a letter dated June 10, 2015, that the responsible employee was terminated "as a result of this negligence".

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, and/or indifference to the regulations.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$1,500.00
Maximum (C) \$3,000.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.10

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_{11} = A + (B \times [C - A])$$

$$P_{11} = \$1,500.00 + (0.10 \times [\$3,000.00 - \$1,500.00])$$

$$P_{11} = \$1,650.00$$

$$\text{Penalty Amount for Penalty Event} = \underline{\$1,650.00}$$

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Penalty Event #12 – Paragraph II.L - The Respondent failed to document responses to findings from compliance audits and failed to correct deficiencies. During the January 2015 inspection, the inspector noted that the audit findings from 2009 and 2012 were not acted on. The inspector also noted that a relief valve study was needed to ensure there was adequate relief capability. This is a violation of 40 CFR 68.79(d), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that, in addition to completing the action items from the 2012 PHA on October 29, 2015, the relief system design basis was completed on December 4, 2015.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that substantial risk of harm to the environment or public health occurred due to this violation. Specifically, the failure to correct deficiencies from the 2009 and 2012 audits did not directly present actual harm or substantial risk of harm to the environment or public health. The Respondent neglected to complete a relief valve study and mechanical integrity recommendations. The Department considers the risk of this violation to be minor.

Nature and Gravity of the Violation: Major

Justification: The violation deviated significantly from the regulation, and little to no implementation of the requirements occurred. Specifically, at the time of the January 2015 inspection, the findings of the 2009 and 2012 audits were not resolved or acted on. This was not prompt, as required by 40 CFR 68.79(d). The Department considers the nature and gravity of this violation to be major. As a corrective action, the Respondent stated in the February 11, 2019, letter that the relief system design basis was completed December 4, 2015, and the PHA deficiencies were corrected October 29, 2015. The Respondent hired a third-party consultant to assure compliance.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 20%
Justification: The Respondent is culpable for the violation. The Respondent also showed indifference to the regulation by failing to correct deficiencies from the 2009 and 2012 audits until 2015. The Respondent repeatedly failed to correct deficiencies, and showed some indifference to the regulations. The Respondent did not display recalcitrance or defiance.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 20%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$1,500.00
Maximum (C) \$3,000.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.20

Number of Events (D): Two (2). One (1) event has been designated for each audit where the Respondent failed to address findings in a timely manner.

Formula(s) to obtain a penalty amount for each
Penalty event

$$P = (A + (B \times [C - A])) \times D$$

$$P_{12} = (A + (B \times [C - A])) \times D$$

$$P_{12} = (\$1,500.00 + (0.20 \times [\$3,000.00 - \$1,500.00])) \times 2$$

$$P_{12} = \$3,600.00$$

$$\text{Penalty Amount for Penalty Event} = \underline{\$3,600.00}$$

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Penalty Event #13 – Paragraph II.M - The Respondent failed to periodically evaluate the performance of the contract employees in fulfilling the requirements of 68.87(c). This is a violation 40 CFR 68.87(b)(5), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that contractor evaluations would be conducted for any on-site work and that two employees had been trained to complete these evaluations.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that substantial risk of harm to the environment or public health occurred due to this violation. Specifically, the Respondent hired a contractor to expand the facility in 2012 and did not evaluate the contractor's performance; however, this violation caused no measurable detrimental effect to the environment, property, and/or public health. The Department considers the risk of this violation to be minor.

Nature and Gravity of the Violation: Major

Justification: The violation deviated significantly from the regulation, and little to no implementation of the requirements occurred. Specifically, as stated in the June 10, 2015, letter, the Respondent did not evaluate the contractor hired to expand the facility in 2012, showing little to no implementation of 40 CFR 68.87(c). The Department considers the nature and gravity of this violation to be major. As a corrective action, in correspondence dated February 11, 2019, the Respondent stated that a training video was being developed, with the help of a third-party consultant, to assure that contractors are properly trained before working near the ammonia refrigeration system.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, or indifference.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$1,500.00
Maximum (C) \$3,000.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.10

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_{13} = A + (B \times [C - A])$$

$$P_{13} = \$1,500.00 + (0.10 \times [\$3,000.00 - \$1,500.00])$$

$$P_{13} = \$1,650.00$$

$$\text{Penalty Amount for Penalty Event} = \underline{\$1,650.00}$$

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Penalty Event #14 – Paragraph II.N - On October 16, 2015, the unauthorized release of an estimated 27,000 pounds (lbs.) of anhydrous ammonia occurred at the Facility between 8:25 A.M. and 11:14 AM. The Respondent submitted a notification report to the Department dated October 21, 2015 with details of the incident (T-166763). The discharge occurred from the ammonia refrigeration system and was reportedly caused by hydraulic shock to the main suction head pipe on the roof of the Facility, where the welded end cap failed. The pressurized ammonia formed a vapor cloud at the south side of the Facility. The local fire department sprayed the cloud to prevent vapors from further leaving the site, and a portion of I-12 was closed in both directions as a precaution. Water contaminated by the anhydrous ammonia affected the soil and vegetation to the south side of the Facility and flowed into a ditch and retention pond. The Department responded to the incident and performed air monitoring. Three (3) Facility employees were taken to the hospital for observation and were released later that day. On October 17, 2015, the Respondent developed a remediation plan. The failure to design and maintain a safe facility and to minimize off-site impact is a violation of LAC 33:III.5907.A, La. R.S. 30:2057(A)(1) and La. R.S. 30:2057(A)(2). In the unauthorized discharge notification report dated October 23, 2015, the Respondent stated that the end cap will be replaced with a new end cap meeting the industrial engineering standards for ammonia refrigeration processes and procedures, and that two additional isolation valves will be installed to reduce the quantity of a future leak, if one were to occur.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Moderate

Justification: The failure to design and maintain a safe facility and to minimize the off-site consequences of accidental releases has the potential for actual, measurable harm or substantial risk of harm to the environment or public health. Specifically, the Respondent had a defective weld on the head pipe on the roof at the Facility, which led to this unauthorized release. The local fire department responded to the incident; however, before water could be applied, a vapor cloud left the Facility and traveled south across Interstate 12 (I-12). Elevated readings of ammonia were detected at the fenceline and interstate. I-12 was closed in both directions as a result. The acute effects of anhydrous ammonia exposure include, but are not limited to, chemical burns, eye, ear, nose and skin irritation, coughing and airway obstruction due to swelling. Additionally, anhydrous ammonia is flammable, and there is a potential explosion risk when released. Water contaminated ammonia affected the soil and vegetation to the south side of the Facility and flowed into a ditch and retention pond. Leaves on the trees on the south side of the Facility turned black as a result of being in contact with ammonia. Historical map imagery from Google Earth dated September 19, 2015, shows a subdivision with homes directly south of the Facility on the opposite side of the interstate. The nearest home is approximately 1,000 feet away; however, no shelter in place was issued. Ammonia has a Reportable Quantity (RQ) of 100 lbs.; approximately 27,000 pounds (270 times the RQ) was released during the incident. The release could have potentially had a detrimental effect under certain conditions. The Department considers the risk of this violation to be moderate.

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Nature and Gravity of the Violation: Moderate

Justification: The Respondent deviated from the regulation. The root cause of the release was found to be a failing end cap on the roof of the building due to a defective weld. Hydraulic shock caused the end cap to fail on the ten (10) inch line. The faulty weld constitutes a failure to maintain a safe facility and, the Department considers the nature and gravity of this violation to be moderate. As stated in the February 11, 2019, letter, within one (1) week of the incident the faulty end cap and pipe immediately surrounding it were replaced; two (2) isolation valves were installed to prevent the release quantity in the future if the pipe were to fail again; a hot gas by-pass pressure release system was installed to prevent hydraulic shock on the pipe, and in 2017, piping was replaced with stainless steel piping to reduce the risk of weld failures in the future.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, and/or indifference to the regulations.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that the Respondent failed to mitigate, or make a reasonable attempt to mitigate, the damages caused by the violation. The Respondent began remediation efforts, such as removing ammonia-contaminated soil, after the release.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent reported the violation to the Department, and the Department has no evidence the Respondent concealed or attempted to conceal the violation.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$5,000.00
Maximum (C) \$8,000.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.10

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_{14} = A + (B \times [C - A])$$

$$P_{14} = \$5,000.00 + (0.10 \times [\$8,000.00 - \$5,000.00])$$

$$P_{14} = \$5,300.00$$

$$\text{Penalty Amount for Penalty Event} = \underline{\$5,300.00}$$

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Penalty Event #15 – Paragraph II.P - The Respondent failed to document initial operating procedure training of operators. During the January 2016 inspection, it was noted that the Facility's previous ammonia engineer, who was in charge of conducting training, did not leave documentation of any procedure training for the current operators. The inspector also noted that there were no written training plans for the training of new operators relative to ammonia system standard operating procedures (SOPs). The failure to ascertain that each employee involved in operating a process has received and understood the required training, and the failure to prepare a record of the training, is a violation 40 CFR 68.71(c), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the new operator training program would be implemented by September 16, 2016.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that substantial risk of harm to the environment or public health occurred due to this violation. Specifically, the failure to document the procedure training for the current operators did not directly present actual harm to the environment or public health. The Department considers the risk of this violation to be minor.

Nature and Gravity of the Violation: Major

Justification: The violation deviated substantially from the regulation, and little to no implementation of the requirements occurred. Specifically, the Respondent did not have documentation showing that each employee had received training. Additionally, the during the January 2016 inspection, the Department observed that the previous ammonia engineer left no written training plans that could be applied to train new operators on ammonia system SOPs. It was not until after the October 2015 release that the untrained operator was trained on SOPs. The Department considers the nature and gravity of this violation to be major. As stated in the February 11, 2019, letter, the Respondent has hired a third-party consultant to provide annual training with documentation of completion and verification of understanding included.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, or indifference.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event (using the Violation Specific Factors and the Penalty Matrix)	Minimum (A) <u>\$1,500.00</u> Maximum (C) <u>\$3,000.00</u>
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Sum of the Percentages for the Penalty Event (using the Violator Specific Factors)	Sum of %s (B) <u>0.10</u>
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Formula(s) to obtain a penalty amount for each Penalty event	$P = A + (B \times [C - A])$
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$$P_{16} = A + (B \times [C - A])$$

$$P_{16} = \$1,500.00 + (0.10 \times [\$3,000.00 - \$1,500.00])$$

$$P_{16} = \$1,650.00$$

$$\text{Penalty Amount for Penalty Event} = \underline{\$1,650.00}$$

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Penalty Event #16 – Paragraph II.Q - The Respondent failed to train employees affected by a change prior to start-up of the affected part of the process. After the ammonia release that occurred in October 2015, the Facility's ammonia leak system design modifications were implemented, which included significant equipment changes and updated operating procedures. During the January 2016 inspection, it was noted that there were changes in the process safety information, process diagrams, pipe modifications, new valves, and modifications of the control system. The changes required a management of change (MOC) procedure to be implemented, as well as training on the new procedures for operators and maintenance personnel. The Respondent did not conduct training on the changes made. The failure to train employees on a change prior to the start-up of the process is a violation 40 CFR 68.75(c), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the MOC 2015-2 was created on October 19, 2015 as a result of the first release and training for it was conducted on December 3, 2015.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that the violation directly presents actual harm or substantial risk of harm to the environment. The Department has no evidence that this violation caused measurable detrimental impact to the environment, property and/or public health. The Department considers the risk of this violation to be minor.

Nature and Gravity of the Violation: Moderate

Justification: The violation deviated from the requirements or statutes; however, some implementation of the requirements occurred. Specifically, the Department noted in the January 2016 inspection that no training on the MOCs occurred prior to the changes being introduced; however, the Respondent had developed MOC 2015-2, but had failed to conduct training on the MOC prior to the start-up of the process. The Department considers the nature and gravity of this violation to be moderate. As a corrective action, in correspondence dated February 11, 2019, the Respondent stated that training was conducted on the MOC 2015-02 on December 3, 2015.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, or indifference.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$500.00
Maximum (C) \$1,500.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.10

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A - (B \times [C - A])$

$$P_{17} = A + (B \times [C - A])$$

$$P_{17} = \$500.00 - (0.10 \times [\$1,500.00 - \$500.00])$$

$$P_{17} = \$600.00$$

$$\text{Penalty Amount for Penalty Event} = \underline{\$600.00}$$

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Penalty Event #17 – Paragraph II.R - The Respondent failed to perform a PSSR for MOC 2015-2. During the January 2016 inspection, it was noted that the changes implemented in response to the October 2015 ammonia release required a PSSR to be performed. The failure to conduct a PSSR for new or modified stationary sources when the modification is significant enough to require a change in the process safety information is a violation 40 CFR 68.77(a), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that a PSSR for MOC 2015-2 was completed on October 31, 2015.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

The Department has no evidence that the failure to perform the PSSR directly presented actual or substantial risk of harm to the environment or public health. Specifically, the Respondent did not update process safety information or operating procedures after implementing changes, which would have required a PSSR. The Department considers the risk of this violation to be minor.

Nature and Gravity of the Violation: Major

The Respondent deviated significantly from the regulations, and little to no implementation of the requirements occurred. Specifically, at the time of the January 2016 inspection, it was noted that the Respondent did not perform a PSSR for MOC 2015-02, which involved significant equipment changes and design modifications. The changes involved in MOC 2015-02 required a PSSR to be performed; the changes included modifications to process safety information, new valves, process diagram changes, piping changes, and modifications to the control system. The Department considers the nature and gravity of this violation to be major. In the February 11, 2019, correspondence, the Respondent stated that the PSSR was completed on October 31, 2015, but was not able to be reproduced for the inspection. The PSSR was not included with the February 11, 2019, correspondence.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.

Adjustment = 0%

Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.

1. The gross revenues generated by the Respondent.

Adjustment = 0%

Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.

2. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.

Adjustment = 10%

Justification: The Respondent is culpable for the violation; however, the Respondent did not display recalcitrance, defiance, or indifference in regards to this violation.

3. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.

Adjustment = 0%

Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.

4. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.

Adjustment = 0%

Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event (using the Violation Specific Factors and the Penalty Matrix)	Minimum (A) <u>\$1,500.00</u> Maximum (C) <u>\$3,000.00</u>
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Sum of the Percentages for the Penalty Event (using the Violator Specific Factors)	Sum of %s (B) <u>0.10</u>
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Formula(s) to obtain a penalty amount for each Penalty event	$P = A + (B \times [C - A])$
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$$P_{18} = A + (B \times [C - A])$$

$$P_{18} = \$1,500.00 + (0.10 \times [\$3,000.00 - \$1,500.00])$$

$$P_{18} = \$1,650.00$$

$$\text{Penalty Amount for Penalty Event} = \underline{\$1,650.00}$$

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Penalty Event #18 – Paragraph II.S - The Respondent failed to perform training for employees in relevant procedures. During the ammonia release in October 2015, the on-scene incident commander determined that a valve on a critical ammonia vessel needed to be closed. Facility employee Mr. Rominal Coleman suited up in Level A gear to enter the hot zone and close the valve; however, his Hazard Waste Operations and Emergency Response (HAZWOPER) certification expired in 2011. The failure to provide relevant emergency response training is a violation 40 CFR 68.95(a)(3), which language has been incorporated by reference in LAC 33:III.5901.A, and La. R.S. 30:2057(A)(2). In a response letter dated August 26, 2016, the Respondent stated that the Facility's personnel no longer respond in emergencies. The Respondent identified the local fire department Hazardous Material (HAZMAT) personnel as the emergency responders, eliminating the need for Facility personnel to be HAZWOPER trained. However, the Respondent will conduct emergency response drills with the fire department or HAZMAT Team and document those drills as recommended.

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The Department has no evidence that substantial risk of harm to the environment or public health occurred due to this violation. Mr. Coleman had been trained in the past, but his annual training certification was expired. The Department has no evidence that substantial risk of harm to the environment, property, and/or public health occurred.

Nature and Gravity of the Violation: Major

Justification: The violation deviated significantly from the regulation to such an extent that little or no implementation of requirements occurred, negating the intent of the requirement. Specifically, Mr. Coleman's HAZWOPER certification was expired. Relevant emergency response training was not renewed prior to Mr. Coleman responding to an emergency. Mr. Coleman's certification expired in 2011, and is required annually. The required refresher trainings were not conducted for approximately four (4) years.

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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent has no history of violations or repeated non-compliance prior to the issuance of NOPP Enforcement Tracking No. AE-PP-16-00694 on or about December 21, 2018. This penalty assessment addresses the violations in AE-PP-16-00694; therefore, no adjustment has been made for this factor.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: NOPP Enforcement Tracking No. AE-PP-16-00694 issued to the Respondent on or about December 21, 2018, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions, and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = 10%
Justification: The Respondent is culpable for the violations; however, the Respondent did not display recalcitrance, defiance, or indifference.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no evidence that there were damages caused by this violation; therefore, no adjustment has been made for this factor.
5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Respondent did not report the violation, as it was discovered during an inspection; however, the Department has no evidence that the Respondent attempted to conceal or concealed the violation found during the inspection.

Total Percentage for Violator Specific Adjustment Factors: 10%

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Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$1,500.00
Maximum (C) \$3,000.00

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) 0.10

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$

$$P_{19} = A + (B \times [C - A])$$

$$P_{19} = \$1,500.00 + (0.10 \times [\$3,000.00 - \$1,500.00])$$

$$P_{19} = \$1,650.00$$

Penalty Amount for Penalty Event = \$1,650.00

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MONETARY BENEFIT OF NONCOMPLIANCE

LAC 33:I.705.G

The Department shall consider the monetary benefits realized through noncompliance. Any monetary benefits calculated may be added to the penalty subtotal. However, the amount calculated may not cause the penalty subtotal to exceed the maximum penalty amount allowed by law. A cash penalty should be collected unless it has been demonstrated and documented that the violator cannot pay the cash penalty.

Justification/Explanation/Calculation of Benefit of Noncompliance:

For Penalty Event #19, the Respondent failed to ensure that Mr. Coleman was up-to-date on his HAZWOPER training so that he could respond to emergencies; however, Mr. Coleman was four (4) years past due on this training. The Department determined that the monetary or economic benefit realized, by the Respondent, through noncompliance equates to the avoided cost of the four (4) HAZWOPER refreshers for Mr. Coleman. The refresher courses cost approximately \$150.00 each; therefore, the monetary or economic benefit realized, by the Respondent, through noncompliance equates to \$600.00.

For the remaining violations, the Department has no evidence the Respondent realized an economic benefit through noncompliance.

Total Monetary Benefit of Noncompliance = \$600.00

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COMPUTATION OF RESPONSE COST

LAC 33:I.705.H

Response Costs—the costs to the state of any response action made necessary by a penalty event that are not voluntarily paid by the violator. These costs shall include, but are not limited to, the costs of surveillance staff activities including cleanup costs and the costs of bringing and prosecuting an enforcement action, such as staff time, equipment use, hearing records, and expert assistance. (See LAC 33:I.703.A)

The following is a breakdown of response costs for the Notice of Potential Penalty, Enforcement Tracking No. AE-PP-16-00694 and this Penalty Assessment.

Personnel (A)	No. of Hours (B)	Hourly Rate of Pay (C)	Direct Cost (D)	Approved Federal Rate (E)	Indirect Cost (F)	Subtotal (G)
Notice of Potential Penalty, Enforcement Tracking No. AE-PP-16-00694						
Enforcement Division						
Enforcement Writer A	40.00	\$15.98	\$639.20	70.91%	\$453.26	\$1,092.46
Enforcement Supervisor	1.50	\$17.60	\$26.40	70.91%	\$18.72	\$45.12
Enforcement Analyst	0.25	\$20.39	\$5.10	70.91%	\$3.62	\$8.72
Enforcement Manager	1.00	\$27.47	\$27.47	60.23%	\$16.55	\$44.02
Enforcement Administrator	0.25	\$43.43	\$10.86	60.23%	\$6.54	\$17.40
Assistant Secretary	0.25	\$49.04	\$12.26	60.23%	\$7.38	\$19.64
Legal Division						
Enforcement Attorney	1.50	\$33.17	\$49.76	70.91%	\$35.28	\$85.04
NOPP Subtotal:						\$1,312.40

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Personnel (A)	No. of Hours (B)	Hourly Rate of Pay (C)	Direct Cost (D)	Approved Federal Rate (E)	Indirect Cost (F)	Subtotal (G)
Penalty Assessment, Enforcement Tracking No. AE-P-23-00836						
Enforcement Division						
Enforcement Writer	25.00	\$23.27	\$581.75	63.39%	\$368.77	\$950.52
Enforcement Supervisor A	6.00	\$33.06	\$198.36	63.39%	\$125.74	\$324.10
Enforcement Supervisor B	2.00	\$31.38	\$62.76	63.39%	\$39.78	\$102.54
Enforcement Analyst	0.25	\$19.60	\$4.90	63.39%	\$3.11	\$8.01
Enforcement Manager	3.00	\$53.07	\$159.21	63.39%	\$100.92	\$260.13
Enforcement Administrator	2.00	\$53.22	\$106.44	63.39%	\$67.47	\$173.91
Assistant Secretary	1.00	\$57.50	\$57.50	63.39%	\$36.45	\$93.95
Legal Division						
Enforcement Attorney Supervisor	1.50	\$49.01	\$73.52	63.39%	\$46.60	\$120.12
Enforcement Attorney	2.00	\$38.08	\$76.16	62.09%	\$47.29	\$123.45
Penalty Subtotal:						\$2,156.73
Total Enforcement Costs:						\$3,469.13

Direct Cost (D) = No. Hours (B) X Rate (C)**Indirect Cost (F) = Direct Cost (D) X Approved Federal Rate (E)****Subtotal (G) = Direct Cost (D) + Indirect Cost (F)**

Approved Federal Rate Effective July 1, 2014-June 30, 2015: 57.08%

Approved Federal Rate Effective July 1, 2015-June 30, 2016: 68.75%

Approved Federal Rate Effective July 1, 2016-June 30, 2017: 70.91%

Approved Federal Rate Effective July 1, 2017-June 30, 2018: 78.24%

Approved Federal Rate Effective July 1, 2018-June 30, 2019: 60.23%

Approved Federal Rate Effective July 1, 2019-June 30, 2020: 62.36%

Approved Federal Rate Effective July 1, 2020-June 30, 2021: 66.37%

Approved Federal Rate Effective July 1, 2021-June 30, 2022: 66.13%

Approved Federal Rate Effective July 1, 2022-June 30, 2023: 62.09%

Approved Federal Rate Effective July 1, 2023-June 30, 2024: 63.39%

Note: Approved Federal Rate for the corresponding period when costs were incurred is used.

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FINAL PENALTY CALCULATION

The values for each penalty amount are added to determine a **Penalty Subtotal** (P_s).

$P_s =$	P_1	\rightarrow	\$140.00
	P_2	\rightarrow	\$8,600.00
	P_3	\rightarrow	\$140.00
	P_4	\rightarrow	\$1,800.00
	P_5	\rightarrow	\$5,300.00
	P_6	\rightarrow	\$600.00
	P_7	\rightarrow	\$1,650.00
	P_8	\rightarrow	\$140.00
	P_9	\rightarrow	\$8,300.00
	P_{10}	\rightarrow	\$1,650.00
	P_{11}	\rightarrow	\$1,650.00
	P_{12}	\rightarrow	\$3,600.00
	P_{13}	\rightarrow	\$1,650.00
	P_{14}	\rightarrow	\$5,300.00
	P_{15}	\rightarrow	\$1,650.00
	P_{16}	\rightarrow	\$600.00
	P_{17}	\rightarrow	\$1,650.00
$+$	P_{18}	\rightarrow	\$1,650.00
	$P_s =$		\$46,070.00

If **Monetary Benefit of Noncompliance** is added:

$$P_s = (P_1 + B_1) + (P_2 + B_2) + (P_3 + B_3)$$

$$P_s = \$46,070.00 + \$600.00$$

$$P_s = \$46,670.00$$

Response Costs (R_c) are then added to the penalty subtotal (P_s) to determine the total penalty amount (P_t).

$$R_c = \underline{\$3,469.13}$$

Penalty Total (P_t) = **Penalty Subtotal** + **Response Costs**

$$P_t = P_s + R_c$$

$$P_t = \$46,670.00 + \$3,469.13$$

$$P_t = \$50,139.13$$

$$\text{Penalty Total} = \underline{\$50,139.13}$$