

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

**JOHNNY PORTER AND SON
CONTRACTORS, INC.**

AI # 213001

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

* **Settlement Tracking No.**
* **SA-WE-25-0065**
*
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* **Enforcement Tracking Nos.**
* **WE-CN-19-00928**
* **WE-PP-21-00259**
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SETTLEMENT AGREEMENT

The following Settlement Agreement is hereby agreed to between Johnny Porter and Son Contractors, Inc. (“Respondent”) and the Department of Environmental Quality (“DEQ” or “the Department”), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (“the Act”).

I

Respondent is a corporation that owns and/or operates a construction project located in Pineville, Rapides Parish, Louisiana (“the Project”).

II

On December 14, 2020, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. WE-CN-19-00928 (Exhibit 1).

On June 28, 2022, the Department issued to Respondent a Notice of Potential Penalty, Enforcement Tracking No. WE-PP-21-00259 (Exhibit 2).

III

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

IV

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00), of which Five Thousand Two Hundred Sixty-Eight and 41/100 Dollars (\$5,268.41) represents the Department's enforcement costs, in settlement of the claims set forth in this Settlement Agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

V

Respondent further agrees that the Department may consider the inspection report(s), the Consolidated Compliance Order & Notice of Potential Penalty, Notice of Potential Penalty and this Settlement Agreement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VI

This Settlement Agreement shall be considered a final order of the Secretary for all purposes, including, but not limited to, enforcement under La. R.S. 30:2025(G)(2), and Respondent hereby waives any right to administrative or judicial review of the terms of this agreement, except such

review as may be required for interpretation of this Settlement Agreement in any action by the Department to enforce this Settlement Agreement.

VII

This Settlement Agreement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and Settlement Agreement, the Department considered the factors for issuing civil penalties set forth in La. R.S. 30:2025(E) of the Act.

VIII

As required by law, the Department has submitted this Settlement Agreement to the Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

IX

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Rapides Parish, Louisiana. The advertisement, in form and wording approved by the Department, announced the availability of this Settlement Agreement for public view and comment and the opportunity for a public hearing. Respondent has submitted an original proof-of-publication affidavit and an original public notice to the Department and, as of the date this Settlement Agreement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

X

Payment is to be made within thirty (30) days from notice of the Secretary's signature. If payment is not received within that time, this Settlement Agreement is voidable at the option of the Department. The Respondent shall provide its tax identification number when submitting payment.

Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of 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.

XI

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

XII

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his or her respective party, and to legally bind such party to its terms and conditions.

**JOHNNY PORTER AND SON
CONTRACTORS, INC.**

BY: _____
(Signature)

(Printed)

TITLE: _____

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

NOTARY PUBLIC (ID # _____)

(stamped or printed)

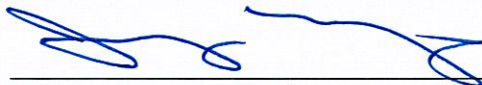
**LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**
Courtney J. Burdette, Secretary

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

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

CONSOLIDATED COMPLIANCE ORDER &
NOTICE OF POTENTIAL PENALTY



Enforcement Tracking No.	WE-CN-19-00928	Certified Mail No.	7012 2210 0001 1915 7858
Agency Interest (AI) No.	213001	Contact Name	Diane Matthews
Alternate ID No.	LAR10M997	Contact Phone No.	225 219-3078
Respondent:	Johnny Porter And Son Contractors, INC.	Facility Name:	Walden Point Subdivision II & III
	c/o John T. Porter, Jr.	Physical Location:	Intersection of Hathern Drive & Goodacre Street and Walden Drive & Goodacre Street
	Agent for Service of Process		
	1268 Philadelphia Rd.	City, State, Zip:	Pineville, LA 71360
	Deville, LA 71328	Parish:	Rapides

This CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY is issued by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C), 30:2050.2 and 30:2050.3(B).

FINDINGS OF FACT

An authorized representative of the Department inspected the abovementioned facility or conducted a file review of the facility to determine the degree of compliance with regulations promulgated in the Louisiana Administrative Code, Title 33. The State regulatory citations for the violation(s) identified during the inspection and/or file review are indicated below.

I.	The Respondent owns and/or operates a construction project located at the intersection of Hathern Drive & Goodacre Street and Walden Drive & Goodacre Street, in Pineville, Rapides Parish, Louisiana. The Respondent was granted authorization under Louisiana Pollutant Discharge Elimination System (LPDES) Storm Water Construction General Permit LAR10M997, effective November 30, 2018. Master General Permit LAR100000 expired on September 30, 2019 and was reissued on August 21, 2019, effective on October 1, 2019. Coverage under General Permit LAR10M997 terminated on March 28, 2020. The Department received a Notice of Intent on April 14, 2020 and Respondent was granted authorization under Louisiana Pollutant Discharge Elimination System (LPDES) Storm Water Construction General Permit LAR10N882 on April 14, 2020. General Permit LAR10N882 will terminate on April 13, 2022. Under the terms and conditions of LPDES Storm Water Construction General Permit LAR10N882, the Respondent is permitted to discharge storm water associated with construction activity into Bayou Marie, waters of the state.	
	Date of Violation	Description of Violation
II.	Inspection(s) May 28, 2019	The Respondent failed to implement all portions of the storm water pollution prevention plan (SWPPP). Specifically, the inspector reviewed the SWPPP and observed that it was not signed nor posted as instructed and required inspections and training were not being conducted. On the east and west entrances of the property, the inspector observed hay bales were not being maintained to prevent sediment runoff from the property. In addition, a weir structure was in place but no rocks, metal grate or wire mesh were installed to prevent sediment runoff around the sides of the weir while working on the completion of the weir. The inspector observed heavy sediment runoff leaving the property and entering into waters of the state. See pictures 1-12 of 22 included in May 28, 2019 inspection referral. LPDES General Permit LAR10M997 (Part IV, Section D.2.a), La.R.S.30:2076(A)(3), and LAC 33:IX.2701.A. The failure to prevent the discharge of sediment to waters of the state is a violation of LAC 33:IX.501.D. A response dated October 11, 2019, indicated erosion control measures were addressed after the inspection.
	Inspection(s) June 25, 2019	The Respondent failed to implement all portions of the storm water pollution prevention plan (SWPPP). Specifically, the inspector observed hay bales that were falling apart and not staked, plastic sheeting that had fallen down and no longer functional, no screens were installed at the construction entrance and no controls were in place to reduce sediment from flowing through and into the adjacent neighborhood and across the street into the city drainage. See pictures 13-22 included in May 28, 2019 inspection referral. LPDES General Permit LAR10M997 (Part IV, Section D.2.a), La.R.S.30:2076(A)(3), and LAC 33:IX.2701.A. A response dated October 11, 2019, indicated erosion control measures were addressed after the inspection.
IV.	Inspection(s) October 28, 2019	The Respondent failed to implement all portions of the storm water pollution prevention plan (SWPPP). Specifically, the facility's SWPPP states that drains will have hay bales in front to trap sediment and silt fencing will be installed throughout the facility. However, the inspector observed on the east entrance that the hay bales were not being maintained and some areas did not have any hay bales installed. The silt fencing was not adequately maintained and was not present throughout the facility. On the west entrance, the inspector observed heavy sediment leaving the facility. In addition, the Respondent did not have signage posted at the front entrance and no records of inspections and employee training. See pictures 3-6 of 6 included in October 28, 2019 inspection referral. LPDES General Permit LAR10M997 (Part IV, Section D.2.a), La.R.S.30:2076(A)(3), and LAC 33:IX.2701.A. The failure to prevent the discharge of sediment to waters of the state is a violation of LAC 33:IX.501.D. The Respondent submitted, via email, training records and inspection reports from October 28, 2019 through December 9, 2019. A response dated March 31, 2020, in reference to inspections on October 28, 2019 and November 22, 2019, indicated that hay bales were placed along the edge of the property and above/ below street drains to catch any sediment runoff, the entrance to the new construction was modified to better divert water to property drains and stop sediment runoff, and silt fencing was reinstalled along the road with better supports.
	Inspection(s) November 22, 2019	The Respondent failed to implement all portions of the storm water pollution prevention plan (SWPPP). Specifically, on the east entrance the inspector observed heavy sediment leaving the facility and flowing offsite. The silt fencing was not properly maintained, some areas of the property did not have any silt fencing installed and the ground mesh was not being adequately maintained. See pictures 1-5 of 5 included in

EXHIBIT

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		<p>November 22, 2019 inspection referral. LPDES General Permit LAR10M997 (Part IV, Section D.2.a), La.R.S.30:2076(A)(3), and LAC 33:IX.2701.A. The failure to prevent the discharge of sediment to waters of the state is a violation of LAC 33:IX.501.D.</p> <p>A response dated March 31, 2020, in reference to inspections on October 28, 2019 and November 22, 2019, indicated that hay bales were placed along the edge of the property and above/ below street drains to catch any sediment runoff, the entrance to the new construction was modified to better divert water to property drains and stop sediment runoff, and silt fencing was reinstalled along the road with better supports.</p>
VI.	Inspection(s) May 1, 2020	<p>The Respondent failed to implement all portions of the storm water pollution prevention plan (SWPPP). Specifically, the facility's SWPPP states that silt fencing, hay bales and/or ground mesh coverage would be installed throughout the facility. However, during the inspection on May 1, 2020, the inspector observed empty lots# 63, 64, 68 and 76 had no silt fencing or ground mesh coverage; lots# 53, 65, 71, 74 and 75 had silt fencing installed but portions of the silt fencing were not maintained. See pictures 1-10 of 24 included in May 1, 2020 inspection referral. LPDES General Permit LAR10M997 (Part IV, Section D.2.a), La.R.S.30:2076(A)(3), and LAC 33:IX.2701.A.</p>
VII.	Inspection(s) May 8, 2020	<p>The Respondent failed to implement all portions of the storm water pollution prevention plan (SWPPP). Specifically, the facility's SWPPP states that silt fencing, hay bales and/or ground mesh coverage would be installed throughout the facility. However, during the follow-up inspection on May 8, 2020, the inspector observed empty lots# 63, 64 and 72 had no silt fencing or ground mesh coverage; lots# 54, 65, 75 and 76 had silt fencing installed but portions of the silt fencing were not maintained. In addition, sediment was observed to have traveled offsite across a neighboring property and sediment was observed leaving the facility from the permitted discharge point. See pictures 11-24 of 24 included in May 1, 2020 inspection referral. LPDES General Permit LAR10M997 (Part IV, Section D.2.a), La.R.S.30:2076(A)(3), and LAC 33:IX.2701.A.</p>
VIII.	File Review September 18, 2020	<p>A file review conducted by the Department revealed that the Respondent failed to timely reapply for a Notice of Extension (NOE) at least thirty (30) days before the expiration date. The general permit LAR10M997 terminated on March 28, 2020. However, the NOE was received by the Department on April 14, 2020. Permit LAR10M997 (Part I, Section D), La. R.S. 30:2076 (A)(3) and LAC 33:IX.501.A</p>
IX.	File Review September 18, 2020	<p>A file review conducted by the Department revealed that the Respondent caused and/or allowed the discharge of wastewater without a permit and/or other authority from the Department. Specifically, the Respondent's permit terminated on March 28, 2020 but construction activities continued beyond expiration of the permit. The permit was reissued on April 14, 2020. (La. R.S. 30:2075)</p>

ORDER

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


I.	To take, immediately upon receipt of this COMPLIANCE ORDER, any and all steps necessary to meet and maintain compliance with the Water Quality Regulations and LPDES General Permit LAR10N882. This shall include, but not be limited to; installing/maintaining erosion controls to prevent sediment runoff from the construction site and correcting all of the violations described in the "Findings of Fact" portion.
II.	To submit to the Enforcement Division, within thirty (30) days after receipt of this COMPLIANCE ORDER, a written report that includes a detailed description of the circumstances surrounding the cited violation(s) and actions taken or to be taken to achieve compliance with the "Order" portion of this COMPLIANCE ORDER. This report and all other reports or information required to be submitted to the Enforcement Division by this COMPLIANCE ORDER shall be submitted to the Department at the address specified in this document.

RIGHT TO APPEAL

I.	The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this COMPLIANCE ORDER. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this COMPLIANCE ORDER.
II.	The request for an adjudicatory hearing shall specify the provisions of the COMPLIANCE ORDER on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the Enforcement Tracking Number and Agency Interest Number, which are located in the upper left-hand corner of the first page of this document and should be directed to the address specified in this document.
III.	Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this COMPLIANCE ORDER may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Division of Administrative Law's (DAL) Procedural Rules. The Department may amend or supplement this COMPLIANCE ORDER prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.
IV.	This COMPLIANCE ORDER shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violation(s) described herein.
V.	The Respondent's failure to request a hearing or to file an appeal or the Respondent's withdrawal of a request for hearing on this COMPLIANCE ORDER shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violation(s), although the Respondent is estopped from objecting to this COMPLIANCE ORDER becoming a permanent part of its compliance history.
VI.	Civil penalties of not more than thirty-two thousand five hundred dollars (\$32,500) may be assessed for each day of violation. The Respondent's failure or refusal to comply with this COMPLIANCE ORDER and the provisions herein will subject the Respondent to possible enforcement procedures under La. R.S. 30:2025, which could result in the assessment of a civil penalty in an amount of not more than fifty thousand dollars (\$50,000) for each day of continued violation or noncompliance.
VII.	For each violation described herein, the Department reserves the right to seek civil penalties in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties.


NOTICE OF POTENTIAL PENALTY	
I.	Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be filed regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.
II.	Prior to the issuance of additional appropriate enforcement action(s), you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Diane Matthews at 225 219-3078 within ten (10) days of receipt of this NOTICE OF POTENTIAL PENALTY.
III.	The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this NOTICE OF POTENTIAL PENALTY. Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement. If the Respondent chooses not to submit the requested most current annual gross revenues statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.
IV.	This CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY is effective upon receipt.
CONTACTS AND SUBMITTAL OF INFORMATION	
Enforcement Division: Louisiana Department of Environmental Quality Office of Environmental Compliance Water Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Diane Matthews	Hearing Requests: Department of Environmental Quality Office of the Secretary Post Office Box 4302 Baton Rouge, Louisiana 70821-4302 Attn: Hearings Clerk, Legal Division Re: Enforcement Tracking No. WE-CN-19-00928 Agency Interest No. 213001
Water Permits Division (if necessary): Department of Environmental Quality Office of Environmental Services Post Office Box 4313 Baton Rouge, LA 70821-4313 Attn: Water Permits Division	Physical Address (if hand delivered): Department of Environmental Quality 602 N Fifth Street Baton Rouge, LA 70802
HOW TO REQUEST CLOSURE OF THIS CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY	
<ul style="list-style-type: none"> To appeal the CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY, the Respondent must follow the guidelines set forth in the "Right to Appeal" portion of this CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY. To request closure of the COMPLIANCE ORDER portion, the Respondent must demonstrate compliance with the "Order" portion of this COMPLIANCE ORDER by completing the attached "CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE" form and returning it to the address specified. <ul style="list-style-type: none"> Before requesting closure of the COMPLIANCE ORDER portion, please contact the Financial Services Division at 225-219-3865 or email them at _DEQ-WWWFinancialServices@la.gov to determine if you owe outstanding fees. To expedite closure of the NOTICE OF POTENTIAL PENALTY portion, the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violation(s) described herein. <ul style="list-style-type: none"> The Department assesses civil penalties based on LAC 33:1.Subpart1.Chapter7. The Respondent may offer a settlement amount but the Department is under no obligation to enter into settlement negotiations. It is decided upon on a discretionary basis. The settlement offer amount may be entered on the attached "CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE" form. The Respondent must include a justification of the offer. DO NOT submit payment of the offer amount with the form. The Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted. Before requesting closure of the NOTICE OF POTENTIAL PENALTY portion, please contact the Financial Services Division at 225-219-3865 or email them at _DEQ-WWWFinancialServices@la.gov to determine if you owe outstanding fees. 	

If you have questions or need more information, you may contact Diane Matthews at 225 219-3078 or Diane.Matthews@la.gov.


Lourdes Kuralde
Assistant Secretary
Office of Environmental Compliance

Date: 12-14-2020

Attachment(s)
- Request to Close
- Settlement Brochure

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF ENVIRONMENTAL COMPLIANCE ENFORCEMENT DIVISION POST OFFICE BOX 4312 BATON ROUGE, LOUISIANA 70821-4312		CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE			
Enforcement Tracking No.	WE-CN-19-00928	Contact Name	Diane Matthews		
Agency Interest (AI) No.	213001	Contact Phone No.	225 219-3078		
Alternate ID No.	LAR10M997				
Respondent:	Johnny Porter And Son Contractors, INC.	Facility Name:	Walden Point Subdivision II & III		
	c/o John T. Porter, Jr. Agent for Service of Process	Physical Location:	Intersection of Hathern Drive & Goodacre Street and Walden Drive & Goodacre Street		
	1268 Philadelphia Rd.	City, State, Zip:	Pineville, LA 71360		
	Deville, LA 71328	Parish:	Rapides		
STATEMENT OF COMPLIANCE					
STATEMENT OF COMPLIANCE			Date Completed	Copy Attached?	
A written report was submitted in accordance with Paragraph II of the "Order" portion of the COMPLIANCE ORDER.					
All items in the "Findings of Fact" portion of the COMPLIANCE ORDER were addressed and the facility is being operated to meet and maintain the requirements of the "Order" portion of the COMPLIANCE ORDER. Final compliance was achieved as of:					
SETTLEMENT OFFER (OPTIONAL)					
(check the applicable option)					
<input type="checkbox"/>	The Respondent is not interested in entering into settlement negotiations with the Department with the understanding that the Department has the right to assess civil penalties based on LAC 33:1 Subpart 1 Chapter 7.				
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-CN-19-00928), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.				
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-CN-19-00928), the Respondent is interested in entering into settlement negotiations with the Department and offers to pay \$ _____ which shall include LDEQ enforcement costs and any monetary benefit of non-compliance. <ul style="list-style-type: none"> • Monetary component = \$ _____ • Beneficial Environmental Project (BEP) component (optional) = \$ _____ • DO NOT SUBMIT PAYMENT OF THE OFFER WITH THIS FORM- the Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted. 				
<input type="checkbox"/>	The Respondent has reviewed the violations noted in NOTICE OF POTENTIAL PENALTY (WE-CN-19-00928) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.				
CERTIFICATION STATEMENT					
I certify, under provisions in Louisiana and United States law that provide criminal penalties for false statements, that based on information and belief formed after reasonable inquiry, the statements and information attached and the compliance statement above, are true, accurate, and complete. I also certify that I do not owe outstanding fees or penalties to the Department for this facility or any other facility I own or operate. I further certify that I am either the Respondent or an authorized representative of the Respondent.					
Respondent's Signature		Respondent's Printed Name		Respondent's Title	
Respondent's Physical Address		Respondent's Phone #		Date	
MAIL COMPLETED DOCUMENT TO THE ADDRESS BELOW:					
Louisiana Department of Environmental Quality Office of Environmental Compliance Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Diane Matthews					

If you have questions or need more information, you may contact Diane Matthews at 225 219-3078 or Diane.Matthews@la.gov.

SETTLEMENT AGREEMENTS

Given the previous information, the following formula is used to obtain a penalty amount.

$$\text{Penalty Event Total} = \text{Penalty Event Minimum} + (\text{Adjustment Percentage} \times (\text{Penalty Event Maximum} - \text{Penalty Event Minimum}))$$

After this, the Department adds any monetary benefit of noncompliance to the penalty event. In the event that a monetary benefit is gained due to the delay of a cost that is ultimately paid, the Department adds the applicable judicial interest. Finally, the Department adds all response costs including, but not limited to, the cost of conducting inspections, and the staff time devoted to the preparation of reports and issuing enforcement actions.

WHAT IS A BEP?

A BEP is a project that provides for environmental mitigation which the respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of the settlement agreement.

Project categories for BEPs include public health, pollution prevention, pollution reduction, environmental restoration and protection, assessments and audits, environmental compliance promotion, and emergency planning, preparedness and response. Other projects may be considered if the Department determines that these projects have environmental merit and is otherwise fully consistent with the intent of the BEP regulations.

WHAT HAPPENS IF MY OFFER IS REJECTED?

If an offer is rejected by the Assistant Secretary, the Legal Division will contact the responsible party, or anyone designated as an appropriate contact in the settlement offer, to discuss any discrepancies.

WHERE CAN I FIND EXAMPLES AND MORE INFORMATION?

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



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

NOTICE OF POTENTIAL PENALTY



Enforcement Tracking No.	WE-PP-21-00259	Certified Mail No.	7021 0950 0001 9072 8744
Agency Interest (AI) No.	213001	Contact Name	Richard Ober, Jr.
Alternate ID No.	LAR10N882	Contact Phone No.	(225) 219-3135
Respondent:	Johnny Porter and Son Contractors, Inc.	Facility Name:	Walden Point Subdivision II & III
	c/o John T. Porter, Jr.	Physical Location:	Intersection of Hathern Drive & Goodacre Street and Walden Drive & Goodacre Street
	Agent for Service of Process	City, State, Zip:	Pineville, LA 71360
	1268 Philadelphia Rd. Deville, LA 71328	Parish:	Rapides

This **NOTICE OF POTENTIAL PENALTY** is issued by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and 30:2050.3(B).

FINDINGS OF FACT

An authorized representative of the Department inspected the abovementioned facility or conducted a file review of the facility to determine the degree of compliance with regulations promulgated in the Louisiana Administrative Code, Title 33. The State regulatory citations for the violation(s) identified during the inspection and/or file review are indicated below.

I.	The Respondent owns and/or operates a construction project located at or near the intersection of Hathern Drive and Goodacre Street and Walden Drive and Goodacre Street in Pineville, Rapides Parish, Louisiana. The Respondent was granted authorization under Louisiana Pollutant Discharge Elimination System (LPDES) Storm Water Construction General Permit LAR10N882 on April 14, 2020. General Permit LAR10N882 was to terminate on April 13, 2022; however, the Department received a Notice of Extension on March 21, 2022, requesting an extension of coverage under General Permit LAR10N882 for up to a year. LPDES Permit LAR10N882 was administratively continued until coverage was reauthorized on May 6, 2022, with a coverage termination date of April 13, 2023. Under the terms and conditions of LPDES Storm Water Construction General Permit LAR10N882, the Respondent is permitted to discharge storm water associated with construction activity into Bayou Maria, waters of the state.	
	On or about December 14, 2020, the Department issued COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY WE-CN-19-00928 . On or about January 14, 2021, the Department received a written response dated January 7, 2021, from the Respondent. COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY WE-CN-19-00928 is a final action of the Department and not subject to further review.	
II.	Date of Violation	Description of Violation
	Inspection(s) February 3, 2021	<p>The Respondent failed to implement its storm water pollution prevention plan (SWPPP). Specifically, the inspection noted that the Respondent's storm water controls were inadequate in preventing sediment from running offsite. The following observations were noted in Phase III of the construction project at the time of the inspection:</p> <ul style="list-style-type: none"> A. Silt fencing was down (adjacent to the last home in Phase II); B. Sediment was on the roadway; C. Silt fencing was not present along the roadway; and D. Sediment was in the storm drains. <p>See photographs 9 - 13 included in the February 3, 2021 inspection report. (LPDES General Permit LAR10N882 (Part IV, Section D.2.a and Part VI, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.A)</p> <p>A representative of the Respondent sent an email on Friday, February 19, 2021, to the Department that included pictures of the actions he had taken subsequent to the inspection. The email and pictures are included as an attachment to the inspection report.</p>

NOTICE OF POTENTIAL PENALTY

I.	Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be filed regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.
II.	Prior to the issuance of additional appropriate enforcement action(s), you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Richard Ober, Jr. at (225) 219-3135 within ten (10) days of receipt of this NOTICE OF POTENTIAL PENALTY .
III.	The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this NOTICE OF POTENTIAL PENALTY . Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement. If the Respondent chooses not to submit the requested most current annual gross revenues statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.
IV.	For each violation described herein, the Department reserves the right to seek civil penalties and the right to seek compliance with its rules and regulations in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties and compliance.
V.	To reduce document handling, please refer to the Enforcement Tracking Number and Agency Interest Number on the front of this document on all correspondence in response to this action.

EXHIBIT

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CONTACTS AND SUBMITTAL OF INFORMATION	
Enforcement Division: Louisiana Department of Environmental Quality Office of Environmental Compliance Water Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Richard Ober, Jr.	Physical Address (if hand delivered): Department of Environmental Quality 602 N Fifth Street Baton Rouge, LA 70802
HOW TO REQUEST CLOSURE OF THIS NOTICE OF POTENTIAL PENALTY	
<p>To expedite closure of the NOTICE OF POTENTIAL PENALTY, the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violation(s) described herein.</p> <ul style="list-style-type: none"> The Department assesses civil penalties based on LAC 33:1 Subpart 1, Chapter 7. The Respondent may offer a settlement amount but the Department is under no obligation to enter into settlement negotiations. It is decided upon on a discretionary basis. The settlement offer amount may be entered on the attached "NOTICE OF POTENTIAL PENALTY REQUEST TO SETTLE" form. The Respondent must include a justification of the offer. DO NOT submit payment of the offer amount with the form. The Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted. Before requesting closure of this NOTICE OF POTENTIAL PENALTY, please contact the Financial Services Division at 225-219-3865 or email them at DEQ-WWWFinancialServices@la.gov to determine if you owe outstanding fees. 	


If you have questions or need more information, you may contact Richard Ober, Jr. at (225) 219-3135 or richard.ober@la.gov.


Celena J. Cage
Assistant Secretary
Office of Environmental Compliance

Date: June 28, 2022

Attachment(s)

- Request to Settle
- Settlement Brochure

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF ENVIRONMENTAL COMPLIANCE ENFORCEMENT DIVISION POST OFFICE BOX 4312 BATON ROUGE, LOUISIANA 70821-4312					
NOTICE OF POTENTIAL PENALTY REQUEST TO SETTLE (OPTIONAL)					
Enforcement Tracking No.	WE-PP-21-00259	Contact Name	Richard Ober, Jr.		
Agency Interest (AI) No.	213001	Contact Phone No.	(225) 219-3135		
Alternate ID No.	LAR10N882				
Respondent:	Johnny Porter and Son Contractors, Inc.	Facility Name:	Walden Point Subdivision II & III		
	c/o John T. Porter, Jr.	Physical Location:	Intersection of Hathern Drive & Goodacre Street and Walden Drive & Goodacre Street		
	Agent for Service of Process				
	1268 Philadelphia Rd.				
	Deville, LA 71328	City, State, Zip:	Pineville, LA 71360		
	Parish:	Rapides			
SETTLEMENT OFFER (OPTIONAL)					
(check the applicable option)					
<input type="checkbox"/>	The Respondent is not interested in entering into settlement negotiations with the Department with the understanding that the Department has the right to assess civil penalties based on LAC 33:1.Subpart1.Chapter7.				
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-PP-21-00259), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.				
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-PP-21-00259), the Respondent is interested in entering into settlement negotiations with the Department and offers to pay \$ _____ which shall include LDEQ enforcement costs and any monetary benefit of non-compliance. <ul style="list-style-type: none"> • Monetary component = \$ _____ • Beneficial Environmental Project (BEP) component (optional)= \$ _____ • DO NOT SUBMIT PAYMENT OF THE OFFER WITH THIS FORM- the Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted. 				
<input type="checkbox"/>	The Respondent has reviewed the violations noted in NOTICE OF POTENTIAL PENALTY (WE-PP-21-00259) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.				
CERTIFICATION STATEMENT					
<i>I certify, under provisions in Louisiana and United States law that provide criminal penalties for false statements, that based on information and belief formed after reasonable inquiry, the statements and information attached and the compliance statement above, are true, accurate, and complete. I also certify that I do not owe outstanding fees or penalties to the Department for this facility or any other facility I own or operate. I further certify that I am either the Respondent or an authorized representative of the Respondent.</i>					
Respondent's Signature		Respondent's Printed Name		Respondent's Title	
Respondent's Physical Address		Respondent's Phone #		Date	
MAIL COMPLETED DOCUMENT TO THE ADDRESS BELOW:					
Louisiana Department of Environmental Quality Office of Environmental Compliance Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Richard Ober, Jr.					

If you have questions or need more information, you may contact Richard Ober, Jr. at (225) 219-3135 or richard.ober@la.gov.

WHAT IS A SETTLEMENT AGREEMENT?

Once the Department has determined that a penalty is warranted for a violation, the Assistant Secretary of the Department, with the concurrence of the Attorney General, may enter into a settlement agreement with the Respondent as a means to resolve the Department's claim for a penalty.

HOW DOES THE SETTLEMENT AGREEMENT PROCESS WORK?

To begin the settlement agreement process, the Department must receive a written settlement offer. Once this offer is submitted, it is sent for approval by the Assistant Secretary of the Office of Environmental Compliance. The formal Settlement Agreement is drafted and sent to the Attorney General's office where the Attorney General has a 90 day concurrence period. During this time, the Respondent is required to run a public notice in an official journal and/or newspaper of general circulation in each affected parish. After which, a 45 day public comment period is opened to allow the public to submit comments. Once the Department has received concurrence, the settlement agreement is signed by both parties. The Department then forwards a letter to the responsible party to establish a payment plan and/or beneficial environmental project (BEP).

WHAT SHOULD I INCLUDE IN A SETTLEMENT AGREEMENT?

The Department uses the penalty determination method defined in LAC 33:1.705 as a guideline to accepting settlement offers. The penalty matrix is used to determine a penalty range for each violation based on the two violation specific factors, the nature and gravity of the violation and the degree of risk/impact to human health and property.

		NATURE AND GRAVITY OF THE VIOLATION		
		MAJOR	MODERATE	MINOR
DEGREE OF RISK TO HUMAN HEALTH OR PROPERTY	MAJOR	\$32,500 to \$20,000	\$20,000 to \$15,000	\$15,000 to \$11,000
	MODERATE	\$11,000 to \$8,000	\$8,000 to \$5,000	\$5,000 to \$3,000
	MINOR	\$3,000 to \$1,500	\$1,500 to \$500	\$500 to \$100

Degree of Risk to Human Health or Property

Major: (actual measurable harm or substantial risk of harm) A violation of major impact to an environmental resource or a hazard characterized by high volume and/or frequent occurrence and/or high pollutant concentration.

Moderate: (potential for measurable detrimental impact) A violation of moderate impact and hazard may be one characterized by occasional occurrence and/or pollutant concentration that may be expected to have a detrimental effect under certain conditions.

Minor: (no harm or risk of harm) A violation of minor impact are isolated single incidences and that cause no measurable detrimental effect or are administrative in nature.

Nature and Gravity of the Violation

Major: Violations of statutes, regulations, orders, permit limits, or permit requirements that result in negating the intent of the requirement to such an extent that little or no implementation of requirements occurred.

Moderate: Violations that result in substantially negating the intent of the requirements, but some implementation of the requirements occurred.

Minor: Violations that result in some deviation from the intent of the requirement; however, substantial implementation is demonstrated.

The range is adjusted using the following violator specific factors:

1. history of previous violations or repeated noncompliance;
2. gross revenues generated by the respondent;
3. degree of culpability, recalcitrance, defiance, or indifference to regulations or orders;
4. whether the Respondent has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the violation; and
5. whether the violation and the surrounding circumstances were immediately reported to the department, and whether the violation was concealed or there was an attempt to conceal by the Respondent.



Given the previous information, the following formula is used to obtain a penalty amount.

$$\text{Penalty Event Total} = \text{Penalty Event Minimum} + (\text{Adjustment Percentage} \times [\text{Penalty Event Maximum} - \text{Penalty Event Minimum}])$$

After this, the Department adds any monetary benefit of noncompliance to the penalty event. In the event that a monetary benefit is gained due to the delay of a cost that is ultimately paid, the Department adds the applicable judicial interest. Finally, the Department adds all response costs including, but not limited to, the cost of conducting inspections, and the staff time devoted to the preparation of reports and issuing enforcement actions.

WHAT IS A BEP?

A BEP is a project that provides for environmental mitigation which the respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of the settlement agreement.

Project categories for BEPs include public health, pollution prevention, pollution reduction, environmental restoration and protection, assessments and audits, environmental compliance promotion, and emergency planning, preparedness and response. Other projects may be considered if the Department determines that these projects have environmental merit and is otherwise fully consistent with the intent of the BEP regulations.

WHAT HAPPENS IF MY OFFER IS REJECTED?

If an offer is rejected by the Assistant Secretary, the Legal Division will contact the responsible party, or anyone designated as an appropriate contact in the settlement offer, to discuss any discrepancies.

WHERE CAN I FIND EXAMPLES AND MORE INFORMATION?

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

