

**STATE OF LOUISIANA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**LACC, LLC US**

**AI # 203831**

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

\* **Settlement Tracking No.**  
\* **SA-WE-25-0021**  
\*  
\* **Enforcement Tracking No.**  
\* **WE-CN-22-00905**  
\*  
\*  
\* **Docket No. 2024-10084-DEQ**  
\*

**SETTLEMENT AGREEMENT**

The following Settlement Agreement is hereby agreed to between LACC, LLC US (“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 chemical manufacturing facility located in Westlake, Calcasieu Parish, Louisiana (“the Facility”).

**II**

On February 9, 2023, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. WE-CN-22-00905 (Exhibit 1).

**III**

In response to the Consolidated Compliance Order & Notice of Potential Penalty, 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 FIVE THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$5,100.00), of which Nine Hundred Thirty-Eight and 08/100 Dollars (\$938.08) 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 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.

## 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 Calcasieu 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 Accountant Administrator, Financial Services Division, Department

of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form attached hereto.

## 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.

**LACC, LLC US**

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed)

TITLE: \_\_\_\_\_

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

\_\_\_\_\_  
NOTARY PUBLIC (ID # \_\_\_\_\_)

\_\_\_\_\_  
(stamped or printed)


**LOUISIANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY**  
Aurelia S. Giacometto, Secretary

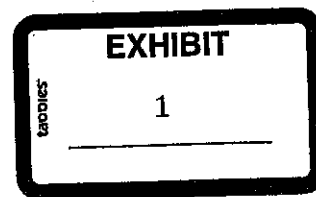
BY: \_\_\_\_\_  
Jerrie "Jerry" Lang, Assistant Secretary  
Office of Environmental Compliance

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

\_\_\_\_\_  
NOTARY PUBLIC (ID # \_\_\_\_\_)


\_\_\_\_\_  
(stamped or printed)

Approved:   
\_\_\_\_\_  
Jerrie "Jerry" Lang, Assistant Secretary



**BEST COPY**

NEXT *5* PAGES

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		 DEQ LOUISIANA	
Enforcement Tracking No.	WE-CN-22-00905		Certified Mail No.	7021 2720 0002 7447 2155			
Agency Interest (AI) No.	203831		Contact Name	Kevin Foy			
Alternate ID No.	LA0127268		Contact Phone No.	(225) 219-3485			
Respondent:	LACC, LLC US		Facility Name:	Ethylene and Derivatives Plant			
	c/o C T Corporation System		Physical Location:	2200 Bayou D'Inde Pass			
	Agent for Service of Process		City, State, Zip:	Westlake, LA 70669			
	3867 Plaza Tower Dr.		Parish:	Calcasieu			
	Baton Rouge, LA 70816						
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).							
<b>FINDINGS OF FACT</b>							
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.	<p>The Respondent owns and/or operates a chemical manufacturing facility located at 2200 Bayou D'Inde Pass, Westlake, Calcasieu Parish, Louisiana. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) Permit LA0127268 on April 20, 2018, with an effective date of June 1, 2018. LPDES Permit LA0127268 will expire on May 31, 2023. The Respondent submitted a renewal application on or about November 3, 2022. Under the terms and conditions of LPDES Permit LA0127268, the Respondent is permitted to discharge process wastewater, process area stormwater (including first flush stormwater), treated effluent from the wastewater treatment plant, cooling tower blowdown, boiler blowdown, wastewaters from the demineralization sump (including but not limited to water treatment and boiler blowdown and condensate treatment systems), miscellaneous non-process wastewaters, and hydrostatic test wastewater into the Calcasieu River Ship Channel (Subsegment 030301), all waters of the state and to discharge non-process area stormwater runoff, miscellaneous non-process wastewaters, hydrostatic test wastewater, and post first-flush stormwater from the process area into local drainage, thence into Bayou D'Inde (Subsegment 030901), all waters of the state.</p>						
II.	<b>Date of Violation</b> <b>Inspection(s) &amp; File Review</b> 11/30/2022 1/18/2023	<b>Description of Violation</b> The Respondent failed to comply with LPDES Permit LA0127268. Specifically, a review of Discharge Monitoring Reports (DMRs) between February 2022 and December 2022 revealed that the Respondent reported exceedances of permit effluent limitations for TSS, pH, and Chloroform as shown in Table 1. 30:2076(A)(3), and LAC 33:IX.501.A)					
<b>ORDER</b>							
Based on the foregoing, the Respondent is hereby ordered to comply with the requirements that are indicated below:							
I.	To take, immediately upon receipt of this COMPLIANCE ORDER, any and all steps necessary to meet and maintain compliance with the Water Quality Regulations. This shall include, but not be limited to; correcting 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.						
III.	To attend a meeting to discuss this COMPLIANCE ORDER and your response. Please contact Kevin Foy at 225-219-3485 or kevin.foy@la.gov within thirty (30) days after receipt of this COMPLIANCE ORDER to schedule a meeting. This meeting must be attended by a responsible representative of the Respondent who is knowledgeable of, and prepared to discuss, the facts and circumstances involved in this matter.						
<b>RIGHT TO APPEAL</b>							
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.						
I.	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.						
	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.						
	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 Kevin Foy at (225) 219-3485 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.
- III.** The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**. Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement. If the Respondent chooses not to submit the requested most current annual gross revenues statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.
- IV.** The Department assesses civil penalties based on LAC 33:1.Subpart1.Chapter7. To expedite closure of this **NOTICE OF POTENTIAL PENALTY** portion, the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violation(s) described herein. The Respondent may offer a settlement amount, but the Department is under no obligation to enter into settlement negotiations. The decision to proceed with a settlement is at the discretion of the Department. The settlement offer amount may be entered on the attached **"CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE"** form. The Respondent may submit the settlement offer within one hundred and eighty (180) days of receipt of this **NOTICE OF POTENTIAL PENALTY** portion but no later than ninety (90) days of achieving compliance with the **COMPLIANCE ORDER** portion. 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.
- V.** 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: Kevin Foy

#### 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-22-00905  
Agency Interest No. 203831

#### 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

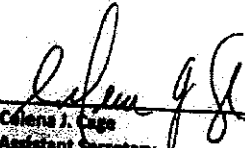
#### Physical Address (if hand delivered):

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

- To appeal the **CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY**, the Respondent must follow the guidelines set forth in the "Right to Appeal" portion of this **CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY**.
  - To request closure of the **COMPLIANCE ORDER** portion, the Respondent must demonstrate compliance with the "Order" portion of this **COMPLIANCE ORDER** by completing the attached **"CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE"** form and returning it to the address specified.
    - Before requesting closure of the **COMPLIANCE ORDER** portion, please contact the Financial Services Division at 225-219-3865 or email them at [DEQ-WWWFinancialServices@la.gov](mailto:DEQ-WWWFinancialServices@la.gov) to determine if you owe outstanding fees.
  - To expedite closure of the **NOTICE OF POTENTIAL PENALTY** portion, the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violation(s) described herein.
    - The Department assesses civil penalties based on LAC 33:1.Subpart1.Chapter7.
    - The Respondent may offer a settlement amount but the Department is under no obligation to enter into settlement negotiations. It is decided upon on a discretionary basis.
    - The settlement offer amount may be entered on the attached **"CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE"** form. The Respondent must include a justification of the offer.
    - DO NOT** submit payment of the offer amount with the form. The Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.
    - Before requesting closure of the **NOTICE OF POTENTIAL PENALTY** portion, please contact the Financial Services Division at 225-219-3865 or email them at [DEQ-WWWFinancialServices@la.gov](mailto:DEQ-WWWFinancialServices@la.gov) to determine if you owe outstanding fees.
- If you have questions or need more information, you may contact Kevin Foy at (225) 219-3485 or [Kevin.Foy@la.gov](mailto:Kevin.Foy@la.gov).



  
Celena J. Cope  
Assistant Secretary  
Office of Environmental Compliance

Date:

02/09/2023

Attachment(s)

- Request to Close
- Table 1
- 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-22-00905	Contact Name	Kevin Foy
Agency Interest (AI) No.	203831	Contact Phone No.	(225) 219-3485
Alternate ID No.	LA0127268		
Respondent:	LACC, LLC US c/o C T Corporation System Agent for Service of Process 3867 Plaza Tower Dr. Baton Rouge, LA 70816	Facility Name:	Ethylene and Derivatives Plant
		Physical Location:	2200 Bayou D'Inde Pass
		City, State, Zip:	Westlake, LA 70669
		Parish:	Calcasieu
<b>STATEMENT OF COMPLIANCE</b>			
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.			
A meeting was attended in accordance with Paragraph III of the "Order" portion of the COMPLIANCE ORDER.			
All items in the "Findings of Fact" portion of the COMPLIANCE ORDER were addressed and the facility is being operated to meet and maintain the requirements of the "Order" portion of the COMPLIANCE ORDER. Final compliance was achieved as of:			
<b>SETTLEMENT OFFER (OPTIONAL)</b>			
(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-CN-22-00905), 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-22-00905), 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.			
<input type="checkbox"/> <ul style="list-style-type: none"> <li>• Monetary component = \$ _____</li> <li>• Beneficial Environmental Project (BEP) component (optional) = \$ _____</li> <li>• 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.</li> </ul>			
<input type="checkbox"/> The Respondent has reviewed the violations noted in NOTICE OF POTENTIAL PENALTY (WE-CN-22-00905) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.			
<b>CERTIFICATION STATEMENT</b>			
<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
<b>MAIL COMPLETED DOCUMENT TO THE ADDRESS BELOW:</b>			
Louisiana Department of Environmental Quality Office of Environmental Compliance Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Kevin Foy			
If you have questions or need more information, you may contact Kevin Foy at (225) 219-3485 or Kevin.Foy@la.gov.			

**Table 1: Permit Effluent Limit Exceedances**

MP End Date	Outfall	Parameter	Limit	DMR Value	Units
03/31/2022	005-Q	pH -- INST MAX	9	9.25	SU
05/31/2022	001-A	Solids, total suspended -- MO AVG	334	444.6	lb/d
05/31/2022	001-A	Solids, total suspended -- DAILY MX	1081	1742.8	lb/d
06/30/2022	001-A	Solids, total suspended -- MO AVG	334	477.4	lb/d
06/30/2022	001-A	Solids, total suspended -- DAILY MX	1081	1332.9	lb/d
07/31/2022	001-A	Solids, total suspended -- MO AVG	334	348.7	lb/d
08/31/2022	001-A	Solids, total suspended -- MO AVG	334	660.3	lb/d
08/31/2022	001-A	Solids, total suspended -- DAILY MX	1081	1427.9	lb/d
09/30/2022	001-A	Solids, total suspended -- MO AVG	334	494.9	lb/d
10/31/2022	001-A	Solids, total suspended -- MO AVG	334	429.1	lb/d
11/30/2022	001-A	Solids, total suspended -- MO AVG	334	704.4	lb/d
11/30/2022	001-A	Solids, total suspended -- DAILY MX	1081	1135.7	lb/d
12/31/2022	001-A	Solids, total suspended -- MO AVG	334	605.2	lb/d
12/31/2022	001-A	Solids, total suspended -- DAILY MX	1081	1772.3	lb/d
12/31/2022	001-Y	Chloroform -- MO AVG	11	.115	lb/d

## 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		
DEGREE OF RISK OR IMPACT TO HUMAN HEALTH OR PROPERTY		MAJOR	MODERATE	MINOR
	MAJOR	\$32,500 to \$20,000	\$20,000 to \$15,000	\$15,000 to \$11,000
	MODERATE	\$11,000 to \$8,000	\$8,000 to \$5,000	\$5,000 to \$3,000
	MINOR	\$3,000 to \$1,500	\$1,500 to \$500	\$500 to \$100

### Degree of Risk to Human Health or Property

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

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

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

### Nature and Gravity of the Violation

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

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

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

The range is adjusted using the following violator specific factors:

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



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

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

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

### WHAT IS A BEP?

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

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

### WHAT HAPPENS IF MY OFFER IS REJECTED?

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

### WHERE CAN I FIND EXAMPLES AND MORE INFORMATION?

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

