

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

ECO MULCH, INC.

AI # 122393

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

* Settlement Tracking No.
* SA-WE-23-0006
*
* Enforcement Tracking No.
* WE-CN-21-00587
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SETTLEMENT

The following Settlement is hereby agreed to between Eco Mulch, 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 mulch processing/production facility located in Shreveport, Caddo Parish, Louisiana (“the Facility”).

II

On December 14, 2021, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. WE-CN-21-00587 (Exhibit 1).

III

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

IV

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

statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of SIX THOUSAND AND NO/100 DOLLARS (\$6,000.00), of which One Thousand Seven Hundred Twenty-Five and 86/100 Dollars (\$1,725.86) represents the Department's enforcement costs, in settlement of the claims set forth in this agreement. The total amount of money expended by Respondent on cash payments to the Department as described above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

V

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

VI

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

VII

This settlement is being made in the interest of settling the state's claims and avoiding for both parties the expense and effort involved in litigation or an adjudicatory hearing. In agreeing to the compromise and settlement, the Department considered the factors for issuing civil penalties set

forth in La. R. S. 30:2025(E) of the Act.

VIII

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

IX

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

X

Payment is to be made over a period of six (6) months in the amount of 1,000.00 per month. The first payment is due within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Accountant Administrator, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303. Each payment shall be accompanied by a completed Settlement Payment Form 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.

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.

ECO MULCH, INC.

BY: Jennifer Clarkston
(Signature)

Jennifer Clarkston
(Printed)

TITLE: manager

THUS DONE AND SIGNED in duplicate original before me this 19th day of June, 20 23, at Shreveport, Oucho Parish, LA

Cheryl L. Peck
NOTARY PUBLIC (ID # 3436)

CHERYL L. PECK, NOTARY PUBLIC
BOSSIER PARISH, LOUISIANA
MY COMMISSION IS FOR LIFE

NOTARY ID NO. 3436
(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

Roger W. Gingles, Secretary

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


THUS DONE AND SIGNED in duplicate original before me this 2nd day of October, 20 23, at Baton Rouge, Louisiana.

Jay Glorioso
NOTARY PUBLIC (ID # 6688)

Jay Glorioso
(stamped or printed)

Approved: Celena J. Cage
Celena J. Cage, Assistant Secretary

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
 OFFICE OF ENVIRONMENTAL COMPLIANCE
 ENFORCEMENT DIVISION **CONSOLIDATED COMPLIANCE ORDER &**
 POST OFFICE BOX 4312 **NOTICE OF POTENTIAL PENALTY**
 BATON ROUGE, LOUISIANA 70821-4312



Enforcement Tracking No.	WE-CN-21-00587	Certified Mail No.	7019 2280 0000 4381 2665
Agency Interest (AI) No.	122393	Contact Name	Kevin Foy
Alternate ID No.	LAG750897; LAR05P493	Contact Phone No.	(225) 219-3485
Respondent:	Eco Mulch, Inc.	Facility Name:	Eco-Mulch & Sod
	c/o Debra L. Struckman	Physical Location:	6105 St. Vincent Ave
	Agent for Service of Process		
	6105 St. Vincent Ave Shreveport, LA 71106	City, State, Zip:	Shreveport, LA 71106
		Parish:	Caddo

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 mulch processing/production facility located at 6105 St. Vincent Ave, Shreveport, Caddo Parish, Louisiana:	
	<p>The Respondent was granted authorization under Louisiana Pollutant Discharge Elimination System (LPDES) General Permit LAG750897 effective on June 4, 2014. LPDES General Permit LAG750897 expired on March 14, 2019, but was administratively continued until it was reissued effective on May 31, 2019. LPDES General Permit LAG750897 will expire on April 25, 2024. Under the terms and conditions of LPDES General Permit LAG750897, the Respondent is permitted to discharge exterior vehicle and equipment wash wastewater into Wallace Lake (Subsegment 100603), waters of the state.</p> <p>The Respondent was granted authorization under Louisiana Pollutant Discharge Elimination System (LPDES) General Permit LAR05P493 effective on January 23, 2012. LPDES General Permit LAR05P493 expired on May 3, 2016. The Respondent was not notified of the reissuance of LPDES Master General Permit LAR050000 in 2016, and thus was not authorized to discharge under that version of the permit. The Respondent did not request termination of permit coverage. Therefore, LPDES General Permit LAR05P493, under which the Respondent was granted authorization effective on January 23, 2012, is considered to be administratively continued. Under the terms and conditions of LPDES General Permit LAR05P493, the Respondent is permitted to discharge stormwater associated with industrial activities into Brush Bayou, thence into Boggy Bayou (Subsegment 100602), waters of the state.</p>	
	Date of Violation	Description of Violation
II.	Inspection(s) 5/18/2021	The Respondent caused and/or allowed the discharge of wastewater from a source or location not authorized by the permit. Specifically, process wastewater, generated at the facility when water is applied to unfinished mulch piles containing horse manure and leaches from the unfinished mulch piles onto the ground, was observed leaving the facility comingled with stormwater and vehicle wash wastewater (La. R.S. 30:2076(A)(1)(a) and LAC 33:IX.501.D). In addition, the above discharge is in violation of LPDES General Permit LAR05P493 as the Respondent is not authorized for stormwater discharges that are mixed with sources of non-storm water. (LAR05P493 (Parts 1.2.3.1 and 9.1.1), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.A)
III.	Inspection(s) 5/18/2021	The Respondent failed to maintain a copy of LPDES General Permit LAG750897 on-site at the facility. At the time of the inspection, the facility representative was unable to provide a copy of LPDES General Permit LAG750897. (LAG750897 (Part I, Page 3 of 17 and Part III, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.501.A) A statement that a copy of LPDES General Permit LAG750897 is now kept on-site at the facility was provided in a response submitted to the Department on September 20, 2021.
IV.	Inspection(s) 5/18/2021	The Respondent failed to maintain a copy of the Storm Water Pollution Prevention Plan (SWPPP) on-site at the facility as required by LPDES General Permit LAR05P493. At the time of the inspection, the facility representative was unable to provide a copy of the SWPPP. (LAR05P493 (Parts 4.12 and 9.1.1), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.A) A copy of the updated SWPPP, as well as a statement that the SWPPP is now kept on-site at the facility, was provided in a response submitted to the Department on September 20, 2021.
V.	File Review 10/13/2021	The Respondent failed to submit Discharge Monitoring Reports (DMRs) in a timely manner. The Respondent is required to submit quarterly DMRs no later than the 28th day of the month following each quarterly monitoring period. Specifically, the Respondent did not submit timely DMRs for quarterly monitoring periods from July 2018 through June 2021. (LAG750897 (before May 31, 2019: Part I, Section C.7, on or after May 31, 2019: Part I, Section C.7, and Part III, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.L.4)
VI.	Inspection(s) & File Review 5/18/2021 10/13/2021	The Respondent failed to sample the effluent from Outfall 001 on a quarterly basis as required by LPDES General Permit LAG750897. Specifically, a sample was never taken during the quarterly monitoring period of April 1, 2021 through June 30, 2021. (LAG750897 (Part I, Section B, Outfall 001, Pages 8 and 9 of 17 and Part III, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.501.A)

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. This shall include, but not be limited to; correcting all of the violations described in the "Findings of Fact" portion.
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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 submit a completed LPDES Permit Application to the Water Permits Division, within thirty (30) days after receipt of this COMPLIANCE ORDER . The completed LPDES Permit Application must address all outfalls at the facility and must follow all procedures and guidelines set forth in LAC 33:IX, Chapter 25. The three sets (the original and two copies) of the completed permit application should be submitted to the Water Permits Division at the address specified in this document. A copy of the permit application should also be sent to the Enforcement Division.
IV.	To submit a completed NetDMR Subscriber Agreement to the Department for approval to submit DMRs electronically using NetDMR, within thirty (30) days after receipt of this COMPLIANCE ORDER . The Subscriber Agreement shall be signed and dated with an original signature and submitted to the Enforcement Division. (NetDMR is accessed through: www.epa.gov/netdmr . For assistance establishing and maintaining a NetDMR account or for NetDMR training, see attached instructions or contact the Permit Compliance Unit at deqnetdmr@la.gov .)
V.	To submit DMRs and associated reports electronically using NetDMR beginning with the first monitoring period after approval of the NetDMR Subscriber Agreement unless otherwise notified in writing by the Department.

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 Kevin Foy at (225) 219-3485 within ten (10) days of receipt of this NOTICE OF POTENTIAL PENALTY .
III.	The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violation(s) to the above named contact person within ten (10) days of receipt of this NOTICE OF POTENTIAL PENALTY . Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify that statement. If the Respondent chooses not to submit the requested most current annual gross revenues statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.

IV.	This CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY is effective upon receipt.
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CONTACTS AND SUBMITTAL OF INFORMATION

Enforcement Division:		Hearing Requests:	
Louisiana Department of Environmental Quality Office of Environmental Compliance Water Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Kevin Foy		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-21-00587 Agency Interest No. 122393	
Water Permits Division (if necessary):		Physical Address (if hand delivered):	
Department of Environmental Quality Office of Environmental Services Post Office Box 4313 Baton Rouge, LA 70821-4313 Attn: Water Permits Division		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 to determine if you owe outstanding fees.
- To expedite closure of the **NOTICE OF POTENTIAL PENALTY** portion, the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violation(s) described herein.
 - The Department assesses civil penalties based on LAC 33:1.Subpart1.Chapter7.
 - The Respondent may offer a settlement amount but the Department is under no obligation to enter into settlement negotiations. It is decided upon on a discretionary basis.
 - The settlement offer amount may be entered on the attached "**CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE**" form. The Respondent must include a justification of the offer.
 - **DO NOT** submit payment of the offer amount with the form. The Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.
 - Before requesting closure of the **NOTICE OF POTENTIAL PENALTY** portion, please contact the Financial Services Division at 225-219-3865 or email them at _DEQ-WWWFinancialServices@la.gov to determine if you owe outstanding fees.


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



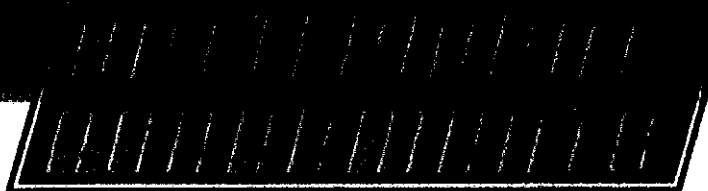
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Assistant Secretary
Office of Environmental Compliance

Date: 12-14-2021

- Attachment(s)
- Request to Close
 - Settlement Offer Brochure

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF ENVIRONMENTAL COMPLIANCE ENFORCEMENT DIVISION CONSOLIDATED COMPLIANCE ORDER & POST OFFICE BOX 4312 NOTICE OF POTENTIAL PENALTY BATON ROUGE, LOUISIANA 70821-4312 REQUEST TO CLOSE				
Enforcement Tracking No.	WE-CN-21-00587	Contact Name	Kevin Foy	
Agency Interest (AI) No.	122393	Contact Phone No.	(225) 219-3485	
Alternate ID No.	LAG750897; LAR05P493			
Respondent:	Eco Mulch, Inc.	Facility Name:	Eco-Mulch & Sod	
	c/o Debra L. Struckman	Physical Location:	6105 St. Vincent Ave	
	Agent for Service of Process			
	6105 St. Vincent Ave	City, State, Zip:	Shreveport, LA 71106	
Shreveport, LA 71106	Parish:	Caddo		
STATEMENT OF COMPLIANCE				
STATEMENT OF COMPLIANCE		Date Completed	Copy Attached?	
A written report was submitted in accordance with Paragraph II of the "Order" portion of the COMPLIANCE ORDER.				
All necessary documents were submitted to the Department within 30 days of receipt of the COMPLIANCE ORDER in accordance with Paragraph(s) III and IV of the "Order" portion of the COMPLIANCE ORDER.				
Submitted DMRs and associated reports electronically using NetDMR in accordance with Paragraph V of the "Order" portion of the COMPLIANCE ORDER.				
All items in the "Findings of Fact" portion of the COMPLIANCE ORDER were addressed and the facility is being operated to meet and maintain the requirements of the "Order" portion of the COMPLIANCE ORDER. Final compliance was achieved as of:				
SETTLEMENT OFFER (OPTIONAL)				
<i>(check the applicable option)</i>				
<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-21-00587), 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-21-00587), 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-21-00587) 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: Kevin Foy				

If you have questions or need more information, you may contact Kevin Foy at (225) 219-3485 or Kevin.Foy@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 33:1705 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 OR IMPACT 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.

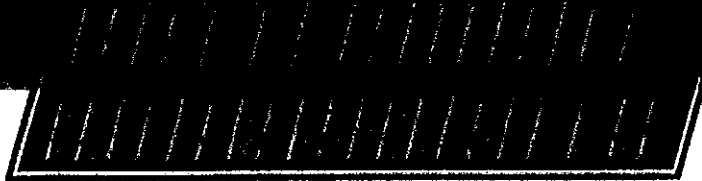
Moderate: Violations that result in substantially negating the intent of the requirements, but some implementation of the requirements occurred.

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

