

**STATE OF LOUISIANA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

<b>IN THE MATTER OF:</b>	*	<b>Settlement Tracking No.</b>
	*	<b>SA-WE-23-0021</b>
<b>PELICAN REFINING COMPANY, L.L.C.</b>	*	
	*	<b>Enforcement Tracking No.</b>
<b>AI # 13058</b>	*	<b>WE-CN-20-00636</b>
	*	<b>WE-CN-22-00188</b>
	*	
<b>PROCEEDINGS UNDER THE LOUISIANA</b>	*	
<b>ENVIRONMENTAL QUALITY ACT</b>	*	
<b>LA. R.S. 30:2001, <u>ET SEQ.</u></b>	*	

**SETTLEMENT**

The following Settlement is hereby agreed to between Pelican Refining Company, L.L.C. (“Respondent”) and the Department of Environmental Quality (“DEQ” or “the Department”), under authority granted by the Louisiana Environmental Quality Act, La. R.S. 30:2001, et seq. (“the Act”).

**I**

Respondent is a limited liability company that owns and/or operates a petroleum refinery and asphalt blending facility located in Lake Charles, Calcasieu Parish, Louisiana (“the Facility”).

**II**

On March 24, 2021, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. WE-CN-20-00636 (Exhibit 1).

On July 21, 2022, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. WE-CN-22-00188 (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 TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00), of which One Thousand Six Hundred Ten and 83/100 Dollars (\$1,610.83) 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 Orders & Notices 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 Calcasieu 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 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.

PELICAN REFINING COMPANY, L.L.C.

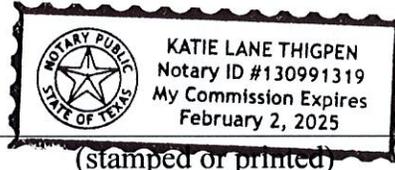
BY: Francis I. Spagnocetti, a Trustee  
(Signature)

FRANCIS I. SPAGNOCKETTI, a Trustee  
(Printed)

TITLE: TRUSTEE

THUS DONE AND SIGNED in duplicate original before me this 10 day of October, 20 23, at Houston, Texas.

Katie Thigpen  
NOTARY PUBLIC (ID # 130991319)

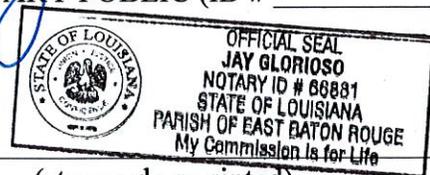


LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY  
Roger W. Gingles, Secretary

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

THUS DONE AND SIGNED in duplicate original before me this 27th day of November, 20 23, at Baton Rouge, Louisiana.

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



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

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF ENVIRONMENTAL COMPLIANCE ENFORCEMENT DIVISION POST OFFICE BOX 4312 BATON ROUGE, LOUISIANA 70821-4312		<b>CONSOLIDATED COMPLIANCE ORDER &amp;                  NOTICE OF POTENTIAL PENALTY</b>		
Enforcement Tracking No.	WE-CN-20-00636	Certified Mail No.	7020 2450 0001 6670 3645	
Agency Interest (AI) No.	13058	Contact Name	Christine Mayeux Cosnahan	
Alternate ID No.	LA0054399	Contact Phone No.	225-219-3767	
Respondent:	Pelican Refining Company, L.L.C.	Facility Name:	Lake Charles Facility	
	c/o Hays Alexander	Physical Location:	4646 Hwy 3059	
	Agent for Service of Process	City, State, Zip:	Lake Charles, LA 70615	
	4232 Bluebonnet Blvd Baton Rouge, LA 70809	Parish:	Calcasieu	
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.	The Respondent owns and/or operates a petroleum refinery and asphalt blending facility located at 4646 LA Hwy 3059, Lake Charles, Calcasieu Parish, Louisiana. The Respondent was issued Louisiana Pollutant Discharge Elimination System (LPDES) Permit LA0054399 on August 13, 2013, with an effective date of September 1, 2013 and an expiration date of August 31, 2018. The Respondent submitted a renewal application on or about March 2, 2018 and LPDES Permit LA0054399 was administratively continued until it was reissued on March 31, 2020, with an effective date of May 1, 2020. LPDES Permit LA0054399 will expire on April 30, 2025. Under the terms and conditions of LPDES Permit LA0054399, the Respondent is permitted to discharge process wastewater, process area stormwater, utility wastewater, lab wastewater, maintenance activities, sanitary wastewater, and non-process area stormwater into the Calcasieu River, waters of the state.			
	<b>Date of Violation</b>	<b>Description of Violation</b>		
II.	File Review 2/1/2021	The Respondent failed to comply with LPDES Permit LA0054399. Specifically, monthly DMRs are missing for January 2020 through March 2020 for Outfall 001; quarterly DMRs are missing for the quarterly monitoring period ending March 2020 for Outfalls 001, 002, 003 and 004. (LPDES permit LA0054399 (Part 1, Effluent Limitations and Monitoring Requirements for Outfalls 001, 002, 003 and 004, and Part II, page 11 of 21), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.L.4)  In addition, the Respondent failed to submit electronic Discharge Monitoring Reports (DMRs) according to the reissued permit. Specifically, monthly DMRs have not been submitted via NetDMR for the monitoring periods of May 2020 to December 2020 for Outfall 001; quarterly DMRs have not been submitted via NetDMR for the monitoring periods ending June 2020, September 2020, and December 2020 for Outfalls 001, 002, 003 and 004 (LPDES permit LA0054399 (Submittal/Action Requirements, Condition S-1 for Outfall 001 pages 3 & 4 of 14, Outfall 002 page 6 of 14, Outfall 003 page 8 of 14, and Outfall 004 page 10 of 14, and Part III, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.L.4)		
III.	File Review 2/1/2021	The Respondent failed to comply with LPDES Permit LA0054399. Specifically, the Respondent failed to submit accurate/complete quarterly Discharge Monitoring Reports (DMRs) from December 2018-September 2019. Specifically, the quarterly DMR for Outfall 004 for the monitoring period ending December 2018 was marked no discharge but contained sample measurements. Additionally, the quarterly DMR for Outfall 003 for the monitoring period ending September 2019 contained no values or comments for benzene and ethylbenzene. (LPDES permit LA0054399 (Part I, Effluent Limitations and Monitoring Requirements for Outfalls 003 and 004, and Part III, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.L.4)		
IV.	File Review 2/1/2021	The Respondent failed to sample the effluent from Outfalls 002, 003 and 004 on a quarterly monitoring frequency as required by LPDES Permit LA0054399. Specifically, DMRs for Outfalls 002, 003 and 004 contain the comment that no samples were taken for the quarters ending March 2019, and June 2019. (LPDES permit LA0054399 (Part I, Effluent Limitations and Monitoring Requirements for Outfalls 002, 003, and 004), La. R.S. 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 submit to the Enforcement Division, within thirty (30) days after receipt of this COMPLIANCE ORDER, properly completed DMRs for the monitoring periods mentioned in Paragraphs II and III of the "Findings of Fact" portion of this Order. If you are submitting copies of DMRs, please be advised that each copy of the DMR shall be signed and certified. If no sampling or monitoring was conducted during a monitoring period, the Respondent should indicate this in the space provided for "Comment and Explanation of Any Violations."			
IV.	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.			



<b>RIGHT TO APPEAL</b>	
<b>I.</b>	The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this <b>COMPLIANCE ORDER</b> . This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this <b>COMPLIANCE ORDER</b> .
<b>II.</b>	The request for an adjudicatory hearing shall specify the provisions of the <b>COMPLIANCE ORDER</b> 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.
<b>III.</b>	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 <b>COMPLIANCE ORDER</b> 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 <b>COMPLIANCE ORDER</b> prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.
<b>IV.</b>	This <b>COMPLIANCE ORDER</b> 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.
<b>V.</b>	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 <b>COMPLIANCE ORDER</b> 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 <b>COMPLIANCE ORDER</b> becoming a permanent part of its compliance history.
<b>VI.</b>	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 <b>COMPLIANCE ORDER</b> 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.
<b>VII.</b>	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.

<b>NOTICE OF POTENTIAL PENALTY</b>	
<b>I.</b>	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.
<b>II.</b>	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 Christine Mayeux Cosnahan at 219-3767 within ten (10) days of receipt of this <b>NOTICE OF POTENTIAL PENALTY</b> .
<b>III.</b>	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 <b>NOTICE OF POTENTIAL PENALTY</b> . 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.
<b>IV.</b>	This <b>CONSOLIDATED COMPLIANCE ORDER &amp; NOTICE OF POTENTIAL PENALTY</b> is effective upon receipt.

<b>CONTACTS AND SUBMITTAL OF INFORMATION</b>	
<b>Enforcement Division:</b> Louisiana Department of Environmental Quality Office of Environmental Compliance Water Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Christine Mayeux Cosnahan	<b>Hearing Requests:</b> 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-20-00636 Agency Interest No. 13058
<b>Water Permits Division (if necessary):</b> Department of Environmental Quality Office of Environmental Services Post Office Box 4313 Baton Rouge, LA 70821-4313 Attn: Water Permits Division	<b>Physical Address (if hand delivered):</b> Department of Environmental Quality 602 N Fifth Street Baton Rouge, LA 70802

<b>HOW TO REQUEST CLOSURE OF THIS CONSOLIDATED COMPLIANCE ORDER &amp; NOTICE OF POTENTIAL PENALTY</b>	
<ul style="list-style-type: none"> <li>• To appeal the <b>CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY</b>, the Respondent must follow the guidelines set forth in the "Right to Appeal" portion of this <b>CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY</b>.</li> <li>• To request closure of the <b>COMPLIANCE ORDER</b> portion, the Respondent must demonstrate compliance with the "Order" portion of this <b>COMPLIANCE ORDER</b> by completing the attached "<b>CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE</b>" form and returning it to the address specified.                         <ul style="list-style-type: none"> <li>○ Before requesting closure of the <b>COMPLIANCE ORDER</b> portion, please contact the Financial Services Division at 225-219-3865 or email them at <a href="mailto:_DEQ-WWWFinancialServices@la.gov">_DEQ-WWWFinancialServices@la.gov</a> to determine if you owe outstanding fees.</li> </ul> </li> </ul>	

- 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 Christine Mayeux Cosnahan at 219-3767 or [christine.cosnahan@la.gov](mailto:christine.cosnahan@la.gov).



\_\_\_\_\_  
Lourdes Iturralde  
Assistant Secretary  
Office of Environmental Compliance

Date: 3-24-2021

cc: Scott Mounce  
4646 Hwy 3059  
Lake Charles, LA 70615  
Certified mail: 7020 2450 0001 6670 3638

Attachment(s)  
- Request to Close

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-20-00636		Contact Name Christine Mayeux Cosnahan	
Agency Interest (AI) No. 13058		Contact Phone No. 219-3767	
Alternate ID No. LA0054399			
Respondent:	Pelican Refining Company, LLC	Facility Name:	Lake Charles Facility
	c/o Hays Alexander	Physical Location:	4646 Hwy 3059
	Agent for Service of Process	City, State, Zip:	Lake Charles, LA 70615
	4232 Bluebonnet Blvd Baton Rouge, LA 70809	Parish:	Calcasieu
<b>STATEMENT OF COMPLIANCE</b>			
<b>STATEMENT OF COMPLIANCE</b>		<b>Date Completed</b>	<b>Copy Attached?</b>
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) II and III of the "Order" portion of the COMPLIANCE ORDER.			
Submitted DMRs and associated reports electronically using NetDMR in accordance with Paragraph IV 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>			
<i>(check the applicable option)</i>			
_____	The Respondent is not interested in entering into settlement negotiations with the Department with the understanding that the Department has the right to assess civil penalties based on LAC 33:1.Subpart1.Chapter7.		
_____	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-CN-20-00636), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.		
_____	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (WE-CN-20-00636), 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"> <li>• Monetary component = \$ _____</li> <li>• Beneficial Environmental Project (BEP) component (optional)= \$ _____</li> <li>• <b>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.</b></li> </ul> The Respondent has reviewed the violations noted in NOTICE OF POTENTIAL PENALTY (WE-CN-20-00636) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.		
<b>CERTIFICATION STATEMENT</b>			
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
<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: Christine Mayeux Cosnahan			

If you have questions or need more information, you may contact Christine Mayeux Cosnahan at 219-3767 or christine.cosnahan@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 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 33:1 Chapter 7
- Beneficial Environmental Projects ..... LAC 33:1 Chapter 25  
FAQs
- Judicial Interest..... provided by the Louisiana State Bar Association



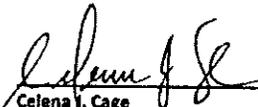
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY OFFICE OF ENVIRONMENTAL COMPLIANCE ENFORCEMENT DIVISION POST OFFICE BOX 4312 BATON ROUGE, LOUISIANA 70821-4312				<b>CONSOLIDATED COMPLIANCE ORDER &amp; NOTICE OF POTENTIAL PENALTY</b>			
Enforcement Tracking No.	WE-CN-22-00188	Certified Mail No.	7017 2680 0000 7350 1865				
Agency Interest (AI) No.	13058	Contact Name	Richard Ober, Jr.				
Alternate ID No.	LA0054399	Contact Phone No.	(225) 219-3135				
Respondent:	Pelican Refining Company, L.L.C.	Facility Name:	Lake Charles Facility				
	c/o Hays M. Alexander	Physical Location:	4646 Highway 3059				
	Agent for Service of Process						
	4232 Bluebonnet Blvd.	City, State, Zip:	Lake Charles, LA 70615				
	Baton Rouge, LA 70809	Parish:	Calcasieu				
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.	The Respondent owns and/or operates a petroleum refinery and asphalt blending facility located at 4646 LA Highway 3059 in Lake Charles, Calcasieu Parish, Louisiana. The Respondent was reissued Louisiana Pollutant Discharge Elimination System (LPDES) Permit LA0054399 on March 31, 2020, with an effective date of May 1, 2020. LPDES Permit LA0054399 will expire on April 30, 2025. Under the terms and conditions of LPDES Permit LA0054399, the Respondent is permitted to discharge process wastewater, process area stormwater, utility wastewater, lab wastewater, maintenance activities, sanitary wastewater, and non-process area stormwater into the Calcasieu River, waters of the state.  The Respondent was issued CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY WE-CN-20-00636 on or about March 24, 2021. On or about May 11, 2021, the Department received a response from the Respondent dated May 7, 2021. CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY WE-CN-20-00636 is a final action of the Department and not subject to further review.						
	<b>Date of Violation</b>	<b>Description of Violation</b>					
II.	Inspection(s) March 12, 2021 File Review June 13, 2022	The Respondent failed to comply with LPDES Permit LA0054399. Specifically, a review of Discharge Monitoring Reports (DMRs) revealed that the Respondent reported failures to comply with its permit effluent limitations for pH. Specifically, the Respondent reported a pH value of 2.9 Standard Units on the second quarter 2021 DMR for Outfall 002; 5.67 Standard Units on the second quarter 2021 DMR for Outfall 003; and 5.53 Standard Units on the fourth quarter 2021 DMR for Outfall 004. The pH permit limitations for each Outfall are an instantaneous minimum of 6 Standard Units and an instantaneous maximum of 9 Standard Units. (LPDES Permit LA0054399 (Permit Requirements, Effluent Limitations and Monitoring Requirements for Outfalls 002, 003, and 004, pages 6, 8, and 10 and Standard Conditions for LPDES Permits, Section A.2), La. R.S. 30:2076(A)(3), LAC 33:IX.501.D, and LAC 33:IX.501.A)					
III.	Inspection(s) March 12, 2021 File Review June 13, 2022	The Respondent failed to sample the effluent from Outfall 003 on a quarterly basis as required by LPDES Permit LA0054399. Specifically, the Respondent failed to collect samples for all parameters for Outfall 003 during the first quarter 2021. (LPDES Permit LA0054399 (Permit Requirements, Effluent Limitations and Monitoring Requirements for Outfall 003, page 8 and Standard Conditions for LPDES Permits, Section A.2), La. R.S. 30:2076(A)(3), LAC 33:IX.2701.A, and LAC 33:IX.501.A)  According to the Respondent's response to the inspection dated May 12, 2021, measures were taken to conduct all sampling as described in the LPDES permit. In a letter dated March 23, 2022, the Respondent noted that sample collection was calendared, a collector was assigned, and other actions were taken to ensure all sampling from the outfalls was conducted.					
IV.	Inspection(s) March 12, 2021	The Respondent failed to collect samples and analyze in accordance with Environmental Protection Agency (EPA) procedures. Specifically, the Respondent failed to conduct the pH analysis within 15 minutes of sample collection. (LPDES Permit LA0054399 (Other Conditions, Part H and Standard Conditions for LPDES Permits, Section A.2), La. R.S. 30:2076(A)(3), LAC 33:IX.2701.A, and LAC 33:IX.2701.J.4)  According to the Respondent's response to the inspection dated May 12, 2021, and a letter dated March 23, 2022, a pH meter was purchased to obtain pH of all water samples within the specified period.					
V.	Inspection(s) March 12, 2021	The Respondent failed to implement its Spill Prevention and Control (SPC) plan. Specifically, the Respondent failed to perform monthly routine inspections, tank integrity testing, and training as specified in the SPC plan for the facility. (La. R.S. 30:2076(A)(3) and LAC 33:IX.905.B)  According to the Respondent's response to the inspection dated May 12, 2021, and a letter dated March 23, 2022, a consultant was contacted to conduct employee training to comply with the applicable SPC requirements. The May 12, 2021 response also noted that the monthly SPC inspections would recommence. According to the Respondent's letter dated March 23, 2022, the SPC required monthly inspections were restarted.					
VI.	Inspection(s) March 12, 2021	The Respondent failed to implement its Storm Water Pollution Prevention Plan (SWPPP). Specifically, the Respondent failed to perform the weekly routine inspections, quarterly visual monitoring, annual inspection and training as specified in the facility's SWPPP. (LPDES Permit LA0054399 (Permit Requirements, Narrative Requirements N-6 and Standard Conditions for LPDES Permits, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.A)					



	According to the Respondent's response to the inspection dated May 12, 2021, and a letter dated March 23, 2022, a consultant was contacted to conduct employee training to comply with the applicable SWPPP requirements. The May 12, 2021 response also noted that the weekly SWPPP inspections and quarterly visual SWPPP monitoring would recommence. According to the Respondent's letter dated March 23, 2022, the SWPPP required weekly inspections and quarterly visual monitoring were restarted.
<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 <b>COMPLIANCE ORDER</b> , 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 <b>COMPLIANCE ORDER</b> , 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 <b>COMPLIANCE ORDER</b> . Additionally, the report shall provide documentation to demonstrate the requirements of the SPC and SWPPP, as mentioned in paragraphs V and VI of the "Findings of Fact" portion of this <b>COMPLIANCE ORDER</b> , are being performed. This report and all other reports or information required to be submitted to the Enforcement Division by this <b>COMPLIANCE ORDER</b> shall be submitted to the Department at the address specified in this document.
<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 <b>COMPLIANCE ORDER</b> . This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this <b>COMPLIANCE ORDER</b> .
II.	The request for an adjudicatory hearing shall specify the provisions of the <b>COMPLIANCE ORDER</b> 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 <b>COMPLIANCE ORDER</b> 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 <b>COMPLIANCE ORDER</b> prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.
IV.	This <b>COMPLIANCE ORDER</b> 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 <b>COMPLIANCE ORDER</b> 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 <b>COMPLIANCE ORDER</b> 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 <b>COMPLIANCE ORDER</b> 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.
<b>NOTICE OF POTENTIAL PENALTY</b>	
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 <b>NOTICE OF POTENTIAL PENALTY</b> .
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 <b>NOTICE OF POTENTIAL PENALTY</b> . 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-I.Subpart1.Chapter7. To expedite closure of this <b>NOTICE OF POTENTIAL PENALTY</b> 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 " <b>CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE</b> " form. The Respondent may submit the settlement offer within one hundred and eighty (180) days of receipt of this <b>NOTICE OF POTENTIAL PENALTY</b> portion but no later than ninety (90) days of achieving compliance with the <b>COMPLIANCE ORDER</b> portion. The Respondent must include a justification of the offer. <b>DO NOT</b> 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 <b>CONSOLIDATED COMPLIANCE ORDER &amp; NOTICE OF POTENTIAL PENALTY</b> is effective upon receipt.

CONTACTS AND SUBMITTAL OF INFORMATION	
<b>Enforcement Division:</b> Louisiana Department of Environmental Quality Office of Environmental Compliance Water Enforcement Division Post Office Box 4312 Baton Rouge, LA 70821 Attn: Richard Ober, Jr.	<b>Hearing Requests:</b> 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-22-00188 Agency Interest No. 13058
<b>Water Permits Division (if necessary):</b> Department of Environmental Quality Office of Environmental Services Post Office Box 4313 Baton Rouge, LA 70821-4313 Attn: Water Permits Division	<b>Physical Address (if hand delivered):</b> Department of Environmental Quality 602 N Fifth Street Baton Rouge, LA 70802
<b>HOW TO REQUEST CLOSURE OF THIS CONSOLIDATED COMPLIANCE ORDER &amp; NOTICE OF POTENTIAL PENALTY</b>	
<ul style="list-style-type: none"> <li>• To appeal the <b>CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY</b>, the Respondent must follow the guidelines set forth in the "Right to Appeal" portion of this <b>CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY</b>.</li> <li>• To request closure of the <b>COMPLIANCE ORDER</b> portion, the Respondent must demonstrate compliance with the "Order" portion of this <b>COMPLIANCE ORDER</b> by completing the attached "<b>CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE</b>" form and returning it to the address specified.                         <ul style="list-style-type: none"> <li>○ Before requesting closure of the <b>COMPLIANCE ORDER</b> portion, please contact the Financial Services Division at 225-219-3865 or email them at <a href="mailto:_DEQ-WWWFinancialServices@la.gov">_DEQ-WWWFinancialServices@la.gov</a> to determine if you owe outstanding fees.</li> </ul> </li> <li>• To expedite closure of the <b>NOTICE OF POTENTIAL PENALTY</b> 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"> <li>○ The Department assesses civil penalties based on LAC 33:1.Subpart1.Chapter7.</li> <li>○ 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.</li> <li>○ The settlement offer amount may be entered on the attached "<b>CONSOLIDATED COMPLIANCE ORDER AND NOTICE OF POTENTIAL PENALTY REQUEST TO CLOSE</b>" form. The Respondent must include a justification of the offer.</li> <li>○ <b>DO NOT</b> 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.</li> <li>○ Before requesting closure of the <b>NOTICE OF POTENTIAL PENALTY</b> portion, please contact the Financial Services Division at 225-219-3865 or email them at <a href="mailto:_DEQ-WWWFinancialServices@la.gov">_DEQ-WWWFinancialServices@la.gov</a> to determine if you owe outstanding fees.</li> </ul> </li> </ul>	

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

  
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 Celena Y. Cage  
 Assistant Secretary  
 Office of Environmental Compliance

Date: 07/21/2022

cc: Scott Mounce  
 Refinery Manager  
 Pelican Refining Company, L.L.C.  
 4646 Highway 3059  
 Lake Charles, LA 70615

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-22-00188	Contact Name	Richard Ober, Jr.	
Agency Interest (AI) No.	13058	Contact Phone No.	(225) 219-3135	
Alternate ID No.	LA0054399			
Respondent:	Pelican Refining Company, L.L.C.	Facility Name:	Lake Charles Facility	
	c/o Hays M. Alexander	Physical Location:	4646 Highway 3059	
	Agent for Service of Process	City, State, Zip:	Lake Charles, LA 70615	
	4232 Bluebonnet Blvd. Baton Rouge, LA 70809	Parish:	Calcasieu	
<b>STATEMENT OF COMPLIANCE</b>				
<b>STATEMENT OF COMPLIANCE</b>		<b>Date Completed</b>	<b>Copy Attached?</b>	
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:				
<b>SETTLEMENT OFFER (OPTIONAL)</b>				
<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-22-00188), 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-22-00188), 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"> <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> The Respondent has reviewed the violations noted in NOTICE OF POTENTIAL PENALTY (WE-CN-22-00188) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.			
<b>CERTIFICATION STATEMENT</b>				
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
<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: 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 OR IMPACT TO HUMAN HEALTH OR PROPERTY	MAJOR	\$32,500	\$20,000	\$15,000
		to \$20,000	to \$15,000	to \$11,000
	MODERATE	\$11,000	\$8,000	\$5,000
		to \$8,000	to \$5,000	to \$3,000
	MINOR	\$3,000	\$1,500	\$500
		to \$1,500	to \$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>

