

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

RAIN CII CARBON LLC

AI # 3439, 67860, 229397

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

* **Settlement Tracking No.**
* **SA-SE-24-0062**
*
* **Enforcement Tracking No.**
* **SE-CN-21-00269**
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*
* **Docket No. 2022-8034-DEQ**
*

SETTLEMENT AGREEMENT

The following Settlement Agreement is hereby agreed to between Rain CII Carbon LLC (“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 facility located in Sulphur, Calcasieu Parish, Louisiana (“the Facility”).

II

On August 19, 2021, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. SE-CN-21-00269 (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 FIVE HUNDRED AND NO/100 DOLLARS (\$5,500.00), of which Eight Hundred Sixty-Two and 20/100 Dollars (\$862.20) 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 Consolidated Compliance Order & 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.

XI

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 and Jefferson Davis 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.

RAIN CII CARBON LLC

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

JOHN BEL EDWARDS
GOVERNOR

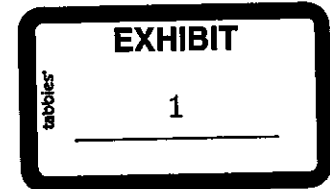


CHUCK CARR BROWN, Ph.D.
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

AUG 19 2021

CERTIFIED MAIL (7019 1640 0001 2617 2755)
RETURN RECEIPT REQUESTED



RAIN CII CARBON LLC
c/o Elfwood F. Cahill, Jr.
Agent for Service of Process
909 Poydras Street, 28th Floor
New Orleans, LA 70112

**RE: CONSOLIDATED COMPLIANCE ORDER
& NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. SE-CN-21-00269
AGENCY INTEREST NO. 3439, 67860, 229397**

Dear Sir/Madam:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **RAIN CII CARBON LLC (RESPONDENT)** for the violation described therein.

Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violation cited in the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** could result in the issuance of a civil penalty or other appropriate legal actions.

Any questions concerning this action should be directed to Amber Fowler at (225) 219-3069 or Amber.Fowler@la.gov.

Sincerely,

A handwritten signature in cursive script that reads "Angela Marse".

Angela Marse
Administrator
Enforcement Division

AM/AMF/amf
Alt ID No. G-019-12207
Attachment

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

IN THE MATTER OF

**RAIN CII CARBON LLC
CALCASIEU PARISH
ALT ID NO. G-019-12207**

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

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ENFORCEMENT TRACKING NO.

SE-CN-21-00269

AGENCY INTEREST NO.

3439, 67860, 229397

**CONSOLIDATED
COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY**

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

FINDINGS OF FACT

I.

The Respondent owns and/or operates the Lake Charles Calcining Plant (the Facility; Agency Interest No. 3439), located at 1920 Pak Tank Road in Sulphur, Calcasieu Parish, Louisiana.

II.

On or about November 17, 2017, the Respondent submitted a Beneficial Use Plan to the Department, which was approved by the Department on or about December 22, 2017. The plan's application specified that a lime and gypsum solid waste mixture generated by the Respondent would be purchased by a landscape architect for use in the New Orleans area. However, according to documentation provided by the Respondent via email on or about February 5, 2021, 21,379.05 tons of the lime and gypsum solid waste mixture was sent to the Mark and JoLynn Pousson farm (Agency Interest No. 229397) from October 8, 2019 to December 31, 2020, which is located at 17467 Oilfield

Road in Welsh, Jefferson Davis Parish, Louisiana. Documentation gathered during an onsite inspection conducted at the Facility on or about January 27, 2021, and subsequent email correspondence from the Respondent dated February 5, 2021, revealed 10,085.44 tons of the lime and gypsum solid waste material was also delivered to Krause & Managan (Agency Interest No. 67860) in Sulphur, Louisiana, and 30,997.77 tons was delivered to HPP in Baytown, Texas. None of these three (3) receiving facilities were listed in the plan. A site visit to the Mark and JoLynn Pousson farm on or about July 29, 2020, revealed the solid waste was being stored onsite and not being utilized for the ultimate stated purpose of raising the pH of the farmland soil. On or about December 1, 2020, the Respondent submitted a modification application to the Beneficial Use Plan regarding the end use and users to the Department. A file review conducted on or about August 16, 2021, revealed the modification application is still pending. A Notice of Deficiency (NOD) for the Beneficial Use Modification was issued to the Respondent on or about June 8, 2021. On or about July 13, 2021, the Respondent requested an extension of time to submit a response to the NOD to the Department. On or about June 15, 2021, the Department approved the Respondent's request for an extension of time, giving the Respondent until September 10, 2021 to submit a response. At the time of the August 16, 2021 file review, the Respondent had not responded to the NOD.

III.

On or about July 29, 2020, the Department conducted an inspection at the Mark and Jolynn Pousson farm, and on or about January 27, 2021, the Department conducted an inspection at the Rain CII Carbon Lake LLC Lake Charles Calcining Plant, in response to a citizen's complaint to determine the degree of compliance with the Act and the supporting Regulations. While the investigation by the Department is not yet complete, the following violation was noted during the course of the inspections:

The Respondent failed, upon approval of the Beneficial Use Plan, to handle, process, store, or otherwise manage the material in accordance with the proposed plan outlined in the application, in violation of LAC 33:VII.1105.C. Specifically, the Respondent sent 62,462.26 tons of the lime and gypsum solid waste mixture to three (3) receiving facilities without authorization from the Department, as described in Findings of Fact paragraph II.

COMPLIANCE ORDER

Based on the foregoing, the Respondent is hereby ordered:

I.

To take, immediately upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to meet and maintain compliance with the Solid Waste Regulations and the Beneficial Use Plan approved by the Department on or about December 22, 2017.

II.

To cease, immediately upon receipt of this **COMPLIANCE ORDER**, transporting the lime and gypsum solid waste mixture to the unauthorized locations described in Findings of Fact paragraph II, as well as any other locations not authorized by the Beneficial Use Plan.

III.

To remove, within sixty (60) days after receipt of this **COMPLIANCE ORDER**, with permission from the landowners, all of the lime and gypsum solid waste mixture sent to the Mark and JoLynn Pousson farm located at 17467 Oilfield Road in Welsh, Louisiana and Krause & Managan located at 1360 North Beglis Parkway in Sulphur, Louisiana, and manage the lime and gypsum solid waste mixture in accordance with the Beneficial Use Plan approved by the Department on or about December 22, 2017. Documentation demonstrating that the removal and proper management of the waste was completed shall be submitted to the Enforcement Division within fifteen (15) days after removal of the waste material.

IV.

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 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:

Office of Environmental Compliance
Post Office Box 4312
Baton Rouge, Louisiana 70821-4312
Attn: Amber Fowler
Re: Enforcement Tracking No. SE-CN-21-00269
Agency Interest No. 3439, 67860, 229397

THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:

I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **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 right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality
Office of the Secretary
Post Office Box 4302
Baton Rouge, Louisiana 70821-4302
Attn: Hearings Clerk, Legal Division
Re: Enforcement Tracking No. SE-CN-21-00269
Agency Interest No. 3439, 67860, 229397

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 (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 twenty-seven thousand five hundred dollars (\$27,500) for each day of violation for the violation(s) described herein may be assessed. For violations which occurred on August 15, 2004, or after, 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 Amber Fowler at (225) 219-3069 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:I.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 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.


Baton Rouge, Louisiana, this 19th day of August, 2021.

22

Lourdes Iturralde
Assistant Secretary
Office of Environmental Compliance

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

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
P.O. Box 4312
Baton Rouge, LA 70821-4312
Attention: Amber Fowler

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.	SE-CN-21-00269	Contact Name	Amber Fowler		
Agency Interest (AI) No.	3439, 67860, 229397	Contact Phone No.	(225) 219-3069		
Alternate ID No.	G-019-12207				
Respondent:	Rain CII Carbon LLC c/o Elfwood F. Cahill, Jr. Agent for Service of Process 909 Poydras Street, 28 th Floor New Orleans, LA 70112	Facility Name:	Rain CII Carbon LLC Lake Charles Calcining Plant		
		Physical Location:	1920 Pak Tank Road		
		City, State, Zip:	Sulphur, LA 70665		
		Parish:	Calcasieu		
STATEMENT OF COMPLIANCE					
STATEMENT OF COMPLIANCE			Date Completed	Copy Attached?	
A written report was submitted in accordance with Paragraph IV of the "Order" portion of the COMPLIANCE ORDER.					
All necessary documents were submitted to the Department within 75 days of receipt of the COMPLIANCE ORDER 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:					
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 33:11, Subpart 1, Chapter 7.				
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY (SE-CN-21-00269), 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 CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY (SE-CN-21-00269), 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. 				
	The Respondent has reviewed the violations noted in CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY (SE-CN-21-00269) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.				
CERTIFICATION STATEMENT					
I certify, under provisions in Louisiana and United States law that provide criminal penalties for false statements, that based on information and belief formed after reasonable inquiry, the statements and information attached and the compliance statement above, are true, accurate, and complete. I also certify that I do not owe outstanding fees or penalties to the Department for this facility or any					

<i>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 P.O. Box 4312 Baton Rouge, LA 70821 Attn: Amber Fowler		

SETTLEMENT AGREEMENTS

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.

	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.



SETTLEMENT AGREEMENTS

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

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

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

WHAT IS A BEP?

A BEP is a project that provides for environmental mitigation which the respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of the settlement agreement. Project categories for BEPs include public health, pollution prevention, pollution reduction, environmental restoration and protection, assessments and audits, environmental compliance promotion, and emergency planning, preparedness and response. Other projects may be considered if the Department determines that these projects have environmental merit and is otherwise fully consistent with the intent of the BEP regulations.

WHAT HAPPENS IF MY OFFER IS REJECTED?

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

WHERE CAN I FIND EXAMPLES AND MORE INFORMATION?

Settlement Offers	searchable in 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
Judicial Interest.....	FAQs provided by the Louisiana State Bar Association

