

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

TANGI EAST, LLC NO. 1

AI # 220439

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

* **Settlement Tracking No.**
* **SA-WE-25-0050**
*
* **Enforcement Tracking No.**
* **WE-P-22-00366**
*
*
* **Docket No. 2024-5083-DEQ**
*

SETTLEMENT AGREEMENT

The following Settlement Agreement is hereby agreed to between Tangi East, LLC No. 1 (“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 residential development project greater than five (5) acres located in Robert, Tangipahoa Parish, Louisiana (“the Project”).

II

On November 14, 2022, the Department issued to Respondent a Penalty Assessment, Enforcement Tracking No. WE-P-22-00366 (Exhibit 1).

III

In response to the Penalty Assessment, 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 NINE HUNDRED AND NO/100 DOLLARS (\$5,900.00), of which Two Thousand Three Hundred Ten and 61/100 Dollars (\$2,310.61) 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 Penalty Assessment and this Settlement Agreement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Respondent, and in any such action Respondent shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Respondent's compliance history.

VII

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

VIII

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

IX

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

X

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Tangipahoa 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 or by Electronic Funds Transfer (EFT) to the Department of Environmental Quality, in accordance with instructions provided to Respondent by the Financial Services Division. Each payment shall be accompanied by a completed Settlement Payment Form attached hereto.

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.

TANGI EAST, LLC NO. 1

BY: _____
(Signature)

(Printed)

TITLE: _____

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

NOTARY PUBLIC (ID # _____)

(stamped or printed)


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

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

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

NOTARY PUBLIC (ID # _____)

(stamped or printed)

Approved: 
Jerrie "Jerry" Lang, Assistant Secretary

JOHN BEL EDWARDS
GOVERNOR

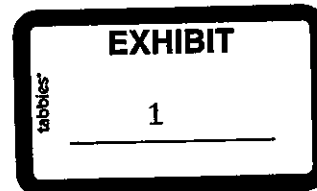


CHUCK CARR BROWN, Ph.D.
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

NOV 14 2022

CERTIFIED MAIL (7020 2450 0001 6670 4475)
RETURN RECEIPT REQUESTED



TANGI EAST, LLC NO. 1
c/o Robert J. Bruno
Agent for Service of Process
70325 Highway 1077, Suite 300
Covington, LA 70433

RE: **PENALTY ASSESSMENT**
ENFORCEMENT TRACKING NO. WE-P-22-00366
AGENCY INTEREST NO. 220439

Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **PENALTY ASSESSMENT** is hereby served on **TANGI EAST, LLC NO. 1 (RESPONDENT)** for the violations described therein.

Any questions concerning this action should be directed to Jessie Canerday at (225) 219-3814 or jessie.canerday@la.gov.

Sincerely,

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

AM/JSC/jsc
Alt ID No. LAR10N779
Attachment

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

IN THE MATTER OF

**TANGI EAST, LLC NO. 1
TANGIPAHOA PARISH
ALT ID NO. LAR10N779**

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

*
*
* **ENFORCEMENT TRACKING NO.**
*
* **WE-P-22-00366**
*
* **AGENCY INTEREST NO.**
*
* **220439**
*

PENALTY ASSESSMENT

The following **PENALTY ASSESSMENT** is issued to **TANGI EAST, LLC NO. 1 (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(E) and 30:2050.3.

FINDINGS OF FACT

I.

The Respondent owns and/or operates a new residential development project greater than five (5) acres located on Louisiana Highway 445, between Larpenier Lane and Havens Subdivision, Robert, Tangipahoa Parish, Louisiana. The Respondent was granted authorization under Louisiana Pollutant Discharge Elimination System (LPDES) General Permit LAR10N779 effective on December 11, 2019. Authorization under LPDES General Permit LAR10N779 terminated on December 10, 2020. Under the terms and conditions of LPDES General Permit LAR10N779, the Respondent was permitted to discharge storm water associated with construction activities into an unnamed ditch, thence into the Tangipahoa River (subsegment 040702), all waters of the state.

II.

On or about January 22, 2020, March 26, 2020, and November 18, 2020, the Department conducted inspections followed by a subsequent file review conducted on or about December 16, 2020, which revealed the following violations:

- A. The Respondent failed to prepare a Storm Water Pollution Prevention Plan (SWPPP). Specifically, the permit requires the SWPPP be prepared prior to submittal of the Notice of Intent (NOI). The Department received an NOI on or about December 11, 2019. The Respondent provided a one-page SWPPP for review during an inspection conducted on or about January 22, 2020. The inspector informed the Respondent that the SWPPP did not meet the requirements of the permit. The Respondent was provided a SWPPP template and contact information for the Small Business Assistance group for assistance with preparing an adequate SWPPP. The Respondent failed to provide an updated/adequate SWPPP during a follow-up inspection, conducted on or about March 26, 2020. On or about November 20, 2020, the Respondent submitted a SWPPP that was certified on November 20, 2020. The SWPPP was incomplete. Specifically, the SWPPP had construction start and end dates of April 1, 2017, and December 1, 2017, respectively; a frequency of inspections was not designated; copies of records of inspections were not included with the SWPPP; and a completed "Stabilization Practice Schedule" was not included with the SWPPP. The failure to prepare a SWPPP is in violation of LPDES Permit LAR10N779 (Part IV, Section A.1 and Part VI, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.A.
- B. The Respondent failed to comply with LPDES permit LAR10N779. Specifically, inadequate storm water controls were observed during the January 22, 2020, March 26, 2020, and November 18, 2020, inspections. The inspections found that silt fencing was not properly maintained. The silt fencing was used to create a retention pond. In multiple locations, during the inspections, the fencing was down and covered with dirt and water; the inspector observed silty water draining into a roadside ditch. The failure to

comply is in violation of LPDES Permit LAR10N779 (Part IV, Section D.2.a and Part VI, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.A.

III.

On February 19, 2021, the Department issued a COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY (CONOPP), Enforcement Tracking No. WE-CN-20-00704 to the Respondent. The Respondent received CONOPP WE-CN-20-00704 on February 26, 2021. The Respondent did not request a hearing, and the action is considered final.

IV.

A civil penalty under Section 2025(E) and 2050.3 of the Act may be assessed for the violations described herein.

V.

Having considered the factors set forth in Section 2025(E)(3) of the Act, and in light of all facts and circumstances presently known, a civil penalty would be appropriate, equitable, and justified.

ASSESSMENT

VI.

A penalty in the amount of **EIGHT THOUSAND TEN DOLLARS AND SIXTY-ONE CENTS (\$8,010.61)** is hereby assessed together with legal interest as allowed by law and all costs of bringing and prosecuting this enforcement action accruing after the date of issuance.

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 **PENALTY ASSESSMENT**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **PENALTY ASSESSMENT**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **PENALTY ASSESSMENT** 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. WE-P-22-00366
Agency Interest No. 220439

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 **PENALTY ASSESSMENT** 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 **PENALTY ASSESSMENT** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **PENALTY ASSESSMENT** shall become a final enforcement action unless the request for a 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 violations described herein and the assessed penalty.

V.

The Respondent must make full payment of the civil penalty assessed herein no later than fifteen (15) days after the assessment becomes final. Penalties are to be made payable to the Department of Environmental Quality, and mailed to:

Department of Environmental Quality
Office of Management and Finance
Post Office Box 4303
Baton Rouge, Louisiana 70821-4303
Attn: Rhonda Mack, Accountant
Re: Enforcement Tracking No. WE-P-22-00366
Agency Interest No. 220439

Enclose with your payment the attached Penalty Payment form.

VI.

Upon the penalty assessed herein becoming final due to the Respondent's failure to timely file a request for a hearing, and upon the Respondent's failure to pay the civil penalty provided herein or failure to make arrangements satisfactory to the Department for such payment, this matter shall be referred to the Department's Legal Affairs Division for collection of the penalty, plus all costs associated with the collection. Failure of the Legal Affairs Division to collect the penalty and associated costs shall result in the transfer of the debt to the Louisiana Office of Debt Recovery (ODR) where it will be subject to an additional collection fee of up to twenty-five percent (25%) of the total debt liability, as provided for in LA R.S. 47:1676 (E).

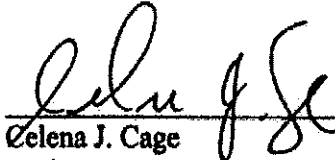
VII.

For each violation described herein, the Department reserves the right to seek compliance with its rules and regulations in any manner allowed by law and nothing herein shall be construed to preclude the right to seek such compliance.

VIII.

This PENALTY ASSESSMENT is effective upon receipt.

Baton Rouge, Louisiana, this 14th day of November, 2022.


Celena J. Cage
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: Jessie Canerday

PENALTY PAYMENT FORM

Please attach this form to your penalty payment
and submit to:

Department of Environmental Quality
Office of Management and Finance
P. O. Box 4303
Baton Rouge, Louisiana 70821-4303
Attn: Rhonda Mack, Accountant

Respondent: TANGI EAST, LLC NO. 1

Enforcement Tracking Number: WE-P-22-00366

Penalty Amount: \$8,010.61

AI Number: 220439

Alternate ID Number: LAR10N779

TEMPO Activity Number: ENF20220001

**For Official Use Only.
Do Not write in this Section.**

Check Number:

Check Date:

Check Amount:

Received Date:

PIV Number:

PIV Date:

**Stamp "Paid" in the box to the right
and initial.**

Route Completed form to:

**Celena J. Cage
Assistant Secretary
Office of Environmental Compliance**

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AI #: 220439
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PENALTY CALCULATION WORKSHEET

Penalty Event #1 – Paragraph II - The Respondent failed to prepare a Storm Water Pollution Prevention Plan (SWPPP). Specifically, the permit requires the SWPPP be prepared prior to submittal of the Notice of Intent (NOI). The Department received an NOI on or about December 11, 2019. The Respondent provided a one-page SWPPP for review during an inspection conducted on or about January 22, 2020. The inspector informed the Respondent that the SWPPP did not meet the requirements of the permit. The Respondent was provided a SWPPP template and contact information for the Small Business Assistance (SBA) group for assistance with preparing an adequate SWPPP. The Respondent failed to provide an updated/adequate SWPPP during a follow-up inspection, conducted on or about March 26, 2020. On or about November 20, 2020, the Respondent submitted a SWPPP that was certified on November 20, 2020. The SWPPP was incomplete. Specifically:

- **The SWPPP had construction start and end dates of April 1, 2017, and December 1, 2017, respectively.**
- **A frequency of inspections was not designated**
- **Copies of records of inspections were not included with the SWPPP.**
- **A completed "Stabilization Practice Schedule" was not included with the SWPPP.**

(LAR10N779 (Part IV, Section A.1 and Part VI, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.A)

Violation Specific Factors

Degree of Risk/Impact to Human Health Or Property: Minor

Justification: The degree of risk is considered to be minor. There is no evidence that human health or the environment were harmed or at a substantial risk, because the Respondent failed to prepare a SWPPP.

Nature and Gravity of the Violation: Major

Justification: The nature and gravity of the violation is to be considered major as little to no implementation of the permit requirements with respect to the SWPPP occurred. The Respondent was required to have a complete SWPPP prior to submitting a Louisiana Pollutant Discharge Elimination System (LPDES) Notice of Intent (NOI) to Discharge Storm Water Associated with Construction Activity Greater than Five (5) Acres. The Respondent was granted authorization to discharge storm water effective December 11, 2019. On January 22, 2020, the Respondent provided a site drainage plan, which served as a single-page SWPPP, to a Department inspector; the SWPPP failed to meet LPDES Permit LAR10N779 requirements. The Respondent was provided with a SWPPP template and contact information for SBA. The Respondent failed to provide the Department inspector with an updated/adequate SWPPP during a follow-up inspection conducted on or about March 26, 2020. A Notice of Deficiency (NOD) was issued on May 18, 2020. The Respondent failed to respond to the NOD. On or about November 20, 2020, the Respondent submitted an updated SWPPP, which was signed and certified on November 20, 2020. The Respondent operated without a complete SWPPP for more than eleven (11) months of the twelve (12) months that LPDES permit LAR10N779 was in effect. The updated SWPPP did not reflect the project at Averies Way Subdivision, as indicated

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AI #: 220439

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by the construction start and end dates of April 1, 2017, and December 1, 2017, respectively. A frequency of inspections was not designated, and copies of records of inspections were not included with the SWPPP. **COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY WE-CN-20-00704**, issued February 19, 2021, and delivered February 26, 2021, ordered the Respondent to submit copies of all storm water inspections from 2020; however, the Respondent failed to submit these documents. The Department reviews storm water inspections to determine if inspections are being conducted and if the SWPPP is effective. The SWPPP also lacked a "Stabilization Practice Schedule." The practice of site stabilization minimizes storm water contamination by erosion when land disturbing activities have ceased, temporarily or permanently.

Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

1. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent was issued Compliance Order & Notice of Potential Penalty (CONOPP) Enforcement Tracking No. WE-CN-20-00704 on February 19, 2021. The Respondent operated without an adequate SWPPP from December 2019 through November 2020. This penalty assessment resolves the civil penalties for violations included in CONOPP WE-CN-20-00704.
2. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: CONOPP Enforcement Tracking No. WE-CN-20-00704 issued to the Respondent on February 19, 2021, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions and also has the ability to pay a reasonable penalty.
3. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = +20%
Justification: The Respondent is culpable and demonstrated indifference by: ignoring the requirement to have a complete SWPPP prior to submitting a NOI; failing to update and submit an adequate SWPPP after notification from the Department inspector during follow-up to inspections; failing to respond to the NOD; failing to include all permit requirements when an updated SWPPP was submitted on or about November 20, 2020; operating without an adequate SWPPP for almost all of the year LPDES permit LAR10N779 was effective; and failing to submit a written report, copies of storm water inspections, and a Stabilization Practice Schedule, as ordered by CONOPP WE-CN-20-00704. The Respondent was not recalcitrant or defiant.
4. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.

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AI #: 220439

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Adjustment = 0%

Justification: The Department has no knowledge of damages caused by failing to prepare a SWPPP. This violation was administrative in nature.

5. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.

Adjustment = 0%

Justification: The Department has no knowledge that the Respondent attempted to conceal the violations.

Total Percentage for Violator Specific Adjustment Factors: +20%

Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$1,500
Maximum (C) \$3,000

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) +20%

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + [B \times (C - A)]$
 $P = 2(\$1,500 + [20\% \times (\$3,000 - \$1,500)])^*$

*Note – the subtotal is multiplied by two (2) for the number of inspections which revealed the Respondent failed to prepare a SWPPP: January 22, 2020, and March 26, 2020.

Penalty Amount for Penalty Event = \$3,600

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AI #: 220439

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Penalty Event #2 – Paragraph III - The Respondent failed to comply with LPDES permit LAR10N779. Specifically, inadequate storm water controls were observed during the January 22, 2020, March 26, 2020, and November 18, 2020, inspections. The inspections found that silt fencing was not properly maintained. The silt fencing was used to create a retention pond. In multiple locations, during the inspections, the fencing was down and covered with dirt and water; the inspector observed silty water draining into a roadside ditch. (LAR10N779 (Part IV, Section D.2.a and Part VI, Section A.2), La. R.S. 30:2076(A)(3), and LAC 33:IX.2701.A)

Violation Specific Factors

Degree of Risk/Impact to Human Health or Property: Minor

Justification: The violations did not present actual harm or substantial risk of harm to the environment or public health. This site drains to the Tangipahoa River (subsegment 040702), which is impaired for fish and wildlife propagation. Suspected causes of impairment are mercury and dissolved oxygen, and suspected sources are unknown and atmospheric deposition. While the silty water discharged from the site may have contributed to turbidity, there is no evidence that it had any effect on fish and wildlife propagation.

Nature and Gravity of the Violation: Moderate

Justification: The nature and gravity of the violation is to be considered moderate as the Respondent substantially negated the intent of the permit requirements with respect to storm water controls, but some implementation occurred. The purpose of storm water controls is to prevent pollutants from entering waters of the state via storm water discharges. LPDES Permit LAR10N779 requires that control measures be properly selected, installed, and maintained. In addition, trapped sediment must be removed from a silt fence before the deposit reaches fifty percent (50%) of the above ground fence height. A Department inspector observed minimal storm water controls in place and silty/muddy water leaving the site during three (3) separate site visits, January 22, 2020, March 26, 2020, and November 18, 2020. According to the site diagram submitted by the Respondent, silt fencing was used to create a "retention pond." During all of the site visits, the Department inspector observed the silt fencing down and/or covered by mud. Silty/muddy water was observed leaving the retention pond and entering the roadside ditch in multiple locations. The Respondent was notified of the inadequate storm water controls observed during the January 22, 2020, site visit via email on or about January 24, 2020, and via Field Interview Form (FIF) delivered by certified mail on or about January 31, 2020. During the March 26, 2020, site visit, the Department inspector noted the storm water controls to be in the same condition as on January 22, 2020, or further deteriorated. The Respondent was notified of the inadequate storm water controls observed during the March 26, 2020, site visit via FIF which was emailed on or about March 27, 2020. The Department inspector observed for a third (3rd) time on or about November 18, 2020, that the silt fencing was not maintained, mud was covering parts of the silt fencing, and silty/muddy water was leaving the site via the downed silt fencing and entering the roadside ditch. The Department inspector notified the Respondent via email that inadequate storm water controls were observed at the site on November 18, 2020.

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AI #: 220439
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Violator Specific Factors

Adjustment Factors Per Event – the upward or downward percentage adjustment for each violator-specific factor shall be no more than 100 percent of the difference between the minimum and maximum penalty amount for the chosen matrix cell. The total upward or downward percentage adjustment is also limited to 100 percent.

6. The history of previous violations or repeated noncompliance.
Adjustment = 0%
Justification: The Respondent was issued Compliance Order & Notice of Potential Penalty (CONOPP) Enforcement Tracking No. WE-CN-20-00704 on February 19, 2021. The Respondent failed to have adequate storm water controls on January 22, 2020, March 26, 2020, and November 18, 2020. This penalty assessment resolves the civil penalties for violations included in CONOPP WE-CN-20-00704.
7. The gross revenues generated by the Respondent.
Adjustment = 0%
Justification: CONOPP Enforcement Tracking No. WE-CN-20-00704 issued to the Respondent on February 19, 2021, requested the submission of the Respondent's most current annual gross revenue statement. The Respondent did not submit the requested annual gross revenue statement; therefore, it is viewed by the Department as an admission that the Respondent has sufficient revenue to comply with all applicable regulations and/or permit conditions and also has the ability to pay a reasonable penalty.
8. The degree of culpability, recalcitrance, defiance, or indifference to regulations or orders.
Adjustment = +20%
Justification: The Respondent is culpable and demonstrated indifference by continuing to have inadequate storm water controls, which allowed silty/muddy water to discharge to the roadside ditch, after the Department inspector notified the Respondent in writing on or about January 24, 2020, January 31, 2020, March 27, 2020, and November 20, 2020. In addition, the Respondent failed to respond to the NOD and failed to submit a written report detailing corrective actions taken, copies of storm water inspections, and a completed Stabilization Practice Schedule as ordered by CONOPP WE-CN-20-00704. The Respondent was not recalcitrant or defiant.
9. Whether the person charged has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the noncompliance or violation.
Adjustment = 0%
Justification: The Department has no knowledge of damages caused by the inadequate storm water controls.
10. Whether the noncompliance or violation and the surrounding circumstances were immediately reported to the Department, and whether the violation or noncompliance was concealed or there was an attempt to conceal by the person charged.
Adjustment = 0%
Justification: The Department has no knowledge that the Respondent attempted to conceal the violations.

Enforcement Tracking #: WB-P-22-00366

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Total Percentage for Violator Specific Adjustment Factors: +20%

Penalty Range for the Penalty Event
(using the Violation Specific Factors
and the Penalty Matrix)

Minimum (A) \$500
Maximum (C) \$1,500

Sum of the Percentages for the Penalty Event
(using the Violator Specific Factors)

Sum of %s (B) +20%

Formula(s) to obtain a penalty amount for each
Penalty event

$P = A + (B \times [C - A])$
 $P = 3(\$500 + [20\% \times (\$1,500 - \$500)])^*$

*Note – the subtotal is multiplied by three (3) for the number of site visits where inadequate storm water controls were present: January 22, 2020, March 26, 2020, and November 18, 2020.

Penalty Amount for Penalty Event = \$2,100

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MONETARY BENEFIT OF NONCOMPLIANCE
LAC 33:1.705.G

The Department shall consider the monetary benefits realized through noncompliance. Any monetary benefits calculated may be added to the penalty subtotal. However, the amount calculated may not cause the penalty subtotal to exceed the maximum penalty amount allowed by law. A cash penalty should be collected unless it has been demonstrated and documented that the violator cannot pay the cash penalty.

Justification/Explanation/Calculation of Benefit of Noncompliance

The Department has insufficient information to determine that the Respondent experienced a benefit of noncompliance associated with failing to prepare a SWPPP and having inadequate storm water controls. The SWPPP submitted by the Respondent on or about November 20, 2020, was a template that was used previously by the Respondent. The SWPPP could have been updated by an employee as part of his or her regular job duties. In addition, storm water control maintenance, particularly the silt fencing, could have been properly maintained by an employee as part of his or her job duties.

Total Monetary Benefit of Noncompliance = \$0.00

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COMPUTATION OF RESPONSE COST
LAC33:I.705.H

Response Costs—the costs to the state of any response action made necessary by a penalty event that are not voluntarily paid by the violator. These costs shall include, but are not limited to, the costs of surveillance staff activities including cleanup costs and the costs of bringing and prosecuting an enforcement action, such as staff time, equipment use, hearing records, and expert assistance. (See LAC 33:I:703.A)

The following is a breakdown of response costs for this Penalty Assessment.

Personnel (A)	No. of Hours (B)	Hourly Rate of Pay (C)	Direct Cost (D)	Approved Federal Rate (E)	Indirect Cost (F)	Subtotal (G)
WE-CN-20-00704						
Enforcement Writer	8	\$24.25	\$194.00	66.37%	\$128.76	\$322.76
Enforcement Supervisor	2	\$29.00	\$58.00	66.37%	\$38.49	\$96.49
Enforcement Manager	0.5	\$39.12	\$19.56	66.37%	\$12.98	\$32.54
Enforcement Analyst	1.75	\$25.53	\$44.68	66.37%	\$29.65	\$74.33
Enforcement Administrator	0.5	\$46.98	\$23.49	66.37%	\$15.59	\$39.08
Assistant Secretary	0.25	\$55.29	\$13.82	66.37%	\$9.17	\$22.99
Enforcement Attorney	1	\$46.26	\$46.26	66.37%	\$30.70	\$76.96
Inspector	24	\$25.66	\$615.84	62.36%	\$384.04	\$999.88
WE-P-22-00366						
Enforcement Writer	8	\$25.22	\$201.76	66.13%	\$133.42	\$335.18
Enforcement Supervisor	2	\$31.49	\$62.98	62.09%	\$39.10	\$102.08
Enforcement Manager	1	\$37.19	\$37.19	62.09%	\$23.09	\$60.28
Enforcement Analyst	1	\$26.83	\$26.83	62.09%	\$16.66	\$43.49
Enforcement Administrator	0.5	\$48.73	\$24.37	62.09%	\$15.13	\$39.50
Assistant Secretary	0.25	\$57.50	\$14.38	62.09%	\$8.93	\$23.31

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Enforcement Attorney	0.5	\$51.50	\$25.75	62.09%	\$15.99	\$41.74
Total Enforcement Costs:						\$2,310.61

Direct Cost (D) = No. Hours (B) X Rate (C)

Indirect Cost (F) = Direct Cost (D) X Approved Federal Rate (E)

Subtotal (G) = Direct Cost (D) + Indirect Cost (F)

Approved Federal Rate Effective July 1, 2019-June 30, 2020: 62.36%

Approved Federal Rate Effective July 1, 2020-June 30, 2021: 66.37%

Approved Federal Rate Effective July 1, 2021-June 30, 2022: 66.13%

Approved Federal Rate Effective July 1, 2022-June 30, 2023: 62.09%

Note: Approved Federal Rate for the corresponding period when costs were incurred is used.

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FINAL PENALTY CALCULATION

The values for each penalty amount are added to determine a Penalty Subtotal (P_s).

$$P_s = P_1 + P_2 + P_3 \dots$$
$$\$5,700.00 = \$3,600 + \$2,100$$

If Monetary Benefit of Noncompliance is added:

$$P_s = (P_1 + B_1) + (P_2 + B_2) + (P_3 + B_3)$$
$$\$5,700.00 = \$3,600 + \$2,100$$

Response Costs (R_c) are then added to the penalty subtotal (P_s) to determine the total penalty amount (P_t).

$$R_c = \underline{\$2,310.61}$$

Penalty Total = Penalty Subtotal + Response Costs

$$(P_t) = P_s + R_c$$
$$\$8,010.61 = \$5,700.00 + \$2,310.61$$

Penalty Total = \$8,010.61