

**STATE OF LOUISIANA**

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**IN THE MATTER OF:**

**VALERO REFINING-MERAUX LLC**

**AI # 1238**

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

\* **Settlement Tracking No.**  
\* **SA-AE-25-0084**  
\*  
\* **Enforcement Tracking No.**  
\* **AE-PP-20-00587**  
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**SETTLEMENT AGREEMENT**

The following Settlement Agreement is hereby agreed to between Valero Refining-Meraux 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 petroleum refinery located in Meraux, St. Bernard Parish, Louisiana ("the Facility").

**II**

On August 3, 2021, the Department issued to Respondent a Notice of Potential Penalty, Enforcement Tracking No. AE-PP-20-00587 (Exhibit 1).

**III**

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

#### IV

Nonetheless, Respondent, without making any admission of liability under state or federal statute or regulation, agrees to pay, and the Department agrees to accept, a payment in the amount of THIRTY-TWO THOUSAND NINE HUNDRED AND NO/100 DOLLARS (\$32,900.00), of which One Thousand Nine Hundred Seventy-Seven and 66/100 Dollars (\$1,977.66) 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).

#### V

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

#### VI

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.

## VII

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.

## 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 St. Bernard 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.

## X

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 Accounts Receivable, 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.

#### XI

In consideration of the above, any claims for penalties are hereby compromised and settled in accordance with the terms of this Settlement Agreement.

#### 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.

**VALERO REFINING-MERAUX 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)

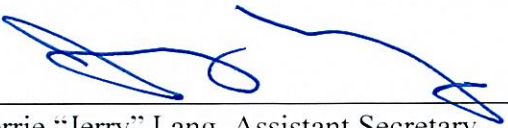
**LOUISIANA DEPARTMENT OF  
ENVIRONMENTAL QUALITY**  
Courtney J. Burdette, Secretary

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

AUG 03 2021

CERTIFIED MAIL (7018 1130 0001 5655 1871)  
RETURN RECEIPT REQUESTED



**VALERO REFINING-MERAUX LLC**  
c/o C T Corporation System  
Agent for Service of Process  
3867 Plaza Tower Dr.  
Baton Rouge, LA 70816

**RE: NOTICE OF POTENTIAL PENALTY  
ENFORCEMENT TRACKING NO. AE-PP-20-00587  
AGENCY INTEREST NO. 1238**

Dear Sir/Madam:

On or about April 10, 2020 and July 24, 2020, inspections of the **MERAUX REFINERY (FACILITY)**, a petroleum refinery, owned and/or operated by **VALERO REFINING-MERAUX, LLC (RESPONDENT)**, were performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Air Quality Regulations. The Facility is located at 250C East Saint Bernard Highway in Meraux, Saint Bernard Parish, Louisiana. The Facility operates under the authority of Title V Air Permit No. 2500-00001-V17 issued on August 23, 2018. The Facility also operates under Consent Decree, Civil Action Number 3:10-cv-00563-bbc entered into the United States District Court for the Western District of Wisconsin on or about February 15, 2011, and under First Amendment to Consent Decree, Civil Action Number 3:10-cv-00563-bbc entered into the United States District Court for the Western District of Wisconsin on or about April 27, 2012.

On April 10, 2020, the Department received a citizen complaint (Incident No. 196367) and a facility notification (Incident No. 196384) regarding a loss of containment in the hydrocracker unit (HCU) which resulted in a vapor release and ignition, followed by a fire. On July 24, 2020, the Department received a citizen complaint (Incident No. 197938) and a facility notification (Incident No. 197954) regarding a partial power outage due to an electrical failure in the refinery.

While the investigation by the Louisiana Department of Environmental Quality (the Department) is not yet complete, the following violations were noted during the course of the inspections and a subsequent file review conducted on June 14, 2021:

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A. The Department received an Unauthorized Discharge Report dated April 17, 2020, a Follow-up Unauthorized Discharge Report dated June 9, 2020, and electronic correspondence dated May 20, 2021 for an incident which occurred on April 10, 2020. According to the Unauthorized Discharge Report dated April 17, 2020, on April 9, 2020, at approximately 11:40 PM, a brief, but intense, rainstorm passed over the Facility. Shortly afterwards, a vessel in the HCU began relieving to the North Flare (EQT 0035) via a pressure safety valve (PSV). It was determined that the elevated pressure subsided, but the PSV had not fully reseated. A plan was developed to briefly close an inlet valve at the PSV to reseat the PSV, which was approved by operations management and documented through the facility's Process Safety Management (PSM) program. However, due to concerns regarding access and egress at the targeted valve, several operators changed the plan in the field and instead opted for the closure of the outlet valve of the PSV. It was not recognized that additional review and approval by operations management was necessary to authorize this change. A review of the new plan would have revealed that the closure of the outlet valve only would result in it being exposed to pressure in excess of its design. When the outlet valve was closed, it immediately failed, resulting in a release of a pressurized hydrogen/hydrocarbon mix which quickly ignited. At approximately 12:45 AM on April 10, 2020, the Respondent experienced a loss of containment in the HCU, which resulted in a vapor release and ignition, followed by a fire. The incident was secured on April 11, 2020, at 10:00 AM. The Respondent determined that this incident was preventable due to operators failing to follow PSM protocols when they altered the plan to reseat the PSV. Approximately 5,800 total pounds of Sulfur Dioxide (SO<sub>2</sub>) were released, which exceeded the SO<sub>2</sub> reportable quantity (RQ) of 500 pounds. Approximately 2,503 lbs. of SO<sub>2</sub> and 13.6 lbs. of Hydrogen Sulfide (H<sub>2</sub>S) were released from the fire in the HCU. The incident resulted in temporary closure of the East St. Bernard Highway and one facility employee seeking medical treatment. According to the Unauthorized Discharge Report dated June 9, 2020, the Respondent reviewed this incident with all personnel and will update the PSM "Critical Safety Device Disabling Procedure" to emphasize the appropriate operation of the PSV inlet and outlet valves. Additionally, affected personnel will be trained on the procedure.

1. The Respondent exceeded the following permitted emission limits as a result of the incident:

	EMISSION POINT	INCIDENT DATE and TIME (duration)	POLLUTANT	PERMIT LIMIT (lbs/hr)	QUANTITY REPORTED (lbs)*
A.	North Flare (EQT0035)	4/10/2020 00:49-10:31 (10 hrs)	SO <sub>2</sub>	97.7	2,997
B.		4/10/2020 00:00-01:00 (1 hr)	PM	9.05	10
C.		4/10/2020 01:00-02:00 (1 hr)			30
D.		4/10/2020 02:00-03:00 (1 hr)			30

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	EMISSION POINT	INCIDENT DATE and TIME (duration)	POLLUTANT	PERMIT LIMIT (lbs/hr)	QUANTITY REPORTED (lbs)*
E.	North Flare (EQT0035)	4/10/2020 00:00-01:00 (1 hr)	NOx	22.78	31
F.		4/10/2020 01:00-02:00 (1 hr)			82
G.		4/10/2020 02:00-03:00 (1 hr)			82
H.		4/10/2020 00:00-01:00 (1 hr)	CO	103.85	140
I.		4/10/2020 01:00-02:00 (1 hr)			341
J.		4/10/2020 02:00-03:00 (1 hr)			341
K.		4/10/2020 00:00-01:00 (1 hr)	VOC	190.95	207
L.		4/10/2020 01:00-02:00 (1 hr)			627
M.		4/10/2020 02:00-03:00 (1 hr)			627
N.	SRU No. 3 Incinerator (EQT0079)	4/10/2020 01:00-02:00 (1 hr)	SO <sub>2</sub>	39.94	194 (total lbs release, 24 lbs in excess of permit limit reported)
O.		4/11/2020 01:00-02:00 (1 hr)			

\* The Respondent reported the Distributed Control System (DCS) flare monitoring data was lost during the incident. Emissions are estimated based on previous HCU depressure events and video observations.

Each exceedance of a permitted emission limit is a violation of Title V Permit No. 2500-00001-V17, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- The Respondent failed to properly operate and diligently maintain control facilities, any device or contrivance, operating procedure, or abatement scheme used to prevent or reduce air pollution, whenever any emissions are being made which can be controlled by the facilities. This is a violation of LAC 33:III.905.A and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).
- The Respondent reported the exceedance of the 12-hour rolling average of 250 ppm SO<sub>2</sub> for the SRU No. 3 Incinerator (EQT0079) from 03:00 hours to 13:00 hours on April 10, 2020. This is a violation of 40 CFR 60.102a(f)(1)(i), which language has been adopted as a Louisiana regulation in LAC 33:III.3003, Specific Requirement 686 of Title V



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Permit No. 2500-00001-V17, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2). This violation may be subject to Stipulated Penalties as required by Consent Decree, Civil Action Number 3:10-cv-00563-bbc.

B. The Department received an Unauthorized Discharge Report dated July 31, 2020, and a Follow-up Unauthorized Discharge Report dated September 22, 2020. According to the Unauthorized Discharge Report dated July 31, 2020, on July 24, 2020, at approximately 13:40 hours, a lightning surge arrestor on a switch rack feeder station activated during a thunderstorm, cutting power to several process units. The partial power interruption affected process heaters, rotating equipment (pumps and compressors), and process conditions inside units. The power outage resulted in flaring and the Respondent estimated that the RQ for SO<sub>2</sub> and H<sub>2</sub>S were exceeded as sulfur containing compounds were combusted at the North Flare (EQT 0035) and South Flare (EQT 0049) due to elevated H<sub>2</sub>S in the process gases. The Respondent estimated that elevated emissions occurred on the incident date between 13:40 hours and 23:00 hours for a duration of 9.4 hours. Approximately, 1,095 total pounds of SO<sub>2</sub> and 180 pounds of H<sub>2</sub>S were released during the incident, which exceeded the SO<sub>2</sub> RQ of 500 pounds and the H<sub>2</sub>S RQ of 100 pounds. According to the September 22, 2020 report, the Respondent determined that this incident was preventable. The facility failed to follow Process Safety Management protocols which allowed emissions in excess of Reportable Quantities to be released when a partial power outage affected process units.

1. The Respondent exceeded the following permitted emission limits as a result of the incident:

	EMISSION POINT	INCIDENT DATE and TIME (duration)	POLLUTANT	PERMIT LIMIT (lbs/hr)	QUANTITY REPORTED (lbs)
A.	North Flare (EQT0035)	7/24/2020 13:40-20:30 (6.8 hrs)	SO <sub>2</sub>	97.7	678
B.		7/24/2020 (1 hr)	PM	9.05	12.57
C.		7/24/2020 (1 hr)			13.30
D.		7/24/2020 (1 hr)			10.44
E.		7/24/2020 (1 hr)			13.09
F.		7/24/2020 (1 hr)	NOx	22.78	31.67
G.		7/24/2020 (1 hr)			33.50
H.		7/24/2020 (1 hr)			26.30
I.		7/24/2020 (1 hr)			32.98

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	EMISSION POINT	INCIDENT DATE and TIME (duration)	POLLUTANT	PERMIT LIMIT (lbs/hr)	QUANTITY REPORTED (lbs)
J.	North Flare (EQT0035)	7/24/2020 (1 hr)	CO	103.85	144.37
K.		7/24/2020 (1 hr)			152.73
L.		7/24/2020 (1 hr)			119.89
M.		7/24/2020 (1 hr)			150.34
N.		7/24/2020 (1 hr)	VOC	190.95	265.46
O.		7/24/2020 (1 hr)			280.83
P.		7/24/2020 (1 hr)			220.44
Q.		7/24/2020 (1 hr)			276.43
R.	SRU No. 2 Incinerator (EQT0019)	7/24/2020 13:43-16:00 (2.3 hrs)	H <sub>2</sub> S	0.43	175
S.		7/24/2020 13:43-16:00 (2.3 hrs)	SO <sub>2</sub>	16.75	227

Each exceedance of a permitted emission limit is a violation of Title V Permit No. 2500-00001-V17, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

- The Respondent failed to properly operate and diligently maintain control facilities, any device or contrivance, operating procedure, or abatement scheme used to prevent or reduce air pollution, whenever any emissions are being made which can be controlled by the facilities. This is a violation of LAC 33:III.905.A and La. R.S. 30:2057(A)(1) and 30:2057(A)(2).
- The Respondent reported the exceedance of the 12-hour rolling average of 250 ppm SO<sub>2</sub> for the SRU No. 2 Incinerator (EQT0019) from 13:43 hours to 16:00 hours on July 24, 2020. This is a violation of 40 CFR 60.102a(f)(1)(i), which language has been adopted as a Louisiana regulation in LAC 33:III.3003, Specific Requirement 228 of Title V Permit No. 2500-00001-V17, LAC 33:III.501.C.4, and La. R.S. 30:2057(A)(1) and 30:2057(A)(2). This violation may be subject to Stipulated Penalties as required by Consent Decree, Civil Action Number 3:10-cv-00563-bbc.

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4. The Respondent failed to operate the South flare (EQT0049) at an opacity less than 20% for more than one (1) six (6) minute period in any sixty (60) consecutive minutes. Specifically, on or about July 24, 2020, the Respondent experienced visible emissions greater than 20% for approximately thirty (30) minutes. This is a violation of Specific Requirement 660 of Title V Permit No. 2500-00001-V17, LAC 33:III.1311.C, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1), and La. R.S. 30:2057(A)(2).
5. The Respondent failed to operate the South flare (EQT0049) with no visible emissions except for not more than one (1) six (5) minute period in a two (2) hour period. Specifically, on or about July 24, 2020, the Respondent experienced which lasted for approximately thirty (30) minutes. This is a violation of 40 CFR 63.670(c), which language has been adopted as a Louisiana regulation in LAC 33:III.5122, Specific Requirement 636 of Title V Permit No. 2500-00001-V17, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1), and La. R.S. 30:2057(A)(2).
6. The Respondent failed to operate the SRU No. 2 Incinerator (EQT0019) at an opacity less than 20% for more than one (1) six (6) minute period in any sixty (60) consecutive minutes. Specifically, on or about July 24, 2020, the Respondent experienced visible emissions greater than 20% for approximately two (2) hours. This is a violation of Specific Requirement 251 of Title V Permit No. 2500-00001-V17, LAC 33:III.1101.B, LAC 33:III.501.C.4, La. R.S. 30:2057(A)(1), and La. R.S. 30:2057(A)(2).

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.

Prior to the issuance of any additional appropriate enforcement action, 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 Dr. Alicia B. Ryan at (225) 219-3374 or [alicia.ryan@la.gov](mailto:alicia.ryan@la.gov) within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

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 in order 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 violations 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 this statement. If the Respondent chooses not to submit the requested most current annual gross revenues

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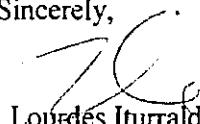
statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.

For each violation described herein, the Department reserves the right to seek civil penalties and 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 penalties and compliance.

The Department assesses civil penalties based on LAC 33:I.Subpart1.Chapter 7. To expedite closure of this **NOTICE OF POTENTIAL PENALTY**, 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 "**NOTICE OF POTENTIAL PENALTY REQUEST TO SETTLE**" 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.

To reduce document handling, please refer to the Enforcement Tracking Number and Agency Interest Number on the front of this document on all correspondence in response to this action.

Sincerely,



Lourdes Iturralde  
Assistant Secretary  
Office of Environmental Compliance

LI/ABR/abr  
Alt ID No. 2500-00001

c: Valero Refining – Meraux  
Mr. Matt Dobbins  
2500 East Saint Bernard Highway  
Meraux, LA 70075

## LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY

## OFFICE OF ENVIRONMENTAL COMPLIANCE

ENFORCEMENT DIVISION

POST OFFICE BOX 4312

BATON ROUGE, LOUISIANA 70821-4312

## NOTICE OF POTENTIAL PENALTY

## REQUEST TO SETTLE (OPTIONAL)



Enforcement Tracking No.	AE-PP-20-00587	Contact Name	Alicia B. Ryan
Agency Interest (AI) No.	1238	Contact Phone No.	(225) 219-3374
Alternate ID No.	2500-00001		
Respondent:	VALERO REFINING-MERAUX LLC	Facility Name:	Meraux Refinery
	c/o C T Corporation System	Physical Location:	2500 East Saint Bernard Highway
	Agent for Service of Process		
	3867 Plaza Tower Dr.	City, State, Zip:	Meraux, LA, 70075
	Baton Rouge, LA 70816	Parish:	Saint Bernard

## SETTLEMENT OFFER (OPTIONAL)

(check the applicable option)

<input type="checkbox"/>	The Respondent is not interested in entering into settlement negotiations with the Department with the understanding that the Department has the right to assess civil penalties based on LAC 33:1.Subpart1.Chapter7.
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in <b>NOTICE OF POTENTIAL PENALTY</b> (AE-PP-20-00587), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.
<input type="checkbox"/>	<p>In order to resolve any claim for civil penalties for the violations in <b>NOTICE OF POTENTIAL PENALTY</b> (AE-PP-20-00587), the Respondent is interested in entering into settlement negotiations with the Department and offers to pay \$_____ which shall include LDEQ enforcement costs and any monetary benefit of non-compliance.</p> <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> <p>The Respondent has reviewed the violations noted in <b>NOTICE OF POTENTIAL PENALTY</b> (AE-PP-20-00587), and has attached a justification of its offer and a description of any BEPs if included in settlement offer.</p>

## 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 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

## 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: Dr. Alicia B. Ryan

# 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.

	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 to \$11,000
	MODERATE	\$11,000 to \$8,000	\$8,000 to \$5,000 to \$3,000
	MINOR	\$3,000 to \$1,500	\$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.



# 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 <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:I Chapter 7</u>
Beneficial Environmental Projects .....	<u>LAC 33:I Chapter 25</u> <u>FAQs</u>
Judicial Interest.....	<u>provided by the Louisiana State Bar Association</u>

