

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF	* ENFORCEMENT TRACKING NO.
	* AE-P-97-0041; AE-P-97-0041A;
BAHAR DEVELOPMENT, INC.	* AE-P-97-0041B
BAHA TOWERS LIMITED PARTNERSHIP	* DOCKET NO. EQ-AP-97024
ORLEANS PARISH	*
	* ENFORCEMENT TRACKING NO.
	* AE-P-98-0257; AE-P-98-0257A
AGENCY INTEREST NO. 38717, 66319	*
	* ENFORCEMENT TRACKING NO.
PROCEEDINGS UNDER THE LOUISIANA	* AE-NP-98-0200; AE-NP-98-0200A
ENVIRONMENTAL QUALITY ACT,	*
La. R.S. 30:2001, <u>ET SEQ.</u>	*

SETTLEMENT

The following Settlement is hereby agreed to between Bahar Development, Inc., Baha Towers Limited Partnership, (joint Respondents) and the Department of Environmental Quality, (Department), under authority granted by the Louisiana Environmental Quality Act, LSA- R.S. 30:2001, et seq., (the "Act").

I.

Respondents owned and/or operated the Plaza Tower Office Building, located at 1001 Howard Avenue, New Orleans, Louisiana and were renovating or demolishing parts of its interior. This building contains Regulated Asbestos Material or Asbestos Containing Material as defined in LAC 33:III.5151 et seq. and LAC 33:III.2703 et seq. (hereafter collectively referred to as RACM) that was blown on or sprayed in the above ceiling area.

II.

On April 2, 1997, the Department issued a Penalty Assessment, Enforcement No. AE-P-97-0041, to Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, in the amount of \$50,000.00, attached hereto and made a part of this Settlement as Exhibit A.

III.

On July 6, 1998, the Department issued an Amended Penalty Assessment, Enforcement No. AE-P-97-0041A, to Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, in the amount of \$20,000.00, attached hereto and made a part of this Settlement as Exhibit B.

IV.

On October 9, 1998, the Department issued a Notice of Violation and Potential Penalty, Enforcement No. AE-NP-98-0200, to Respondent, MBA Services, L.L.C., attached hereto and made a part of this Settlement as Exhibit C. AE-NP-98-0200 was later amended by the Department removing MBA Services, L.L.C. as the Respondent, by naming the proper Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, referred to below in Paragraph VIII.

V.

On December 11, 1998, the Department issued a Penalty Assessment, Enforcement No. AE-P-98-0257, to Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, in the amount of \$120,000.00, attached hereto and made a part of this Settlement as Exhibit D, and, in response thereto, Respondents made a timely request for a hearing.

VI.

On January 22, 2003, the Department issued a Second Amended Penalty Assessment, Enforcement No. AE-P-97-0041B, to Respondents, Bahar Development, Inc. and Baha Towers

Limited Partnership, attached hereto and made a part of this Settlement as Exhibit E.

VII.

On February 16, 2003, the Department issued an Amended Penalty Assessment, Enforcement No. AE-P-98-0257A, to Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, attached hereto and made a part of this Settlement as Exhibit F.

VIII.

On February 17, 2003, the Department issued an Amended Notice of Violation & Potential Penalty, Enforcement No. AE-NP-98-0200A, to Respondents, Bahar Development, Inc. and Baha Towers Limited Partnership, attached hereto and made a part of this Settlement as Exhibit G.

IX.

The Department conducted inspections at Respondents' facility on May 28, 1996, June 7, 1996, June 26, 1996, and April 27, 1998, and noted various violations of the Act and Air Quality Regulations as stated in the Enforcement Actions attached hereto as Exhibits A through G.

X.

The Respondents deny they committed any of the alleged violations or that Respondents are liable for any fines, forfeitures and/or penalties.

XI.

Nonetheless, the Respondents, without making any admission of liability under state or federal statute or regulation, agree to pay, and the Department agrees to accept, a payment in the amount of EIGHTY THOUSAND AND NO/100 DOLLARS (\$80,000.00) to be paid in settlement of the alleged violations set forth in this agreement.

XII.

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

XIII.

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

XIV.

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

XV.

The Respondents have caused a public notice advertisement to be placed in the official journal of the parish governing authority in Orleans Parish. The advertisement, in form, wording, and size approved by the Department, announced the availability of this settlement for public view and

comment and the opportunity for a public hearing. Respondents have submitted a proof-of-publication affidavit to the Department and, as of the date this Settlement is executed on behalf of the Department, more than forty-five (45) days have elapsed since publication of the notice.

XVI.

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 Agreement is voidable at the option of the Department. Payment is to be made payable to the Department of Environmental Quality and mailed to the attention of Darryl Serio, Office of Management and Finance, Department of Environmental Quality, Post Office Box 82231, Baton Rouge, Louisiana, 70884-2231.

XVII.

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

XVIII.

The total amount of money expended by the Respondent to DEQ, as set forth above, shall be considered a civil penalty for tax purposes, as required by La. R.S. 30:2050.7(E)(1).

XIX.

Each undersigned representative of the parties certifies that he or she is fully authorized to execute this Settlement Agreement on behalf of his/her respective party, and to legally bind such party to its terms and conditions.

**BAHAR DEVELOPMENT, INC.
BAHA TOWERS LIMITED PARTNERSHIP**

BY: William Starr
(signature)
W WILLIAM STARR
(Printed)

TITLE: AGENT BY CORPORATE
RESOLUTION

THUS DONE AND SIGNED in duplicate original before me this 9th day,
of May, 20 05, in Jefferson Parish Louisiana

[Signature]
NOTARY PUBLIC (ID 21366)
David J. Motter
(Printed or Typed)

STATE OF LOUISIANA
Mike D. McDaniel, Ph.D., Secretary
Department of Environmental Quality

BY: Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 24th day of
August, 20 05, at Baton Rouge, Louisiana

[Signature]
NOTARY PUBLIC (ID # 21673)
G. Allen Kunguonok
(Printed or Typed)

Approved: Harold Leggett
Harold Leggett, Ph.D., Assistant Secretary



CHARLES C. FOTI, JR.
ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

August 4, 2005

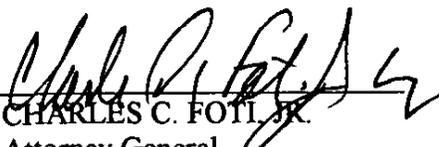
Mr. Herman Robinson, Executive Counsel
La. Department of Environmental Quality
Legal Affairs Division
P.O. Box 4302
Baton Rouge, LA 70821-4302

Re: AG Review of DEQ Settlement;
Bahar Development, Inc.
AE-P-97-0041, *et al.*

Dear Mr. Robinson:

Pursuant to the authority granted to me by Art. IV, Sec. 8 of the state constitution and R.S. 30:2050.7(E)(2)(a), I approve the above referenced settlement.

Sincerely,

By: 
CHARLES C. FOTI, JR.
Attorney General

CCF/mlc