STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:	*	**Settlement Tracking No.**
	*	**SA-AE-06-0020**
FALSTAF, L.L.C.	*	
	*	**Enforcement Tracking No.**
AI # 97933	*	**AE-P-99-0272; AE-P-90272A**
	*	
PROCEEDINGS UNDER THE LOUISIANA	*	
ENVIRONMENTAL QUALITY ACT	*	**Docket No. 520557-8, 19TH JDC,**
LA. R.S. 30:2001, ET SEQ.	*	**C4-14793-G-11,CDC-Parish of Orleans**

SETTLEMENT

The following Settlement is hereby agreed to between Falstaff Associates I, L.L.C. ("Falstaff") 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.

Falstaff is a limited liability company who owns a building and will conduct a renovation project at or near 2600 Gravier Street, New Orleans, Orleans Parish, Louisiana ("the Facility").

II.

On August 29, 2000, the Department issued to Respondent in the name of Mr. Roger T. Boes, a Penalty Assessment, Enforcement No. AE-P-00-0272, in the amount of Three Hundred Fifty-One Thousand Seven Hundred Fifty and No/100 Dollars ($351,750.00), which was based upon the following findings of fact:

Respondent owns and/or operates a renovation project at a building known as the Falstaff Brewery Building, located at or near 2600 Gravier Street, New Orleans, Orleans Parish, Louisiana.

On or about January 4th and 6th, 1999, representatives of the Air Quality Division conducted

Air Quality – asbestos investigations of the Falstaff Brewery Building located at or near 2600 Gravier Street, New Orleans, Orleans Parish, Louisiana.

During the inspection of the Falstaff Brewery Building on or about January 4th and 6th, 1999, the following violations were noted:

1. According to the Louisiana Air Quality Regulations, to determine which requirements of Subsection F.1, 2 and 3 of Section LAC 33:III.5151 apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation each owner or operator shall thoroughly inspect the facility where the demolition or renovation operation will occur for the presence of asbestos. Respondent failed to conduct the required inspection. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.1 and Section 2057(A)(2) of the Act.

2. According to the Louisiana Air Quality Regulations, each owner or operator of a demolition or renovation activity shall provide the administrative authority with typed notice of intention to demolish or renovate. Respondent failed to notify the Department of its intent to demolish or renovate. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.2.a and Section 2057(A)(2) of the Act.

3. According to the Louisiana Air Quality Regulations, each owner or operator of a demolition or renovation activity shall remove all regulated asbestos containing material (RACM) from a facility being demolished or renovated before any activity begins that would break up, dislodge or similarly disturb the material. Respondent failed to remove the asbestos containing material before this operation. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.a and Section 2057(A)(2) of the Act.

4. According to the Louisiana Air Quality Regulations, when RACM is stripped from a facility component while it remains in place in the facility, adequately wet the RACM prior to and during the stripping operation. The work area should be controlled to prevent the release of asbestos-containing material to the outside air. Respondent failed to adequately wet the asbestos material during stripping, failed to control the work area to prevent a release of fibers to the outside air and failed to exhibit any evidence of controls to prevent the migration of asbestos fibers. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.c and Section 2057(A)(2) of the Act.

5. According to the Louisiana Air Quality Regulations, for all RACM, including material that has been removed or stripped: adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal.

Respondent failed to ensure that the RACM remained wet until disposal. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.F.3.f.i and Section 2057(A)(2) of the Act.

6. According to the Louisiana Air Quality Regulations, adequately wet and store asbestos-containing material as follows: after wetting, seal all asbestos-containing waste material in leak-tight, clear, transparent containers while wet. Respondent failed to seal asbestos-containing waste material in leak-tight, clear, transparent containers. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.J.1.a.iii and Section 2057(A)(2) of the Act.

7. According to the Louisiana Air Quality Regulations, adequately wet and store asbestos-containing material as follows: Label the containers specified in this Subsection using warning labels specified by OSHA. Respondent failed to label the containers according to OSHA guidelines. This is a violation of the Louisiana Air Quality Regulations, in particular LAC 33:III.5151.J.1.a.iv and Section 2057(A)(2) of the Act.

III.

On December 20, 2002, the Department issued to Respondent Amended Penalty Assessment, Enforcement No. AE-P-99-0272A which stated:

The Louisiana Department of Environmental Quality (the Department) hereby amends the Penalty Assessment issued to Mr. Roger T. Boes (Respondent) on August, 29, 2000, Enforcement Tracking No. AE-P-99-0272 as follows:

The Department hereby amends the Respondent's name to read as follows:

"FALSTAF, L.L.C."

The Department hereby amends the Finding of Fact to read as follows:

"Boes Corporation, Inc. and Falstaf, L.L.C. owns and/or operates a renovation project at a building known as Falstaff Brewery Building, located at or near 26090 Gravier Street, New Orleans, Orleans Parish, Louisiana."

The Department incorporated all of the remainder of the original Penalty Assessment, Enforcement Tracking No. AE-P-99-0272 and Agency Interest No. 97933 as if reiterated therein.

The Amended Penalty Assessment was effective upon receipt.

Falstaff acquired the facility from the Respondent on June 16, 2006, by credit sale duly recorded in the Parish of Orleans. Falstaff did not commit any violation of the Act set forth hereinabove. However, in an effort to clear the title to the facility and abate the asbestos containing material and lead-based paint at the facility, Falstaff enters into this Settlement.

IV.

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

V.

Nonetheless, Falstaff, 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 SEVENTY-TWO THOUSAND FIVE HUNDRED AND NO/100 DOLLARS ($72,500.00), of which One Thousand Seven Hundred Fifty and No/100 Dollars ($1,750.00) represents DEQ's enforcement costs, in settlement of the claims set forth in this agreement.

VI.

Falstaff, in addition to the penalty amount specified in Paragraph V above and as part of this Settlement, agrees to abate asbestos containing material and lead-based paint from the facility pursuant to LAC 33:III.2801 et seq., and LAC 33:III.5151 et seq., as well as any other applicable state and federal statute or regulation. The abatement project(s) shall be implemented as follows:

A. Falstaff shall submit to the Department, Air Quality Section of the Enforcement Division, P.O. Box 4312, Baton Rouge, Louisiana 70821-4312, for approval, an asbestos and lead-based paint abatement plan no later than 30 days from the date the Department signs this settlement. Abatement shall not commence until Falstaff

receives written approval from the Department, but no later that 30 days after the Department approves Falstaff's abatement plan and/or the Department signs this Settlement, whichever is later.

B. Falstaff shall submit monthly reports regarding its progress on the projects. The first shall be due on the 5th of the month following the date the Department approves Falstaff's abatement plan and the Department signs this Settlement. Monthly reports shall be submitted on the 5th of every month thereafter until the project is completed. Each such monthly report shall include a description of the project, tasks completed, tasks remaining, the percentage completed, and money expended on each project through the date of the report. Upon completion of all projects required under this Settlement, Falstaff shall submit a final report to include a summary of all the information previously submitted and a total amount spent on the projects listed above. It shall also contain a certification that the projects were completed as described. Each report shall be submitted to the Air Quality Section of the Enforcement Division, P.O. Box 4312, Baton Rouge, Louisiana 70821-4312.

C. Falstaff shall complete all asbestos containing material and lead-based paint abatement projects at the facility within twelve (12) months from commencement of the project.

VII.

Falstaff further agrees that the Department may consider the inspection report(s), the Penalty Assessment, and this Settlement for the purpose of determining compliance history in connection with any future enforcement or permitting action by the Department against Falstaff, and in any such

action Falstaff shall be estopped from objecting to the above-referenced documents being considered as proving the violations alleged herein for the sole purpose of determining Falstaff's compliance history.

VIII.

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 Falstaff 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.

IX.

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.

X.

Falstaff has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Orleans Parish, Louisiana. 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. Falstaff has 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.

XI.

Payment is to be made within ten (10) days from notice of the Secretary's signature. If payment is not received within that time, this Agreement is voidable at the option of the Department. Payments are to be made by check, payable to the Department of Environmental Quality, and mailed or delivered to the attention of Darryl Serio, Office of Management and Finance, 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 (Exhibit A).

XII.

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

XIII.

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.

FALSTAFF ASSOCIATES I, L.L.C.

BY: _____
(Signature)

_____
(Printed)

TITLE: _____

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

_____
NOTARY PUBLIC (ID #_____)

_____
(Printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Mike D. McDaniel, Ph.D., Secretary

BY: _____
Harold Leggett, Ph.D., 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 # _____)

_____
(Printed)

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