

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

* **Settlement Tracking No.**
* **SA-AE-09-0013**

**FOUNTAINBLEAU MANAGEMENT
SERVICES, L.L.C.**

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* **Enforcement Tracking No.**
* **AE-CN-07-0163**
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AI # 10560

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

SETTLEMENT

The following Settlement is hereby agreed to between Fountainbleau Management Services, L.L.C. ("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 an apartment complex located in Shreveport, Caddo Parish, Louisiana ("the Facility").

II

On January 23, 2008, the Department issued to Respondent a Consolidated Compliance Order and Notice of Potential Penalty, Enforcement No. AE-CN-07-0163, which was based upon the following findings of fact:

The Respondent owns and/or operates the Highland View Apartments, an apartment complex located at 1846 Fairfield Avenue in Shreveport, Caddo Parish, Louisiana. The Respondent employed personnel not accredited to perform asbestos abatement activities to renovate the facility.

On or about September 12, 2007, a complaint inspection was performed to determine the degree of compliance with the Act and the Air Quality Regulations. At the time of the inspection, the inspector noted that evidence of demolition and/or renovations existed on the 9th and 10th floors at the Highland View Apartments. According to a facility representative, tenants occupied dwelling units on the 11th and 12th floors.

On or about September 13-14, 2007, in response to a complaint of improper handling of asbestos containing materials (ACM), inspectors for the Department returned to the Highland View Apartments and took preliminary samples of suspected ACM. The sample analysis results came back positive for greater than 1% ACM on three (3) of the samples. Also, wipe samples gathered from the basement and the 10th, 11th, and 12th floors by ALTEC Environmental Consultants, Inc., came back positive for asbestos fibers.

On or about September 18-19, 2007, during a follow-up inspection at the Highland View Apartments, inspectors distributed official public notifications to the tenants on the 11th and 12th floors disclosing the analysis of the sampling.

On or about September 27, 2007, an additional complaint inspection was performed at the Highland View Apartments. The inspector noted that on the 9th floor, evidence of the scraping of ceiling spray-on acoustic material, sanding of wall surfaces and the cutting and removal of sections of ceiling and wall sheetrock had taken place. A Cease and Desist Order was issued on October 2, 2007, as a result of citizen complaints and the Department inspections.

On or about September 28, 2007, a file review of inspections performed by the Department on or about September 12, 13, 14, 18, 19, and 27, 2007, was performed to determine the degree of compliance with the Act and the Air Quality Regulations.

The following violations were noted at the time of the file review and/or inspections:

- A. Prior to demolition or renovation activities, the Respondent is required to thoroughly inspect the affected facility for the presence of asbestos, including Category I and Category II nonfriable ACM. The Respondent's failure to properly inspect the affected facility prior to demolition or renovation activities is a violation of LAC 33:III.5151.F.1.d and La. R.S. 30:2057(A)(2).
- B. An individual or company contracted to perform demolition or renovation activity which disturbs regulated asbestos-containing material (RACM) must be recognized by the Louisiana Board for Contractors to perform asbestos abatement. The Respondent's failure to contract with a licensed individual or company to perform asbestos abatement prior to demolition or renovation is a violation of LAC 33:III.5151.F.1.f and La. R.S. 30:2057(A)(2).
- C. The Respondent failed to submit to the Environmental Services, Permits Division a typed notice of intention to demolish or renovate using the latest version of Form AAC-2. This form is due to the Department ten (10) days prior to the demolition or renovation. The Respondent's failure to complete and submit Form AAC-2 is a violation of LAC 33:III.5151.F.2.a, and La. R.S. 30:2057(A)(2).
- D. The Respondent failed to use procedures to trace the disposal of ACM. This is a violation of LAC 33:III.5151.F.2.g and La. R.S. 30:2057(A)(2).
- E. The Respondent failed to control the work area to prevent the release of ACM to the outside air. This is a violation of LAC 33:III.5151.F.3.c and La. R.S. 30:2057(A)(2).

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 TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00), of which Two Thousand Four Hundred Seventy-Two and 29/100 Dollars (\$2,472.29) represents Department's enforcement costs, in

settlement of the claims set forth in this 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), the Consolidated Compliance Order and Notice of Potential Penalty and this Settlement 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 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 agreement in any action by the Department to enforce this agreement.

VII

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.

VIII

The Respondent has caused a public notice advertisement to be placed in the official journal of the parish governing authority in Caddo 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. Respondent 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.

IX

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 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 (Exhibit A).

X

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

XI

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.

FOUNTAINBLEAU MANAGEMENT SERVICES, L.L.C.

BY: _____
(Signature)

(Print)

TITLE: _____

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

NOTARY PUBLIC (ID # _____)

(Print)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Harold Leggett, Ph.D., Secretary

BY: _____
Peggy M. Hatch, 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 # _____)

(Print)

Approved: 

Peggy M. Hatch, Assistant Secretary