

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

G & H RESTORATIONS, L.L.C.

AI # 141809

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

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Settlement Tracking No.  
SA-AE-08-0001

Enforcement Tracking No.  
AE-P-07-0147

SETTLEMENT

The following Settlement is hereby agreed to between G & H Restorations, 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 who owns and/or operates a construction company facility and who contracted with Specialty Demolition and Concrete Cutting, L.L.C. to demolish a warehouse and remove the debris from the demolition site. The demolished facility was located at 2101 Poydras Street in New Orleans, Orleans Parish, Louisiana ("the Facility").

II

On November 28 2007, the Department issued to Respondent a Penalty Assessment, Enforcement No. AE-P-07-0147, in the amount of \$11,164.18, which was based upon the following findings of fact:

The Respondent operates a construction company and contracted with Specialty Demolition and Concrete Cutting, L.L.C. to demolish a warehouse and remove the debris from the demolition

site. The demolished facility was located at 2101 Poydras Street in New Orleans, Orleans Parish, Louisiana.

On or about July 10 through August 4, 2006, inspections of a vacant lot, owned and/or operated by the Respondent, were performed to determine the degree of compliance with the Act and the Air Quality regulations.

The following violations were noted during the course of the inspections:

- A. The Respondent failed to determine which emission control requirements apply to them by having the affected facility thoroughly inspected for the presence of asbestos prior to the commencement of a demolition activity. This is a violation of LAC 33:III.5151.F.1 and La. R.S. 30: 2057(A)(2).
- B. The Respondent failed to provide the Environmental Services, Permits Division with typed notice of intention to demolish or renovate using the latest version of Form AAC-2, Notification of Demolition and Renovation. This is a violation of LAC 33:III.5151.F.2.a and La. R.S. 30: 2057(A)(2).
- C. The Respondent failed to remove all regulated asbestos-containing material (RACM) from a facility being demolished or renovated before any activity began that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. This is a violation of LAC 33:III.5151.F.3.a and La. R.S. 30: 2057(A)(2).
- D. The Respondent failed to control the work area to prevent the release of asbestos-containing material (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).
- E. The Respondent failed to adequately wet RACM that has been removed and ensure that it remains wet until collected and contained or treated for disposal. This is a violation of LAC 33:III.5151.F.3.f.i and La. R.S. 30: 2057(A)(2).
- F. The Respondent failed to carefully lower RACM to the ground or floor, not dripping, throwing, sliding, or otherwise damaging or disturbing the ACM. This is a violation of LAC 33:III.5151.F.3.f.ii and La. R.S. 30: 2057(A)(2).

- G. The Respondent discharged asbestos contaminated liquids from the demolition activity when it was reasonably anticipated that such asbestos would become airborne. This is a violation of LAC 33:III.5151.F.3.k and La. R.S. 30: 2057(A)(2).
- H. The Respondent failed to deposit all ACM as soon as practical. This is a violation of LAC 33:III.5151.J.2 and La. R.S. 30: 2057(A)(2).

On or about July 21, 2006, the Respondent was issued an Emergency Cease and Desist Order to immediately cease demolitions activities at the site, to immediately contract with a licensed and accredited asbestos abatement contractor, to immediately wet and sufficiently cover the ACM to prevent airborne emissions, and to immediately secure the area from public access. The Respondent received the Emergency Cease and Desist Order on July 24, 2006.

On July 21, 2006, the Respondent engaged Leaaf Environmental, L.L.C. to develop a scope of work to clean the site, solicit bids from certified abatement contractors to perform the work, provide on site air quality monitoring and act as a liaison with the Department. The Respondent engaged Zimmer-Eschette Services, L.L.C. to perform the asbestos work on July 28, 2006.

A letter from the Respondent's attorney dated September 8, 2006, summarizes G & H Restorations, L.L.C. actions, both prior and in response to its receipt of the Emergency Cease and Desist Order.

On October 17, 2006, a Notice of Potential Penalty (NOPP), Enforcement Tracking No. AE-PP-06-0131, was issued to the Respondent. The Respondent received the NOPP on October 25, 2006.

The Respondent's attorney requested a 10-day extension of the deadline by which the Respondent must respond and a meeting to discuss the NOPP in a facsimile dated October 27, 2006. The meeting to discuss the NOPP was held on November 2, 2006.

On or about November 20, 2006, the Department received the Respondent's response to the NOPP. The response was dated November 10, 2006, and contained comments related to the violations cited in the NOPP and an analysis pursuant to the nine factors.

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 ELEVEN THOUSAND ONE HUNDRED SIXTY-FOUR AND 18/100 DOLLARS (\$11,164.18) of which FIVE HUNDRED SIXTY-FOUR AND 18/100 DOLLARS (\$564.18) represents DEQ'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 DEQ 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), 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 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 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.

## VIII

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.

## IX

The Respondent 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. 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.

## X

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).

XI

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

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.

G & H RESTORATIONS, L.L.C.

BY: [Signature]  
(Signature)  
James M. Huger  
(Print)

TITLE: MANAGER

THUS DONE AND SIGNED in duplicate original before me this 29th day of February, 20 08, at New Orleans, Louisiana.



OFFICIAL SEAL  
STEVEN C. SERIO  
BAR ROLL #30052  
STATE OF LOUISIANA  
PARISH OF JEFFERSON  
My Commission is for Life

[Signature]  
NOTARY PUBLIC (ID # 30052)

Steven Serio  
(Print)

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

BY: [Signature]  
Peggy M. Hatch, Assistant Secretary  
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 10th day of June, 20 08, at Baton Rouge, Louisiana.

[Signature]  
NOTARY PUBLIC (ID # 40535)

Tel. R. Draper, Jr.  
(Print)

Approved: [Signature]  
Peggy M. Hatch, Assistant Secretary