

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

NAYLOR CONCRETE CONSTRUCTION
COMPANY, INC.

AI # 2320

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

- * Settlement Tracking No.
- * SA-AE-08-0035
- *
- *
- * Enforcement Tracking No.
- * AE-CN-07-0118
- *
- *
- * Docket No. 2008-10413-EQ
- *

SETTLEMENT

The following Settlement is hereby agreed to between Naylor Concrete Construction Company, Inc. ("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 corporation that owns and/or operates a concrete construction company contracted by Oak Tree Realty Investments, L.L.C. to renovate a building located at 625 Jackson Avenue in New Orleans, Orleans Parish, Louisiana ("the Facility").

II

On September 28, 2007, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement No. AE-CN-07-0118, which was based upon the following findings of fact:

The Respondent contracted with Oak Tree Realty Investments, L.L.C. to renovate the former Sara Mayo Health Care Center building located at 625 Jackson Avenue in New Orleans, Orleans

Parish, Louisiana. The Respondent is not accredited to perform asbestos abatement activities. The Respondent employed RGA Environmental to inspect the facility for asbestos-containing materials (ACM) prior to renovation activities. RGA Environmental took 206 samples on September 15 & 16, 2006, of which 43 samples tested positive for asbestos.

On or about October 11 through October 13, 2006, November 29, 2006, and December 14, 2006, investigations of the renovation activities at the facility 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 performed an activity that disturbed regulated asbestos-containing material (RACM) but was not recognized by the Licensing Board for Contractors to perform asbestos abatement. This is a violation of LAC 33:III.5151.F.1.f 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 in violation of LAC 33:III.5151.F.2.a and La. R.S. 30:2057(A)(2).
- C. The Respondent failed to remove all RACM prior to renovation activities that would break up, dislodge, or similarly disturb the material. 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 adequately wet RACM prior to and during stripping operations. 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 ensure that RACM remained adequately wet until collected and contained 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 have an accredited asbestos abatement supervisor physically present at the demolition site. This is a violation of LAC 33:III.5151.F.3.h and La. R.S. 30:2057(A)(2).
- G. The Respondent failed to adequately wet and seal asbestos-containing waste material in leak-tight, clear, transparent bags. This is a violation of LAC 33:III.5151.J.1.a.iii and La. R.S. 30:2057(A)(2).

- H. The Respondent failed to have accredited asbestos abatement workers perform demolition activities associated with RACM. This is a violation of LAC 33:III.5151.P.1.a.ii and La. R.S. 30:2057(A)(2).

III

In response to the Consolidated Compliance Order & Notice of Potential Penalty, Respondent made a timely request for a hearing.

IV

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

V

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 FIVE THOUSAND ONE HUNDRED AND NO/100 DOLLARS (\$5,100.00), of which Two Hundred Ninety-Four and 92/100 Dollars (\$294.92) 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 Consolidated Compliance Order & 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.

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.

**NAYLOR CONCRETE CONSTRUCTION
COMPANY, INC.**

BY: _____
(Signature)

(Print)

TITLE: _____

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

NOTARY PUBLIC (ID # _____)

(Print)

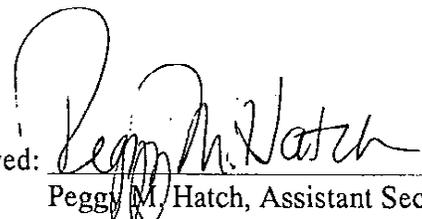
**LOUISIANA DEPARTMENT OF
ENVIRONMENTAL QUALITY**
Harold Leggett, Ph.D., Secretary

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