

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

V. KEELER AND ASSOCIATES, INC.

AI # 99938, 8555

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

* Settlement Tracking No.
* SA-AE-20-0049
*
* Enforcement Tracking No.
* AE-PP-17-01048
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SETTLEMENT

The following Settlement is hereby agreed to between V. Keeler and Associates, 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 was contracted to perform asbestos renovation activities at a school located in located in New Orleans, Orleans Parish, Louisiana (“the Facility”).

II

On July 31, 2018, the Department issued to Respondent a Notice of Potential Penalty, Enforcement No. AE-PP-17-01048 (Exhibit 1).

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 SIX THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$6,500.00), of which Five Hundred Ninety-Nine and 26/100 Dollars (\$599.26) represents the 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 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 La. R. S. 30:2025(E) of the Act.

VIII

As required by law, the Department has submitted this Settlement Agreement to the Louisiana Attorney General for approval or rejection. The Attorney General's concurrence is appended to this Settlement Agreement.

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 and wording 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 an original proof-of-publication affidavit and an original public notice 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 over a two-year period in eight (8) quarterly payments of Eight Hundred Twelve and 50/100 Dollars (\$812.50). The first payment is due ten (10) days from notice of the Secretary's signature. The remaining seven (7) payments of \$812.50 will be tendered in the same manner within 120-day consecutive quarterly installments. 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.

V. KEELER AND ASSOCIATES, INC.

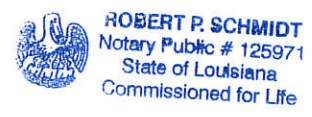
BY: [Signature]
(Signature)

Vernes Keeler
(Printed)

TITLE: President

THUS DONE AND SIGNED in duplicate original before me this 15th day of June, 20 21, at ORLEANS LOUISIANA.

[Signature]
NOTARY PUBLIC (ID # 125971)



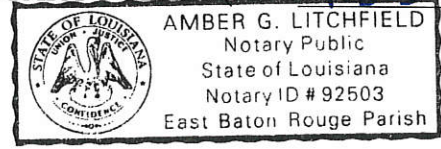
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LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Chuck Carr Brown, Ph.D., Secretary

BY: [Signature]
Loures Iturralde, Assistant Secretary
Office of Environmental Compliance

THUS DONE AND SIGNED in duplicate original before me this 19th day of August, 20 21, at Baton Rouge, Louisiana.

[Signature]
NOTARY PUBLIC (ID # 92503)



(stamped or printed)

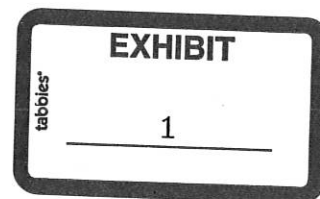
Approved: [Signature]
Loures Iturralde, Assistant Secretary



JOHN BEL EDWARDS
GOVERNOR

CHUCK CARR BROWN, PH.D.
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE



July 31, 2018

CERTIFIED MAIL (7017 0530 0000 5978 6431)
RETURN RECEIPT REQUESTED

V. KEELER AND ASSOCIATES, INC.

c/o Roy Rodney, Jr.
Agent for Service of Process
365 Canal Street, #2430
New Orleans, LA 70130

**RE: NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. AE-PP-17-01048
AGENCY INTEREST NO. 99938**

Dear Sir:

On or about March 22, 2017 and March 27, 2017, inspections of **LAFAYETTE ACADEMY CHARTER SCHOOL (FACILITY)**, a school, owned and/or operated by the Louisiana Department of Education Recovery School District, were performed to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Air Quality Regulations. The facility is located at 2727 S. Carrollton Avenue in New Orleans, Orleans Parish, Louisiana. The facility's agency interest (AI) number is 99938. **V. KELLER AND ASSOCIATES, INC. (RESPONDENT)**, AI number 8555, was contracted to perform asbestos renovation activities at the facility.

An emergency Notification of Demolition and Renovation and Asbestos Contaminated Debris Activity Form (AAC-2(a)), dated March 13, 2017, was submitted to the Department after the general contractor, Tuna Construction, discovered several layers of floor tile that had not previously been tested for asbestos on the third floor of the facility. According to the AAC-2(a), testing determined that the floor tile contained asbestos and approximately 200 cubic yards of Category I/Category II vinyl asbestos tile (VAT) and asbestos containing mastic would be renovated from the facility. The Respondent submitted additional AAC-2(a)s dated April 26, 2017; May 25, 2017; June 12, 2017; and June 15, 2017 to request additional Asbestos Disposal Verification Forms (ADVFs), change the amount of Category I/Category II material to be removed to 400 cubic yards, and add gypcrete as a type Category I/Category II material to be removed. The Respondent requested and the Department issued a total of 20 ADVFs for this asbestos renovation activity. All 20 completed ADVFs were returned to the Department after the asbestos-containing material (ACM) was disposed of at River Birch Landfill, a recognized asbestos landfill.

V. Keeler & Associates, Inc.

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During the course of the inspection conducted on March 22, 2017, Mr. Patrick Delaney introduced himself as the on-site supervisor. At the time of the inspection, asbestos abatement contractor/supervisor accreditation paperwork could not be produced for Mr. Delaney. Additionally, a record review revealed that Mr. Delaney was not accredited by the Department as an asbestos abatement contractor/supervisor at the time of the inspection. While the Department's inspector was on-site, Mr. Roberto Falcon, the supervisor listed on the AAC-2(a), returned from his lunch break. Mr. Falcon was accredited as an asbestos abatement contractor/supervisor at the time of the inspection.

During this inspection, the Department's inspector requested to see a bag of ACM from inside the containment. While outside of containment, the inspector observed boot prints on the floor between the two (2) containment areas where children were walking. Mr. Delaney brought a bag of ACM from inside containment for the Department's inspector. There was a torn piece of loose leaf paper folded between the two (2) layers of bags that was crumpled and unreadable as the ink had become wet from moisture inside the bag. In an empty classroom, the inspector also observed the storage of large rectangular sections of flooring that had been removed by cutting. The flooring was wrapped in plastic that had holes in multiple sections; therefore, it was not leak-tight. This material was not labeled with generator labels and the material was not wet. During the course of the March 27, 2017 inspection, the Department's inspector did not observe generator labels on the bags of waste in the top portion of the dumpster. The Respondent provided the Department with an email dated March 27, 2017, with photographs that showed every bag had been removed from the dumpster and a generator label was added to the bags that did not have a label.

In AAC-2(a)s submitted to the Department, the Respondent listed the ACM being renovated as Category I/Category II, not regulated asbestos-containing material (RACM). The Department's inspector observed the VAT, the asbestos-containing mastic used to attach the VAT to the floor, and the underlying plywood had been cut in rectangular sections. The cutting of Category I and/or Category II nonfriable ACM renders the material RACM.

While the investigation by the Louisiana Department of Environmental Quality (the Department) is not yet complete, the following violation(s) were noted during the course of the inspections:

- A. The acting asbestos abatement contractor/supervisor that the Department's inspector initially interviewed on March 22, 2017 was not accredited. The failure to ensure during a renovation activity that at least one (1) asbestos abatement contractor/supervisor was physically present and trained in accordance with Subsection P and of LAC 33:III.5151 is a violation of LAC 33:III.5151.F.3.h, and La. R.S. 30:2057(A)(2). An accredited asbestos abatement contractor/supervisor returned to the facility during the course of the inspection.
- B. Boot prints were visible on the floor between the two (2) containment areas. Additionally, children were walking the halls between the two (2) containment areas. The failure to ensure no visible emissions were discharged to the outside air during collection, mixing, wetting, and handling operations of Asbestos-containing waste material (ACWM) is a violation of LAC 33:III.5151.J.1.a.ii, and La. R.S. 30:2057(A)(2).

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- C. ACWM was wrapped in plastic, but the wrapping was full of holes. Additionally, some ACWM was not wet. The failure to seal all ACWM in a leak-tight, clear transparent container while wet is a violation of LAC 33:III.5151.J.1.a.iii and La. R.S. 30:2057(A)(2).
- D. On or about March 22, 2017, generator labels observed on bags of ACWM were not legible. Additionally, some of the wrapped ACWM did not have generator labels. During the follow-up inspection on March 27, 2017, generator labels were still not being used on the bags of ACWM in the top portion of the dumpster. The failure to label wrapped ACWM with the name of the waste generator and the location at which the waste was generated is a violation of LAC 33:III.5151.J.1.a.v and La. R.S. 30:2057(A)(2). On March 27, 2017, the Respondent submitted photographs to the Department's inspector showing every bag had been removed from the dumpster and a generator label was added to the bags that did not have a label.

Pursuant to La. R.S. 30:2050.3(B), you are hereby notified that the issuance of a penalty assessment is being considered for the violation(s) described herein. Written comments may be filed regarding the violation(s) and the contemplated penalty. If you elect to submit comments, it is requested that they be submitted within ten (10) days of receipt of this notice.

Prior to the issuance of any additional appropriate enforcement action, you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Stacy Martinez at 225-219-3378 or stacy.martinez@la.gov within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.

The Department is required by La. R.S. 30:2025(E)(3)(a) to consider the gross revenues of the Respondent and the monetary benefits of noncompliance in order to determine whether a penalty will be assessed and the amount of such penalty. Please forward the Respondent's most current annual gross revenue statement along with a statement of the monetary benefits of noncompliance for the cited violations to the above named contact person within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**. Include with your statement of monetary benefits the method(s) you utilized to arrive at the sum. If you assert that no monetary benefits have been gained, you are to fully justify this statement. If the Respondent chooses not to submit the requested most current annual gross revenues statement within ten (10) days, it will be viewed by the Department as an admission that the Respondent has the ability to pay the statutory maximum penalty as outlined in La. R.S. 30:2025.

For each violation described herein, the Department reserves the right to seek civil penalties and the right to seek compliance with its rules and regulations in any manner allowed by law, and nothing herein shall be construed to preclude the right to seek such penalties and compliance.

The Department assesses civil penalties based on LAC 33:I.Subpart1.Chapter 7. To expedite closure of this **NOTICE OF POTENTIAL PENALTY**, the Respondent may offer a settlement amount to resolve any claim for civil penalties for the violation(s) described herein. The Respondent may offer a settlement amount, but the Department is under no obligation to enter into settlement negotiations. The decision to proceed with a settlement is at the discretion of the Department. The settlement offer amount

V. Keeler & Associates, Inc.

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may be entered on the attached "**NOTICE OF POTENTIAL PENALTY REQUEST TO SETTLE**" form. The Respondent must include a justification of the offer. **DO NOT** submit payment of the offer amount with the form. The Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.

To reduce document handling, please refer to the Enforcement Tracking Number and Agency Interest Number on the front of this document on all correspondence in response to this action.

Sincerely,



Lourdes Iturralde
Assistant Secretary
Office of Environmental Compliance

LI/SMM/smm

Alt ID No. N/A

c: V. Keeler & Associates, Inc.

P.O. Box 3424

New Orleans, LA 70117

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
 OFFICE OF ENVIRONMENTAL COMPLIANCE
 ENFORCEMENT DIVISION
 POST OFFICE BOX 4312
 BATON ROUGE, LOUISIANA 70821-4312

**NOTICE OF POTENTIAL PENALTY
 REQUEST TO SETTLE (OPTIONAL)**



Enforcement Tracking No.	AE-PP-17-01048	Contact Name	Stacy Martinez
Agency Interest (AI) No.	99938	Contact Phone No.	225-219-3378
Alternate ID No.	N/A		
Respondent:	V. Keeler & Associates, Inc.	Facility Name:	Lafayette Academy Charter School
	c/o Roy Rodney, Jr.	Physical Location:	2727 S. Carrollton Avenue
	Agent for Service of Process		
	365 Canal Street, #2430	City, State, Zip:	New Orleans, LA 70118
	New Orleans, LA 70130	Parish:	Orleans

SETTLEMENT OFFER (OPTIONAL)

(check the applicable option)

_____ The Respondent is not interested in entering into settlement negotiations with the Department with the understanding that the Department has the right to assess civil penalties based on LAC 33:I.Subpart1.Chapter7.

_____ In order to resolve any claim for civil penalties for the violations in **NOTICE OF POTENTIAL PENALTY** (AE-PP-17-01048), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.

_____ In order to resolve any claim for civil penalties for the violations in **NOTICE OF POTENTIAL PENALTY** (AE-PP-17-01048), the Respondent is interested in entering into settlement negotiations with the Department and offers to pay \$ _____ which shall include LDEQ enforcement costs and any monetary benefit of non-compliance.

- Monetary component = \$ _____
- Beneficial Environmental Project (BEP) component (optional)= \$ _____
- **DO NOT SUBMIT PAYMENT OF THE OFFER WITH THIS FORM**- the Department will review the settlement offer and notify the Respondent as to whether the offer is or is not accepted.

_____ The Respondent has reviewed the violations noted in **NOTICE OF POTENTIAL PENALTY** (AE-PP-17-01048) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.

CERTIFICATION STATEMENT

I certify, under provisions in Louisiana and United States law that provide criminal penalties for false statements, that based on information and belief formed after reasonable inquiry, the statements and information attached and the compliance statement above, are true, accurate, and complete. I also certify that I do not owe outstanding fees or penalties to the Department for this facility or any other facility I own or operate. I further certify that I am either the Respondent or an authorized representative of the Respondent.

Respondent's Signature	Respondent's Printed Name	Respondent's Title
Respondent's Physical Address	Respondent's Phone #	Date

MAIL COMPLETED DOCUMENT TO THE ADDRESS BELOW:

Louisiana Department of Environmental Quality
 Office of Environmental Compliance
 Enforcement Division
 P.O. Box 4312
 Baton Rouge, LA 70821
 Attn: Stacy Martinez