

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

LEMOINE FAMILY, BUILDERS, INC.

AI # 14948

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

* **Settlement Tracking No.**
* **SA-AE-24-0033**
*
* **Enforcement Tracking No.**
* **AE-PP-22-00732**
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SETTLEMENT AGREEMENT

The following Settlement Agreement is hereby agreed to between Lemoine Family, Builders, 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 demolition and renovation activities at a site located in Harahan, Jefferson Parish, Louisiana (“the Site”).

II

On March 24, 2023, the Department issued to Respondent a Notice of Potential Penalty, Enforcement Tracking No. AE-PP-22-00732 (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 ELEVEN THOUSAND AND NO/100 DOLLARS (\$11,000.00), of which One Thousand Six Hundred Forty and 98/100 Dollars (\$1,640.98) represents the Department's enforcement costs, in settlement of the claims set forth in this Settlement 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), permit record(s), the Notice of Potential Penalty and this Settlement Agreement 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 Settlement 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 Settlement Agreement in any action by the Department to enforce this Settlement Agreement.

VII

This Settlement Agreement 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 Agreement, 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 Jefferson Parish, Louisiana. The advertisement, in form and wording approved by the Department, announced the availability of this Settlement Agreement 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 Agreement 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 thirty (30) days from notice of the Secretary's signature. If payment is not received within that time, this Settlement Agreement is voidable at the option of the Department. The Respondent shall provide its tax identification number when submitting payment. 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 attached hereto.

XI

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

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.

LEMOINE FAMILY, BUILDERS, INC.

BY: _____
(Signature)

(Printed)

TITLE: _____

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

NOTARY PUBLIC (ID # _____)

(stamped or printed)

LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Aurelia S. Giacometto, Secretary

BY: _____
Jerrie "Jerry" Lang, 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 # _____)

(stamped or printed)

Approved: 

Jerrie "Jerry" Lang, Assistant Secretary



JOHN BEL EDWARDS
GOVERNOR

CHUCK CARR BROWN, Ph.D.
SECRETARY

State of Louisiana
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE

MAR 24 2023

CERTIFIED MAIL (7019 2970 0000 6032 9876)
RETURN RECEIPT REQUESTED

LEMOINE FAMILY, BUILDERS, INC.
c/o Calvin Lemoine
Agent for Service of Process
13468 Rosewood Drive
Ponchatoula, LA 70454



RE: NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. AE-PP-22-00732
AGENCY INTEREST NO. 14948

Dear Sir:

On or about May 18, 2022, an inspection of the **CAFÉ DU MONDE WAREHOUSE** (site), owned and/or operated by H. N. Fernandez, Inc., was performed as a result of a citizen complaint (T-208629) to determine the degree of compliance with the Louisiana Environmental Quality Act (the Act) and the Air Quality Regulations. The site is located at 5615 Jefferson Highway, in Harahan, Jefferson Parish, Louisiana. **LEMOINE FAMILY, BUILDERS, INC. (RESPONDENT)**, Agency Interest No. 235298, was contracted to perform demolition and renovation activities at the site. Lemoine Family, Builders, Inc. is a licensed contractor recognized by the Louisiana State Licensing Board for Contractors.

On or about May 12, 2022, an anonymous complaint was received by the Louisiana Department of Environmental Quality (the Department) stating a building was demolished with no notification to the Department. The structure that was demolished was approximately 14,800 square feet. The area surrounding the facility is predominantly used for commercial purposes. The remaining demolition debris that was observed during the site visit on May 18, 2022 predominantly consisted of concrete and rebar. During the inspection, a representative of Lemoine Family, Builders, Inc. stated that he was unaware if asbestos testing was conducted prior to the demolition and renovation activities at the site.

Since an asbestos inspection or notification was not completed prior to the demolition activities at the site, all debris from the demolition is categorized as Asbestos-Contaminated Debris (ACD), which contains Regulated Asbestos-Containing Material (RACM), in accordance with LAC 33:III.5151.F.d.

Lemoine Family, Builders, Inc.

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After the May 18, 2022 inspection, the Respondent contracted Zimmer-Eschette Service II, LLC (Agency Interest No. 94446) to perform an asbestos survey at the site and remove and dispose of the remaining debris. On May 28, 2022, LDEQ issued the original Asbestos Disposal Verification Form (ADVF) No. 0058297 in response to the AAC-2(a) submitted by Zimmer-Eschette Service II, LLC on May 24, 2022. On or about August 10, 2022, Bayou Disposal & Hauling transported the last load of ACM debris from the site to River Birch Landfill, a recognized asbestos landfill (RAL).

While the investigation by the Department is not yet complete, the following violations were noted during the course of the inspection and subsequent file review:

- A. The Respondent failed to ensure an asbestos inspection was conducted before demolition and renovation began at the site or assume RACM was present. Prior to the commencement of demolition and renovation activities, the Respondent must either assume RACM is present or thoroughly inspect the affected site for the presence of asbestos. Specifically, during the inspection on May 18, 2022, a representative of Lemoine Family, Builders, Inc. stated that he was unaware if asbestos testing was conducted prior to the demolition and renovation activities at the site. Failure to properly inspect the site for asbestos or assume RACM was present prior to conducting demolition and renovation activities 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 Office of Environmental Services with typed notice of intention to conduct demolition and renovation activities by submitting the latest version of the AAC-2 and applicable fees prior to the demolition and renovation activities. Specifically, the Respondent submitted an AAC-2 after the demolition and renovation activities occurred at the site. Failure to submit a notice of intent to demolish or renovate by completing the AAC-2 is a violation of LAC 33:III.5151.F.1.1, LAC 33:III.5151.F.2.a, LAC 33:III.5151.F.2.c.i, and La. R.S. 30:2057(A)(2). On May 28, 2022, LDEQ issued the original ADVF No. 0058297 in response to the AAC-2(a) submitted by Zimmer-Eschette Service II, LLC on May 24, 2022.
- C. The Respondent failed to dispose of RACM at a RAL. Specifically, the facility was demolished prior to an asbestos inspection; therefore all debris at the site is categorized as ACD per LAC 33:III.5151.F.1.d. According to disposal tickets provided by the Respondent on February 9, 2023 and correspondence with the Respondent dated December 16, 2022, four (4) to five (5) 30-yard containers of debris, determined to be RACM, were disposed in Hwy 90, LLC's C&D Landfill located at 5000 US Highway 90 in Westwego, Louisiana (Agency No. 100642). Hwy 90, LLC C&D Landfill is a Type III construction and demolition debris landfill and is not a RAL. RACM shall not be disposed in a Louisiana Type III landfill. Disposal of RACM at a Louisiana type III landfill is a violation of LAC 33:III.5151.J.1.a.vi.(a) and La. R.S. 30:2057(A)(2).

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.

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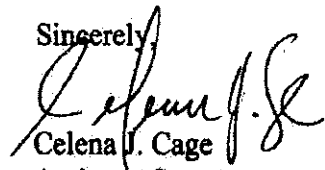
Prior to the issuance of any additional appropriate enforcement action, you may request a meeting with the Department to present any mitigating circumstances concerning the violation(s). If you would like to have such a meeting, please contact Katie Bowers at 225-219-3760 or katie.bowers@la.gov within 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 may be entered on the attached "**NOTICE OF POTENTIAL PENALTY REQUEST TO SETTLE**" form. The Respondent may submit the settlement offer within one hundred and eighty (180) days of receipt of this **NOTICE OF POTENTIAL PENALTY**. 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,

Celena J. Cage
Assistant Secretary
Office of Environmental Compliance

CJC/KMB/kmb
Alt ID No. N/A

**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.	7019 2970 0000 6032 9876	Contact Name	Katie Bowers
Agency Interest (AI) No.	14948	Contact Phone No.	25-219-3760
Alternate ID No.	N/A		
Respondent:	LEMOINE FAMILY, BUILDERS, INC.	Facility Name:	Café Du Monde Warehouse
	c/o Calvin Lemoine	Physical Location:	5615 Jefferson Highway
	Agent for Service of Process	City, State, Zip:	Harahan, LA 70123
	13468 Rosewood Drive	Parish:	Jefferson
	Ponchatoula, LA 70454		

(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 33:1.Subpart1.Chapter7.
- In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (AE-PP-22-00732), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.
- The Respondent may submit the settlement offer within one hundred and eighty (180) days of receipt of this NOTICE OF POTENTIAL PENALTY (AE-PP-22-00732).
- In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (AE-PP-22-00732), 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-22-00732) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.

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: Katie Bowers

WHAT IS A SETTLEMENT AGREEMENT?

Once the Department has determined that a penalty is warranted for a violation, the Assistant Secretary of the Department, with the concurrence of the Attorney General, may enter into a settlement agreement with the Respondent as a means to resolve the Department's claim for a penalty.

HOW DOES THE SETTLEMENT AGREEMENT PROCESS WORK?

To begin the settlement agreement process, the Department must receive a written settlement offer. Once this offer is submitted, it is sent for approval by the Assistant Secretary of the Office of Environmental Compliance. The formal Settlement Agreement is drafted and sent to the Attorney General's office where the Attorney General has a 90 day concurrence period. During this time, the Respondent is required to run a public notice in an official journal and/or newspaper of general circulation in each affected parish. After which, a 45 day public comment period is opened to allow the public to submit comments. Once the Department has received concurrence, the settlement agreement is signed by both parties. The Department then forwards a letter to the responsible party to establish a payment plan and/or beneficial environmental project (BEP).

WHAT SHOULD I INCLUDE IN A SETTLEMENT AGREEMENT?

The Department uses the penalty determination method defined in LAC 33:1.705 as a guideline to accepting settlement offers. The penalty matrix is used to determine a penalty range for each violation based on the two violation specific factors, the nature and gravity of the violation and the degree of risk/impact to human health and property.

NATURE AND GRAVITY OF THE VIOLATION				
	MAJOR	MODERATE	MINOR	
DEGREE OF RISK OR IMPACT TO HUMAN HEALTH OR PROPERTY	MAJOR	\$32,500 to \$20,000	\$20,000 to \$15,000	\$15,000 to \$11,000
	MODERATE	\$11,000 to \$8,000	\$8,000 to \$5,000	\$5,000 to \$3,000
	MINOR	\$3,000 to \$1,500	\$1,500 to \$500	\$500 to \$100

Degree of Risk to Human Health or Property

Major: (actual measurable harm or substantial risk of harm) A violation of major impact to an environmental resource or a hazard characterized by high volume and/or frequent occurrence and/or high pollutant concentration.

Moderate: (potential for measurable detrimental impact) A violation of moderate impact and hazard may be one characterized by occasional occurrence and/or pollutant concentration that may be expected to have a detrimental effect under certain conditions

Minor: (no harm or risk of harm) A violation of minor impact are isolated single incidences and that cause no measurable detrimental effect or are administrative in nature.

Nature and Gravity of the Violation

Major: Violations of statutes, regulations, orders, permit limits, or permit requirements that result in negating the intent of the requirement to such an extent that little or no implementation of requirements occurred.

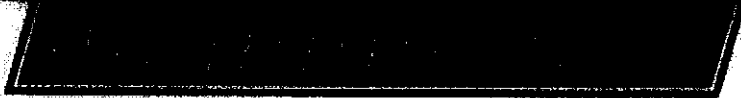
Moderate: Violations that result in substantially negating the intent of the requirements, but some implementation of the requirements occurred.

Minor: Violations that result in some deviation from the intent of the requirement; however, substantial implementation is demonstrated.

The range is adjusted using the following violator specific factors:

1. history of previous violations or repeated noncompliance;
2. gross revenues generated by the respondent;
3. degree of culpability, recalcitrance, defiance, or indifference to regulations or orders;
4. whether the Respondent has failed to mitigate or to make a reasonable attempt to mitigate the damages caused by the violation; and
5. whether the violation and the surrounding circumstances were immediately reported to the department, and whether the violation was concealed or there was an attempt to conceal by the Respondent.





Given the previous information, the following formula is used to obtain a penalty amount.

$$\text{Penalty Event Total} = \text{Penalty Event Minimum} + (\text{Adjustment Percentage} \times (\text{Penalty Event Maximum} - \text{Penalty Event Minimum}))$$

After this, the Department adds any monetary benefit of noncompliance to the penalty event. In the event that a monetary benefit is gained due to the delay of a cost that is ultimately paid, the Department adds the applicable judicial interest. Finally, the Department adds all response costs including, but not limited to, the cost of conducting inspections, and the staff time devoted to the preparation of reports and issuing enforcement actions.

WHAT IS A BEP?

A BEP is a project that provides for environmental mitigation which the respondent is not otherwise legally required to perform, but which the defendant/respondent agrees to undertake as a component of the settlement agreement. Project categories for BEPs include public health, pollution prevention, pollution reduction, environmental restoration and protection, assessments and audits, environmental compliance promotion, and emergency planning, preparedness and response. Other projects may be considered if the Department determines that these projects have environmental merit and is otherwise fully consistent with the intent of the BEP regulations.

WHAT HAPPENS IF MY OFFER IS REJECTED?

If an offer is rejected by the Assistant Secretary, the Legal Division will contact the responsible party, or anyone designated as an appropriate contact in the settlement offer, to discuss any discrepancies.

WHERE CAN I FIND EXAMPLES AND MORE INFORMATION?

- Settlement Offers searchable in EDMS using the following filters
Media: Air Quality, Function: Enforcement; Description: Settlement
- Settlement Agreements Enforcement Division's website
specific examples can be provided upon request
- Penalty Determination Method LAC 33:1 Chapter 7
- Beneficial Environmental Projects LAC 33:1 Chapter 25
FAQs
- Judicial Interest..... provided by the Louisiana State Bar Association

