

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

RICK ALLEN CONSTRUCTION
MANAGEMENT, L.L.C.

AI # 198204

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

* Settlement Tracking No.
* SA-MM-24-0020
*
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* Enforcement Tracking No.
* MM-CN-15-01475
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SETTLEMENT AGREEMENT

The following Settlement Agreement is hereby agreed to between Rick Allen Construction Management, 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 a condemned mobile home site located in Leesville, Vernon Parish, Louisiana (“the Facility”).

II

On November 9, 2017, the Department issued to Respondent a Consolidated Compliance Order & Notice of Potential Penalty, Enforcement Tracking No. MM-CN-15-01475 (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 TWENTY THOUSAND AND NO/100 DOLLARS (\$20,000.00), of which Two Thousand Two Hundred Sixty-Nine and 88/100 Dollars (\$2,269.88) 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), the Consolidated Compliance Order & 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 Vernon 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

An initial payment of \$5,000.00 is to be made within thirty (30) days from notice of the Secretary's signature. The remaining \$15,000.00 is to be paid over a period of eighteen (18) consecutive months in the amount of \$833.33 per month, with the last payment submitted for the amount of \$833.39, due on the 15th of the month. 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.

**RICK ALLEN CONSTRUCTION
MANAGEMENT, L.L.C.**

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
November 9, 2017

CERTIFIED MAIL 7014 1200 0000 7863 8140
RETURN RECEIPT REQUESTED

RICK ALLEN CONSTRUCTION MANAGEMENT, L.L.C.
c/o Rick Allen
Agent for Service of Process
1597 Pitkin Highway
Leesville, LA 71446

**RE: CONSOLIDATED COMPLIANCE ORDER
& NOTICE OF POTENTIAL PENALTY
ENFORCEMENT TRACKING NO. MM-CN-15-01475
AGENCY INTEREST NO. 198204**

Dear Sir:

Pursuant to the Louisiana Environmental Quality Act (La. R.S. 30:2001, et seq.), the attached **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is hereby served on **RICK ALLEN CONSTRUCTION MANAGEMENT, L.L.C. (RESPONDENT)** for the violations described therein.

Compliance is expected within the maximum time period established by each part of the **COMPLIANCE ORDER**. The violations cited in the **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** could result in the issuance of a civil penalty or other appropriate legal actions.

Any questions concerning this action should be directed to Tom Cranford at (225) 219-3095.

Sincerely,

Celena J. Cage
Administrator
Enforcement Division

CJC/TLC/jap
Attachment



**STATE OF LOUISIANA
DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF ENVIRONMENTAL COMPLIANCE**

IN THE MATTER OF	*	
	*	
RICK ALLEN CONSTRUCTION MANAGEMENT, L.L.C.	*	ENFORCEMENT TRACKING NO.
	*	MM-CN-15-01475
VERNON PARISH ALT ID NO.: N/A	*	
	*	AGENCY INTEREST NO.
PROCEEDINGS UNDER THE LOUISIANA ENVIRONMENTAL QUALITY ACT, La. R.S. 30:2001, ET SEQ.	*	198204
	*	

**CONSOLIDATED
COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY**

The following **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is issued to **RICK ALLEN CONSTRUCTION MANAGEMENT, L.L.C. (RESPONDENT)** by the Louisiana Department of Environmental Quality (the Department), under the authority granted by the Louisiana Environmental Quality Act (the Act), La. R.S. 30:2001, et seq., and particularly by La. R.S. 30:2025(C), 30:2050.2 and 30:2050.3(B).

FINDINGS OF FACT

I.

The Respondent owns and/or operates Towering Pines Mobile Home Park, a condemned mobile home site, located at 2109 Nolan Trace, Leesville, Vernon Parish, Louisiana (the Site). The Site has not operated under any permit granted by the Department.

II.

According to training records for entry and extinguishing fires, reviewed during an inspection conducted by the Department on or about August 28, 2015, the Leesville Fire Department intentionally burned mobile homes located on the Site as part of training conducted on August 21 - 23 2015 and August 27, 2015. According to LAC 33:III.5151.F.3.j, if a facility or residential structure is demolished by intentional burning, including activities related to the training of fire personnel and testing

firefighting materials or equipment, all RACM, including category I and category II non-friable asbestos-containing material (ACM), shall be removed in accordance with LAC 33:III.Chapter 5151 before burning. During a conversation on or about September 15, 2015, Mayor Rick Allen informed the Department's inspector that asbestos testing was not conducted prior to burning the trailers. The Department has no record of receiving an AAC-2 form prior to the burning activities. Since demolition activities were conducted prior to an inspection or notification, all debris at the Site is considered asbestos-contaminated debris (ACD) and regulated asbestos-containing material (RACM). The requirements of regulations LAC 33:III.5151.F.2 and 3 and LAC 33:III.5151.J therefore apply.

III.

On or about August 28, 2015, and August 31, 2015, inspections of the Site in response to a citizen complaint revealed the following violations:

- A. The Respondent caused and/or allowed the disposal of regulated solid waste at the Site without a permit and/or authority from the Department, in violation of La. R.S. 30:2155, and LAC 33:VII.315.C. Specifically, the inspections revealed that the unauthorized waste disposed at the Site included, but was not limited to, burned remnants of trailers, construction and demolition debris, insulation, vegetative material, and possibly asbestos.
- B. The Respondent caused and/or allowed the open burning of solid waste without a permit and/or authority from the Department, in violation of La. R.S. 30:2155, and LAC 33:VII.315.M. Thirteen (13) large fires were observed at the Site on or about August 28, 2015. The inspector instructed the Respondent's employee to extinguish the fires and the Leesville Fire Department extinguished the burn piles. The inspector returned to the Site on August 31, 2015, and the piles were burning again. The fire department was again called to extinguish the fires.
- C. Prior to the commencement of demolition activity, the Respondent must either assume RACM is present or thoroughly inspect the facility for the presence of asbestos. The failure to conduct an asbestos inspection prior to the intentional burning of multiple trailer homes is a violation of LAC 33:III.5151.F.1 and La. R.S. 30:2057(A)(2).
- D. A review of the facility's record revealed the Respondent did not provide the Office of Environmental Services with typed notice of intention to demolish multiple trailer homes by submitting the Notification of Demolition and Renovation and Asbestos-Contaminated Debris Activity Form (AAC-2) and applicable fees. The Department has no record of

receiving an AAC-2 for this demolition activity. Failure to provide notice of intention to demolish is a violation of LAC 33:III.5151.F.2.a and La. R.S. 30:2057(A)(2).

- E. The Respondent did not remove all ACD at the Site before demolishing structures by burning. The failure to remove all RACM in accordance with State regulations prior to demolishing a structure by intentional burning, including activities related to the training of fire personnel, is a violation of LAC 33:III.5151.F.3.j and La. R.S. 30:2057(A)(2). Additionally, the August 28, 2015 outdoor burning of waste material is a violation of LAC 33:III.1109.B, La. R.S. 30:2057(A)(1) and 30:2057(A)(2).

COMPLIANCE ORDER

Based on the foregoing, the Respondent is **hereby ordered**:

I.

To take, immediately upon receipt of this **COMPLIANCE ORDER**, any and all steps necessary to meet and maintain compliance with the Solid Waste and Air Quality Regulations. Specifically, the Respondent shall ensure compliance with LAC 33:III.Chapter 5151, including but not limited to properly removing all RACM prior to demolishing any structures on the Site through intentional burning, in accordance with LAC 33:III.5151.F.3.j

II.

To cease, immediately upon receipt of this **COMPLIANCE ORDER**, disposing or allowing the disposal of regulated solid waste of any kind at the Site or any other site that is not permitted to receive such waste.

III.

To complete closure of the Site, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, by removing all regulated solid waste to a permitted solid waste disposal facility. The Respondent shall submit documentation of proper disposal or recycling to the Office of Environmental Compliance, Enforcement Division.

IV.

To remove all ACD and transport it to a recognized asbestos landfill (RAL) within thirty (30) days after receipt of this **COMPLIANCE ORDER**. The ACD shall be handled in accordance with LAC 33:III.5151.F.2 and 3 and LAC 33:III.5151.J, including but not limited to proper notifications, proper handling and disposal of ACD, the use of accredited personnel/transports to conduct the removal

activities, and submitting notification of completion of demolition in accordance with LAC 33:III.5151.F.3.m.

V.

To cease, immediately upon receipt of this **COMPLIANCE ORDER**, open burning or allowing the burning of regulated solid waste of any kind at the Site or any other site not authorized by the Department.

VI.

To submit to the Enforcement Division, within thirty (30) days after receipt of this **COMPLIANCE ORDER**, a written report that includes a detailed description of the circumstances surrounding the cited violations and actions taken or to be taken to achieve compliance with the Order Portion of this **COMPLIANCE ORDER**. This report and all other reports or information required to be submitted to the Enforcement Division by this **COMPLIANCE ORDER** shall be submitted to:

Office of Environmental Compliance
Post Office Box 4312
Baton Rouge, Louisiana 70821-4312
Attn: Tom Cranford
Re: Enforcement Tracking No. MM-CN-15-01475
Agency Interest No. 198204

THE RESPONDENT SHALL FURTHER BE ON NOTICE THAT:

I.

The Respondent has a right to an adjudicatory hearing on a disputed issue of material fact or of law arising from this **COMPLIANCE ORDER**. This right may be exercised by filing a written request with the Secretary no later than thirty (30) days after receipt of this **COMPLIANCE ORDER**.

II.

The request for an adjudicatory hearing shall specify the provisions of the **COMPLIANCE ORDER** on which the hearing is requested and shall briefly describe the basis for the request. This request should reference the Enforcement Tracking Number and Agency Interest Number, which are located in the upper right-hand corner of the first page of this document and should be directed to the following:

Department of Environmental Quality
Office of the Secretary
Post Office Box 4302
Baton Rouge, Louisiana 70821-4302
Attn: Hearings Clerk, Legal Division
Re: Enforcement Tracking No. MM-CN-15-01475
Agency Interest No. 198204

III.

Upon the Respondent's timely filing a request for a hearing, a hearing on the disputed issue of material fact or of law regarding this **COMPLIANCE ORDER** may be scheduled by the Secretary of the Department. The hearing shall be governed by the Act, the Administrative Procedure Act (La. R.S. 49:950, et seq.), and the Department's Rules of Procedure. The Department may amend or supplement this **COMPLIANCE ORDER** prior to the hearing, after providing sufficient notice and an opportunity for the preparation of a defense for the hearing.

IV.

This **COMPLIANCE ORDER** shall become a final enforcement action unless the request for hearing is timely filed. Failure to timely request a hearing constitutes a waiver of the Respondent's right to a hearing on a disputed issue of material fact or of law under Section 2050.4 of the Act for the violation(s) described herein.

V.

The Respondent's failure to request a hearing or to file an appeal or the Respondent's withdrawal of a request for hearing on this **COMPLIANCE ORDER** shall not preclude the Respondent from contesting the findings of facts in any subsequent penalty action addressing the same violation(s), although the Respondent is estopped from objecting to this **COMPLIANCE ORDER** becoming a permanent part of its compliance history.

VI.

Civil penalties of not more than twenty-seven thousand five hundred dollars (\$27,500) for each day of violation for the violation(s) described herein may be assessed. For violations which occurred on August 15, 2004, or after, civil penalties of not more than thirty-two thousand five hundred dollars (\$32,500) may be assessed for each day of violation. The Respondent's failure or refusal to comply with this **COMPLIANCE ORDER** and the provisions herein will subject the Respondent to possible enforcement procedures under La. R.S. 30:2025, which could result in the assessment of a civil penalty

in an amount of not more than fifty thousand dollars (\$50,000) for each day of continued violation or noncompliance.

VII.

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

NOTICE OF POTENTIAL PENALTY

I.

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.

II.

Prior to the issuance of additional appropriate enforcement action(s), 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 Tom Cranford at (225) 219-3095 within ten (10) days of receipt of this **NOTICE OF POTENTIAL PENALTY**.


III.

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 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 violation(s) 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 that statement.

IV.

This **CONSOLIDATED COMPLIANCE ORDER & NOTICE OF POTENTIAL PENALTY** is effective upon receipt.

Baton Rouge, Louisiana, this 9th day of November, 2017.



Lourdes Iturralde
Assistant Secretary
Department of Environmental Quality

Copies of a request for a hearing and/or related correspondence should be sent to:

Louisiana Department of Environmental Quality
Office of Environmental Compliance
Enforcement Division
P.O. Box 4312
Baton Rouge, LA 70821-4312
Attention: Tom Cranford