

STATE OF LOUISIANA

DEPARTMENT OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

ZIMMER-ESCHETTE SERVICE II, L.L.C.

AI # 109007, 94446

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

* **Settlement Tracking No.**
* **SA-MM-25-0072**
*
* **Enforcement Tracking No.**
* **MM-PP-17-00961**
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SETTLEMENT AGREEMENT

The following Settlement Agreement is hereby agreed to between Zimmer-Eschette Service II, 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 was contracted to perform an emergency asbestos response action at a site located in Abita Springs, St. Tammany Parish, Louisiana ("the Facility").

II

On October 5, 2018, the Department issued to Respondent a Notice of Potential Penalty, Enforcement Tracking No. MM-PP-17-00961 (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 FOUR THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$4,500.00), of which One Thousand Five Hundred Thirty-One and 17/100 Dollars (\$1,531.17) 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 St. Tammany Parish and Orleans 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 Accounts Receivable, Financial Services Division, Department of Environmental Quality, Post Office Box 4303, Baton Rouge, Louisiana, 70821-4303 or by Electronic Funds Transfer (EFT) to the Department of Environmental Quality, in accordance with instructions

provided to Respondent by the Financial Services Division. 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.

ZIMMER-ESCHETTE SERVICE II, 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**
Courtney J. Burdette, 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

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

NOTICE OF POTENTIAL PENALTY



Enforcement Tracking No.	MM-PP-17-00961	Certified Mail No.	7012 2210 0001 1915 9524
Agency Interest (AI) No.	109007 & 94446	Contact Name	Alissa Cockerham
Alternate ID No.	N/A	Contact Phone No.	(225) 219-3785
Respondent:	Zimmer-Eschette Service II, L.L.C.	Facility Name:	Abita Springs Middle School
	c/o Thomas J. Lutkewitte	Physical Location:	72079 Maple Street
	Agent for Service of Process		
	1515 Poydras Street, Suite 1400	City, State, Zip:	Abita Springs, Louisiana 70420
	New Orleans, Louisiana 70112	Parish:	St. Tammany

This **NOTICE OF POTENTIAL PENALTY** is issued 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 30:2050.3(B).

FINDINGS OF FACT

An authorized representative of the Department inspected the abovementioned facility or conducted a file review of the facility to determine the degree of compliance with regulations promulgated in the Louisiana Administrative Code, Title 33. The State regulatory citations for the violation(s) identified during the inspection and/or file review are indicated below.

I.	The Respondent (AI No. 94446) was contracted to perform an emergency asbestos response action at the site of Abita Springs Middle School (the Facility), located at 72079 Maple Street, Abita Springs, St. Tammany Parish, Louisiana. According to the information on the AAC-2 form submitted to the Department, asbestos containing floor tiles were found during carpet removal on July 31, 2017. The removal was completed as an emergency and removed on July 31, 2017. The Respondent does not have the authority from the Department to store solid waste at an off-site location.	
	Date of Violation	Description of Violation
II.	Inspection(s) & File Review 8/18/2017 & 2/2/2018	The Respondent failed to submit an emergency notification to the Department's regional office at least four (4) hours after learning of the incident that required emergency renovation operations. The failure to provide notification to the Department's regional office for an emergency no later than four (4) hours after learning of the incident that required the emergency renovation operation is a violation of LAC 33:III.5151.F.2.e and La. R.S. 30:2057(A)(2).
III.	Inspection(s) & File Review 8/18/2017 & 2/2/2018	The Respondent failed to include the storage site information in Section XI of the AAC-2 form. Section XI of the AAC-2 form was marked "N/A" for "Solid Waste Transporter Only if Taken to Offsite Premises and Stored Prior to Disposal." According to a representative of the Respondent, the waste was stored at their company office until August 23, 2017, prior to disposal at a recognized asbestos landfill (RAL). The failure to include the offsite/temporary storage area in the notice is a violation of LAC 33:III.5151.F.2.d.xviii and La. R.S. 30:2057(A)(2).
IV.	Inspection(s) & File Review 8/18/2017 & 2/2/2018	The Respondent failed to transport asbestos containing waste directly to a RAL. According to information provided to the Department by a facility representative, the asbestos-containing waste material was taken to offsite premises and stored prior to disposal. The AAC-2 form lists Zimmer-Eschette Service II, LLC as the solid waste transporter. The failure of the waste transporter to transport the asbestos-containing waste material with the ADVF directly to a RAL is a violation of LAC 33:III.5151.F.2.f.iii and La. R.S. 30:2057(A)(2).
V.	Inspection(s) & File Review 8/18/2017 & 2/2/2018	The Respondent failed to submit a 24-hour completion notification to the Department's regional office after the renovation activity had ended and the work area had been cleaned. The failure to notify the Department's regional office within 24 hours after the renovation activity has ended and the work area has been cleaned is a violation of LAC 33:III.5151.F.3.m and La. R.S. 30:2057(A)(2).
VI.	Inspection(s) & File Review 8/18/2017 & 2/2/2018	The Respondent stored solid waste generated from an off-site location in a manner which may cause a health hazard without being an authorized transfer station or collection, processing, or disposal facility, in violation of LAC 33:VII.315.B. Specifically, the Respondent removed the asbestos containing floor tiles from the Abita Springs Middle School located at 72079 Maple Street in Abita Springs, St. Tammany Parish, Louisiana (AI# 109007) on or about July 31, 2017, through August 1, 2017, and stored the solid waste at the company office located at 907 South Broad Street in New Orleans, Orleans Parish, Louisiana (AI# 94446) prior to disposal at the designated recognized asbestos landfill. In correspondence submitted to the Department via email on August 23, 2017, the Respondent stated the asbestos containing solid waste was being stored at the company office located in New Orleans, Louisiana. An Asbestos Disposal Verification Form (ADVF) was received by the Department on or about September 5, 2017, indicating the asbestos contaminating solid waste was disposed of on August 23, 2017 at a recognized asbestos landfill. This violation has been addressed.



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 Alissa Cockerham at (225) 219-3785 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 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.
VI.	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.
V.	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.

CONTACTS AND SUBMITTAL OF INFORMATION

Enforcement Division:	Physical Address (if hand delivered):
Louisiana Department of Environmental Quality Office of Environmental Compliance Air Enforcement Division P.O. Box 4312 Baton Rouge, LA 70821 Attn: Alissa Cockerham	Department of Environmental Quality 602 N Fifth Street Baton Rouge, LA 70802

HOW TO REQUEST CLOSURE OF THIS NOTICE OF POTENTIAL PENALTY

To expedite closure of the **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 Department assesses civil penalties based on LAC 33:I.Subpart1.Chapter7.
- The Respondent may offer a settlement amount but the Department is under no obligation to enter into settlement negotiations. It is decided upon on a discretionary basis.
- The settlement offer amount 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.

If you have questions or need more information, you may contact Alissa Cockerham at (225) 219-3785 or Alissa.cockerham@la.gov.

Date: 10-5-18


Lourdes Iturralde
Assistant Secretary
Office of Environmental Compliance

cc:


Attachment(s)

- Request to Settle

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NOPP FORM 1

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.	MM-PP-17-00961	Contact Name	Alissa Cockerham		
Agency Interest (AI) No.	109007 & 94446	Contact Phone No.	(225) 219-3785		
Alternate ID No.	N/A				
Respondent:	Zimmer-Eschette Service II, L.L.C.	Facility Name:	Abita Springs Middle School		
	c/o Thomas J. Lutkewitte	Physical Location:	72079 Maple Street		
	Agent for Service of Process				
	1515 Poydras Street, Suite 1400	City, State, Zip:	Abita Springs, Louisiana 70420		
	New Orleans, Louisiana 70112	Parish:	St. Tammany Parish		
SETTLEMENT OFFER (OPTIONAL)					
(check the applicable option)					
<input type="checkbox"/>	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.				
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (MM-PP-17-00961), the Respondent is interested in entering into settlement negotiations with the Department and would like to set up a meeting to discuss settlement procedures.				
<input type="checkbox"/>	In order to resolve any claim for civil penalties for the violations in NOTICE OF POTENTIAL PENALTY (MM-PP-17-00961), 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. <ul style="list-style-type: none"> • 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. 				
<input type="checkbox"/>	The Respondent has reviewed the violations noted in NOTICE OF POTENTIAL PENALTY (MM-PP-17-00961) and has attached a justification of its offer and a description of any BEPs if included in settlement offer.				
CERTIFICATION STATEMENT					
<i>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.</i>					
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: Alissa Cockerham

If you have questions or need more information, you may contact Alissa Cockerham at (225) 219-3785 or Alissa.cockerham@la.gov.