

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by the California Air Resources Board (ARB) principally located at 1001 I Street, Sacramento, California 95814, and Aztec Construction & Restoration, Inc. (Aztec Construction), principally located at 4361 Caterpillar Rd, Redding, California 96003, and Benson Roofing, Inc. (Benson Roofing), principally located at 3980 Marvel Lane, Redding, California 96002.

### RECITALS

1. California Health and Safety Code (H&SC) section 39658(b)(1) establishes the Asbestos National Emissions Standard for Hazardous Air Pollutants (title 40, Code of Federal Regulations (CFR) section 61.140, et seq.) as an Airborne Toxic Control Measure (Asbestos ATCM) enforceable by ARB.
2. The Asbestos ATCM defines an owner or operator of a demolition or renovation activity as any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both. (40 CFR § 61.141)
3. The Asbestos ATCM defines "visible emissions" to mean any emissions, which are visually detectable without the aid of instruments, coming from regulated asbestos containing materials or asbestos-containing waste material.
4. The Asbestos ATCM requires owner(s) or operator(s) of demolition or renovation activities to provide written notification of the intention to demolish or renovate a regulated facility ten (10) working days before work begins. (40 CFR § 61.145(b))
5. The Asbestos ATCM requires owners or operators of a demolition or renovation activity and prior to the commencement of the demolition or the renovation, to thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II non-friable asbestos containing materials. (40 CFR § 61.145(a))
6. The Asbestos ATCM establishes procedures for asbestos emission control. (40 CFR § 61.145(c))
7. The Asbestos ATCM establishes restrictions on the discharge of visible emissions to the outside air during the collection, processing, packaging or transporting of any asbestos-containing waste material from regulated work. (40 CFR § 61.150(a))
8. The Asbestos ATCM requires that all asbestos-containing waste material shall be deposited as soon as it is practical by the generator at a waste disposal facility approved to accept asbestos containing waste materials. (40 CFR § 61.150(b))

9. The Asbestos ATCM requires that all vehicles used to transport asbestos-containing waste materials be marked during the loading and unloading of waste materials. (40 CFR § 61.150(c))
10. On or about September 23, 2015, Aztec Construction and Benson Roofing renovated a structure identified as the "Round House" located at 6 Junction Road, Quincy, California 95971. The renovation involved the removal of approximately 3,000 square feet of asbestos containing roofing material. The Round House is a regulated structure under the Asbestos ATCM.
11. Aztec Construction and Benson Roofing were each an operator of a demolition or renovation activity under the Asbestos ATCM, with respect to the asbestos removal at the Round House.
12. On or about September 24, 2015, Quincy School District personnel observed and collected samples of renovation debris, identified as roofing paper from the Round House Roof. Quincy School District personnel submitted the samples for analysis by polarized light microscopy. The analysis established that the "Grey Roofing paper QHS Round House Roof" contained friable asbestos in regulated concentrations of 70 to 80 percent chrysotile asbestos.
13. On or about September 24, 2015, Quincy School District hired PFC Industrial Hygiene Consulting, a Certified Asbestos Consultant, to oversee the clean-up of the asbestos-containing renovation material.
14. On or about September 24, 2015, Aztec Construction and Benson Roofing shipped asbestos-containing waste material to Bass Hill Landfill, a landfill not permitted to accept asbestos-containing waste material.
15. On September 25, 2015, Quincy School District cancelled classes in order to protect the health and wellbeing of students and staff from exposure to asbestos-containing waste materials.
16. Between September 25 and September 28, 2015, Advanced Smart Solutions, Inc., a licensed asbestos abatement company, abated the asbestos-containing roofing material and provided clearance air quality monitoring to ensure that the school environment was adequately protected. The emergency renovation submitted by Advanced Smart Solutions, Inc., indicated that the Round House contained approximately 3,000 square feet of asbestos-containing roofing material.
17. Aztec Construction and Benson Roofing admit to the facts identified in Recitals 1 through 16, above.

18. ARB alleges that Aztec Construction and Benson Roofing failed to inspect the Round House for asbestos containing materials prior to commencement of renovation.
19. ARB alleges that Aztec Construction and Benson Roofing failed to notify ARB and U.S. Environmental Protection Agency 10 working days prior to commencing the regulated renovation activity was conducted to determine the presence of asbestos and no written notification of intention to remove asbestos had been submitted by the owner or operators prior to the commencement of the renovation.
20. ARB alleges that Aztec Construction and Benson Roofing negligently violated state law by failing to adhere to asbestos emission control procedures established by the Asbestos ATCM resulting in the release of asbestos-containing emissions into the environment.
21. ARB alleges that Aztec Construction and Benson Roofing failed to properly label vehicles and waste containers used in the storage and transportation of asbestos-containing waste material.
22. ARB alleges that Aztec Construction and Benson Roofing improperly disposed of asbestos-containing waste material at a facility not permitted to accept asbestos-containing waste material.
23. A violation of the Asbestos ATCM is a violation of State Law resulting in penalties. State law authorizes strict liability penalties not to exceed \$10,000.00 per day, for each day that the violation occurs. State law establishes penalties for the negligent emission of an air contaminant in violation of State law of not more than \$25,000 per day of violation. (H&SC § 42402 et seq.)
24. ARB and Aztec Construction and Benson Roofing desire to resolve this matter completely under the terms of this Agreement, in lieu of litigation. In order to resolve these violations, Aztec Construction and Benson Roofing agree to take the actions enumerated below within the Terms and Release.

#### **TERMS AND RELEASE**

25. In consideration of ARB not filing a legal action against Aztec Construction and Benson Roofing for the alleged violations referred to above, ARB and Aztec Construction and Benson Roofing agree as follows:

Upon execution of this Agreement Aztec Construction and Benson Roofing agree to pay civil penalties in the total amount of THIRTY SEVEN THOUSAND FIVE HUNDRED dollars (\$40,000.00). Payments shall be made in accordance with the instructions in Attachments A to this agreement. If any payment is missed, Aztec

Construction and Benson Roofing agree that the outstanding balance, up to \$40,000.00, becomes due and payable immediately without further notice or action.

26. Aztec Construction and Benson Roofing agree that they are jointly and severally responsible for the full penalty amount.
27. Aztec Construction and Benson Roofing shall not violate the Asbestos ATCM.
28. Aztec Construction and Benson Roofing agree that the Effective Date of this Settlement Agreement shall be the earlier of the date upon which Aztec Construction executes this Settlement Agreement or the date upon which Benson Roofing executes this Settlement Agreement.
29. Aztec Construction and Benson Roofing each agree to provide to at least one employee, training that meets the Asbestos Hazard Emergency Response Act requirements for Asbestos Contractor/Supervisor Initial (40-hour) training. To demonstrate compliance with this provision, Aztec Construction and Benson Roofing must each provide to ARB proof of completion, in the form of a copy of the awarded training certificate documenting the date of attainment within one year of the Effective Date of this Agreement and shall be mailed to:  
  

Mr. Ahmad Najjar  
Enforcement Division  
Air Resources Board  
P.O. Box 2815  
Sacramento, California 95812
30. This Agreement shall apply to and be binding upon Aztec Construction and Benson Roofing along with their officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations, and upon ARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this Agreement.
31. This Agreement constitutes the entire agreement and understanding between ARB and Aztec Construction and Benson Roofing concerning the subject matter hereof, and supersedes and replaces all prior negotiations and agreements between ARB and Aztec Construction and Benson Roofing concerning the subject matter.
32. Failure to comply with any of the terms of this Agreement shall void the agreement and ARB may take enforcement action based on the initial violation and any subsequent violations of this Agreement. Any failure to comply with this Agreement will be determined individually, such that a failure by one party does not otherwise impact compliance by the remaining parties.

33. Severability. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement is to remain in full force and effect.
34. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice-of-law rules.
35. **SB 1402 Statement**

Senate Bill 1402 (Dutton, Chapter 413, Statutes of 2010) requires ARB to provide information on the basis for the penalties it seeks (H&SC section 39619.7). This information is provided throughout this Agreement and is summarized here:

**The manner in which the penalty amount was determined, including per unit or per vehicle penalty.**

Penalties must be set at levels sufficient to discourage violations. The penalties in this matter were determined in consideration of all relevant circumstances, including the eight factors specified in H&SC section 42403.

The per-unit penalty in this case is a maximum of \$25,000.00 per violation per day for negligent violations pursuant to H&SC § 42402.1. After considering all factors specified in H&SC § 42403, the penalty obtained in this case is a total of \$40,000.00, representing the sum of approximately \$1,363.63 per day for each of 11 days that Aztec Construction and Benson Roofing failed to submit a notification and failed to conduct a thorough asbestos inspection, and \$25,000 for one day that Aztec Construction and Benson Roofing negligently emitted asbestos emissions into the environment. Asbestos is a toxic air contaminant and violations of the Asbestos ATCM, including violations of this nature could result in immediate and localized exposure. The penalty reflects the severity of the violations, including the negligent emission of asbestos-containing waste materials from work conducted while school students were present. The penalty reflects that Aztec Construction and Benson Roofing quickly hired a licensed asbestos abatement company to remediate the asbestos emissions and clean the contamination. The penalty also reflects that ARB has not previously issued Asbestos ATCM notices of violations to Aztec Construction and Benson Roofing.

**The provision of law the penalty is being assessed under and why that provision is the most important.**

The penalty provision that is being applied in this case is HSC § 42402 et seq., because Aztec Construction and Benson Roofing negligently failed to comply with the Asbestos ATCM.


**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specific level, and if so a quantification of excess emissions, if it is practical to do so.**

The penalty is being assessed under provisions of the Asbestos ATCM that restrict the visible emissions of asbestos-containing waste material. ARB staff estimates that asbestos-containing emission resulted from the improper removal of approximately 1,656 square feet of asbestos containing roofing material containing 70 to 80 percent chrysotile asbestos as established by polarized light microscopy.


36. Aztec Construction and Benson Roofing acknowledge that ARB has complied with SB 1402 in prosecuting and settling this case. Specifically, ARB has considered all relevant facts, including those listed at H&SC § 42403, has explained the manner in which the penalty amount was calculated (including a per unit or per vehicle penalty, if appropriate), has identified the provision of law under which the penalty is being assessed, and has considered and determined that this penalty is not being assessed under a provision of law that prohibits the emission of pollutants at a specific level.
37. Penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar cases, and the potential cost and risk associated with litigating these particular violations. Penalties in future cases might be smaller or larger on a per unit basis.
38. The penalty reflects ARB's assessment of the relative strength of its case against Aztec Construction and Benson Roofing, and the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law, and remove any unfair advantage that Aztec Construction and Benson Roofing may have secured from their actions.
39. Now therefore, in consideration of the payment on behalf of Aztec Construction and Benson Roofing ARB hereby resolves with Aztec Construction and Benson Roofing and their principals, officers, agents, predecessors, and successors from any and all claims for the past violations of the Asbestos ATCM ARB may have based on the circumstances described in the Recitals. The undersigned represent that they have the authority to enter into this Agreement.

**SIGNATURES**


**California Air Resources Board**

By:   
Name: Ellen M. Peter  
Title: Chief Counsel  
Date: 6/29/2016

**Aztec Construction & Restoration, Inc.**

By:   
Name: Scott Birondo  
Title: Owner  
Date: 5-12-16

**Benson Roofing, Inc.**

By:   
Name: Philip Chadwick  
Title: Owner  
Date: 5/12/16