

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:

Carlton Spinks
Fairhope, Baldwin County, Alabama

Demolition – Point Clear School Building
6485 County Road 32
Fairhope, Baldwin County, Alabama

****Proposed****

ADMINISTRATIVE
ORDER NO: 16-___-AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), the Alabama Department of Environmental Management (hereinafter, the “Department” or “ADEM”) Administrative Code of Regulations (hereinafter, “ADEM Admin. Code R.”) promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended, the Department makes the following FINDINGS:

1. Carlton Spinks (hereinafter, “Spinks”) is the owner of the Point Clear School Building (hereinafter, the “School”), located at 6485 County Road 32, Fairhope, Baldwin County, Alabama.

2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.).

4. The U.S. Environmental Protection Agency's National Emission Standard for Hazardous Air Pollutants (NESHAP), found at 40 C.F.R. Part 61, Subpart M, is incorporated by reference in ADEM Admin. Code r. 335-3-11-.02(12).

5. 40 C.F.R. § 61.141 defines Regulated asbestos-containing material (RACM) as (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

6. 40 C.F.R. § 61.145(a)(1) states that in a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is at least 260 linear feet on pipes, at least 160 square feet on other facility components, or at least 35 cubic feet off facility components where the length or area could not be measured previously.

7. 40 C.F.R. § 61.145(b)(3)(i) requires the owner or operator of a demolition or renovation activity for a subject facility to provide written Notice of Intention to Demolish or Renovate (hereinafter, "Notice of Demolition") at least ten workdays before demolition, asbestos stripping or removal work, or any other activity which disturbs the asbestos.

8. 40 C.F.R. § 61.145(b)(4)(viii)(ix) requires that the notification include the following: Scheduled starting and completion dates of asbestos removal work in a demolition or renovation. Scheduled starting and completion dates of demolition or renovation.

9. 40 C.F.R. § 61.145(c)(1) requires the removal of all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

10. ADEM Admin. Code r. 335-3-11-.05(1) requires that any person, firm, organization, or corporation who is the owner or operator of any asbestos removal project for which notification is required pursuant to the requirements of rule 335-3-11-.02(12) shall ensure that the parties executing the asbestos removal project are certified by the Department.

11. On April 11, 2016, Spinks submitted to the Department via email a Notice of Demolition and/or Asbestos Removal (ADEM Form 496) for the School and after reviewing the notification, the Department determined that the notification was incomplete. The next day, April 12, 2016, the Department responded via email requesting further information. (See "Attachment B", which is hereby made a part of these Findings.)

12. On May 26, 2016, the Department attempted to contact Spinks for a status update on the project, due to not having received a revised notification or a response to the Department's previous correspondence.

13. On June 1, 2016, the Department conducted an inspection at the School and noted that it had been demolished, in violation of ADEM Admin. Code rs. 335-3-11-.05(1) and 335-3-11-.02(12).

14. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Spinks did not include all of the required information on the Notification of Demolition and/or Asbestos Removal. The Department was not informed of the demolition and/or removal dates for this project. The Department is not aware if the required abatement of asbestos-containing materials was performed before demolishing the School, which could have exposed workers and others nearby to elevated levels of asbestos fibers. The contractor listed on the notification, SLM Lot Clearing, is not currently certified by The Department as an Asbestos Removal Contractor. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no care taken by Spinks to comply with the applicable requirements of the ADEM Admin. Code R.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Spinks likely derived economic benefit by not properly removing asbestos containing materials before demolishing the School.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Spinks to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Spinks has no known prior violations of asbestos regulations with the Department.

F. THE ABILITY TO PAY: Spinks has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18) c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty herein is appropriate and consistent with the historical penalty range imposed by the Department for similar violations (See "Attachment A", which is hereby made a part of these Findings).

ORDER

Based upon the foregoing FINDINGS and pursuant to Ala. Code §§22-22A-5(10), 22-22A-5(12), 22-22-5(18), and 22-28-18 (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, New Ship shall pay to the Department a civil penalty in the amount of \$5,000.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environment Management by certified or cashier's check and shall be submitted to:

Office of General Counsel
Alabama Department of
Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That, immediately upon receipt of this Order and continuing thereafter, Spinks shall ensure immediate and future compliance with 40 C.F.R. Part 61, Subpart M as adopted in ADEM Admin. Code r. 335-3-11-.02, particularly as it applies to renovation and demolition operations.

C. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. Except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under federal, State or local law, and shall not be construed to waive or relieve Spinks of its obligations to comply in the future with any permit or other written direction from the Department.

E. That, issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Spinks for the violations cited herein.

F. That, failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against

Spinks for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this ____ day of _____, 2016.

Lance R. LeFleur, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

PROPOSED ADMINISTRATIVE ORDER CERTIFICATE OF SERVICE

I, Ronald W. Gore, do hereby certify that I have served this Proposed Administrative Order upon the person(s) listed below by sending the same, postage paid, through the United States Mail **91 7108 2133 3936 7151 0385** with instructions to forward and return receipt, to:

Mr. Carlton Spinks
361 N Summit
Fairhope, AL 36532

DONE this the 6th day of July, 2016.



Ronald W. Gore
Chief - Air Division
Alabama Department of
Environmental Management

ATTACHMENT A

**Carlton Spinks
Fairhope, Baldwin County, Alabama
Demolition – 6485 County Road 32, Fairhope, Alabama**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to comply with the Department's requirements for asbestos removal and demolition	1	\$2,500	\$1,500	\$0	
					Total of Three Factors
TOTAL PER FACTOR		\$2,500	\$1,500	\$0	\$4,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) Enter at Right	\$0

Economic Benefit (+)	\$1,000
Amount of Initial Penalty	\$5,000
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$5,000.00

Footnotes

* See the "Department's Findings" portion of the Order for a detailed description of each violation and the penalty factors.

ATTACHMENT B

**Carlton Spinks
Fairhope, Baldwin County, Alabama
Demolition – 6485 County Road 32, Fairhope, Alabama**

From: Nabors, Melanie
Sent: Tuesday, April 12, 2016 9:37 AM
To: 'Carlton@GatewaySourcing.com'
Cc: Barron, Don
Subject: Point Clear School Building Asbestos Inspection

Hello Mr. Spinks,

After reviewing the ADEM Form 496 submitted for the Point Clear School building, it was determined by the Air Division that a revised Form 496 must be submitted. A certified asbestos removal contractor must be used for removal of any friable asbestos containing material and any non-friable category II asbestos containing material. The previously mentioned items must be removed before demolition. The contractor listed, SLM Lot Clearing, is not an ADEM certified asbestos removal contractor. Asbestos removal dates and demolition dates must be included on the form. Also, the amount(s) and type(s) of ACM section (no. 6) of ADEM Form 496 should be corrected. Upon review of the sampling report submitted by Barksdale & Associates, Inc., it was determined that the amounts and types of ACM listed on the form are incorrect. Please make the necessary corrections and submit a revised Form 496 to the Special Services Section for review.

Thanks,

Melanie Nabors
Air Division-Special Services Section
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7897
adem.alabama.gov

