

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF: )  
 )  
City of Ozark )  
Ozark, Dale County, Alabama )

PROPOSED CONSENT ORDER NO: 22-XXX-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (“Department” or “ADEM”) and the City of Ozark (“City”) pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-17, as amended, the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, as amended, the ADEM Administrative Code of Regulations (“ADEM Admin. Code R.”) promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended.

STIPULATIONS

1. The City managed demolition activities of multiple structures on properties located in Ozark, Dale County, Alabama (the “Sites”).
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, 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, *as amended*.

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 ("Notice") 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(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.

DEPARTMENT'S CONTENTIONS

9. On January 28, 2022, the Department received two complaints regarding demolition of structures under the control of the City.

10. On February 17, 2022, Department personnel conducted an investigation of the Sites and noted that demolition activities were conducted without prior notification to the Department.

11. On March 2, 2021, the Department issued a Letter of Inquiry (LOI) to the City regarding the demolition of regulated structures.

12. On March 7, 2022, the City responded to the LOI, by stating that twelve regulated structures had been demolished without prior submittal of the required demolition notifications and without having the required asbestos inspections performed.

13. 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 violations, 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 violations 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: The City failed to submit the required notifications to the Department and failed to perform, or have performed, the required certified asbestos inspections of the Sites before initiating the demolition. The Department considers these violations to be serious.

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

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The City likely derived an economic benefit by not having the required asbestos inspections performed.

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

E. HISTORY OF PREVIOUS VIOLATIONS: The City has no previous history with the Department for violating the asbestos and demolition regulations.

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

G. OTHER FACTORS: The City, by failing to have the required asbestos inspection of the Sites performed, risked exposing its employees, contractors, and other individuals to asbestos.

14. 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 (*See* “Attachment A”, which is hereby incorporated into the Department’s Contentions).

15. The Department neither admits nor denies the City's Contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without the unwarranted expenditure of State resources in further prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

CITY'S CONTENTIONS

16. The City neither admits nor denies the Department's Contentions. The City consents to abide by the terms of this Consent Order and to pay the civil penalty assessed herein.

17. The City of Ozark contends that all structures demolished on or around October of 2021 were inspected by a City of Ozark employee with more than thirty years of experience in the construction and demolition business. Upon conclusion of said inspections, the City determined that no RACM was located in any facility and thus considered the structures as classified structures under 40 C.F.R. 61.141. Further the City contends that the City of Ozark interpreted the rules governing notification and inspection of the facilities as not applying to said structures because the City interpreted the rules to apply to a planned project and not to structures located in completely separate areas within the municipal borders without a larger project plan to be developed. The City further contends that the demolition of said structures was not intended for an economic development or revitalization program, but was simply intended for safety of the community as the structures had fallen into such a state of disrepair as to be a safety concern.

ORDER

THEREFORE, the City, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and the Department has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and the City agree to enter into this Consent Order with the following terms and conditions:

A. The City agrees to pay the Department a civil penalty in the amount of \$4,000.00 for the violations cited herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. The City agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

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

C. The City agrees that, immediately upon receipt of this Order and continuing thereafter, it shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-3-.01.

D. 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.

E. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

F. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the violations, which are cited in this Consent Order.

G. The City agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

H. For purposes of this Consent Order only, the City agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. The City also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, the City shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of the City, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of the City)

and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of the City, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

I. The Department and the City agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances referenced herein. Should additional facts and circumstances be discovered in the future concerning the Site which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and the City shall not object to such future orders, litigation or enforcement action based on the issuance of this Consent Order if future orders, litigation or other enforcement action address new matters not raised in this Consent Order.

J. The Department and the City agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent



Order shall not be appealable, and the City does hereby waive any hearing on the terms and conditions of same.

K. The Department and the City agree that this Order shall not affect the City's obligation to comply with any Federal, State, or local laws or regulations.

L. The Department and the City agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

M. The Department and the City agree 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.

N. The Department and the City agree that any modifications of this Order must be agreed to in writing signed by both parties.

O. The Department and the City agree that, 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 the City of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CITY OF OZARK



(Signature of Authorized Representative)

Mark Blankenship  
(Printed Name)

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL  
MANAGEMENT

\_\_\_\_\_  
Lance R. LeFleur  
Director

Mayer  
 (Printed Title)

Date Signed: July 21, 2022

Date Executed: \_

**ATTACHMENT A**

**City of Ozark  
 Ozark, Dale County, AL**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to comply with asbestos/demolition regulations	12	\$2,000	\$1,000	\$0	
					<b>Total of Three Factors</b>
<b>TOTAL PER FACTOR</b>		<b>\$2,000</b>	<b>\$1,000</b>	<b>\$0</b>	<b>\$3,000</b>

<b>Adjustments to Amount of Initial Penalty</b>	
Mitigating Factors (-)	
Ability to Pay (-)	

<b>Economic Benefit (+)</b>	\$1,000
<b>Amount of Initial Penalty</b>	\$4,000
<b>Total Adjustments (+/-)</b>	\$0

Other Factors (+/-)	
Total Adjustments (+/-) ) <i>Enter at Right</i>	\$0

<b>FINAL PENALTY</b>	\$4,000.00
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Footnotes

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