

**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

_____ IN THE MATTER OF:)	
)	
Quality Erosion Control, LLC)	****Proposed****
2501 County Road 503)	
Marbury, Alabama 36051)	
)	ADMINISTRATIVE
)	ORDER NO: 16-____-AP
Demolition – Knights Inn Hotel)	
1657 Highway 31 North)	
Prattville, Autauga County, Alabama)	
_____)	

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. Quality Erosion Control, LLC (hereinafter, “Quality”), a demolition contractor operating from 2501 County Road 503, Marbury, Alabama, was sub-contracted by Whitehead Consulting (hereinafter, “Whitehead”), a consultant for Knights Inn Hotel (hereinafter, the “Hotel”) owner Rahima Visram (hereinafter, “Visram”), to perform the demolition of the Hotel, located at 1657 Highway 31 North, Prattville, Autauga 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(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.

9. ADEM Admin. Code r. 335-3-11-.05(1) states 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.

10. ADEM Admin. Code r. 335-3-3-.01(2)(b)1 states that “...open burning must take place on the property on which the combustible fuel originates.”

11. ADEM Admin. Code r. 335-3-3-.01(2)(b)4 states that “Only vegetation and untreated wood may be burned. It is unauthorized to open burn heavy oils, asphalt products, plastics, vinyl materials, insulation, paper, cardboard, natural or synthetic rubber, salvage or scrap materials, chemicals, garbage, treated or painted wood, or any trash.”

12. On March 23, 2016, the Department conducted an inspection of Hotel site and noted that it was being demolished without having received the required notification of demolition, in violation of ADEM. Admin. Code r. 335-3-11-.02(12).

13. During the March 23, 2016 inspection, the Department observed illegal open burning of various materials including, but not limited to bed mattresses, construction waste, metal, treated wood, and refuse, in violation of ADEM Admin. Code r. 335-3-3-.01(2)(b).

13. On March 28, 2016, the Department issued a Notice of Violation (NOV) to Visram.

14. On June 16, 2016, Visram responded to the NOV stating that Whitehead was contracted to be the managing consultant for the demolition project. Visram explained that Whitehead bid on the project in early March 2015 and Whitehead subcontracted Quality to perform the demolition, which began in early September 2015. Visram also indicated that the required asbestos inspection and abatement were not performed, which is in violation of ADEM Admin. Code r. 335-3-11-.02(12).

15. Quality is not currently certified by the Department as an Asbestos Removal Contractor. Removal or disturbance of RACM performed by a contractor not certified by the Department is a violation of ADEM Admin. Code r. 335-3-11-.05(1).

16. 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: Quality failed to submit the required notification of demolition and/or asbestos removal and the Department was not made aware if an asbestos inspection was performed at the Hotel. Additionally, the Department was not made aware if the required abatement of asbestos-containing materials was performed before demolishing the Hotel, which could have exposed workers and others nearby to elevated levels of asbestos fibers. Quality is not currently certified by the Department as an asbestos removal contractor and should not have been open burning illegally at the Hotel site. The Department considers these violations to be serious.

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

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Quality likely derived economic benefit by not properly removing asbestos containing materials before demolishing the Hotel and by illegally open burning prohibited materials instead of properly disposing them.

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

E. HISTORY OF PREVIOUS VIOLATIONS: Quality has no known prior history with the Department for violations of the demolition/asbestos and open burning regulations.

F. THE ABILITY TO PAY: Quality has 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, Quality 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 Environmental 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, Quality 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. Additionally, Quality shall ensure that it does not violate ADEM Admin. Code r. 335-3-3-.01(2)(b) by illegally open burning prohibited materials.

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

ORDERED and ISSUED this _____ day of _____, 2016.

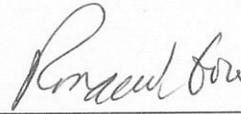
Lance R. LeFleur, Director
Alabama Department of Environmental
Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

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 0217** with instructions to forward and return receipt, to:

Quality Erosion Control, LLC
2501 County Road 503
Marbury, Alabama 36051

DONE this the 23rd day of August, 2016.



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

ATTACHMENT A

Quality Erosion Control, LLC

**Demolition – Knight’s Inn Hotel
1657 Highway 31 North, Prattville, Autauga County**

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	\$2,000	\$1,000	\$0	
Illegal open burning	1	\$2,000	\$1,000	\$0	
					Total of Three Factors
TOTAL PER FACTOR		\$4,00	\$2,000	\$0	\$6,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	-\$3,000
Other Factors (+/-)	
Total Adjustments (+/-) Enter at Right	-\$3,000

Economic Benefit (+)	\$2,000
Amount of Initial Penalty	\$8,000
Total Adjustments (+/-)	-\$3,000
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.