

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
Hercules Investments, L.L.C.)
Demolition of Commercial Property)
24621 Perdido Beach Boulevard)
Orange Beach, Baldwin County, Alabama)
PROPOSED
ADMINISTRATIVE
ORDER NO: 25-XXX-AP

FINDINGS

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 Alabama Department of Environmental Management (“Department” or “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*, the Department makes the following FINDINGS:

1. Hercules Investments, L.L.C. (Hercules), owned and operated by James Madison Brown, is responsible for the demolition of the structures located at 24621 Perdido Beach Boulevard, Orange Beach, Baldwin County, Alabama (the “Site”), which is owned by John E. Pilcher, Jody T. Pilcher III, Mary E. Pilcher, and Emmie Pilcher Flowers (“the Owners”).
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 (AAPCA), 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).
 - a. 40 C.F.R. §61.141 defines "facility" as "any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. For purposes of this definition, any building, structure, or installation that contains a loft used as a dwelling is not considered a residential structure, installation, or building. Any structure, installation or building that was previously subject to this subpart is not excluded, regardless of its current use or function."
 - b. 40 C.F.R. § 61.145(a) states in part, "[t]o determine which requirements of paragraphs (a), (b), and (c) of this section apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of

the facility where the demolition or renovation operation will occur for the presence of asbestos...”

- c. 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.
- d. 40 C.F.R. § 61.145(c)(1) requires the removal of all RACM [regulated asbestos containing material] 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.

5. ADEM Admin. Code r. 335-3-11-.05(1) requires that “[a]ny 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) [Subpart M] shall ensure that the parties executing the asbestos removal project are certified by the Department.”

6. On July 11, 2025, Department personnel discovered demolition had been conducted at the Site without proper notification.

7. On September 18, 2025, the Department issued a Notice of Violation (NOV) to the Owners regarding the renovation/demolition activity at the Site.

8. On October 17, 2025, the Department received a response from the Owners stating that the property was leased to Hercules, who was responsible for obtaining all required permits necessary. A ten-day notification was not submitted to ADEM, and

the structures were not inspected by an Alabama accredited asbestos inspector prior to the demolition.

9. The failure to conduct an inspection by an Alabama accredited asbestos inspector of the regulated structures for the presence of asbestos containing material is a violation of 40 C.F.R. § 61.145(a), and thus a violation of ADEM Admin. Code r. 335-3-11-.02(12) and ADEM Admin. Code r. 335-3-11-.05(1).
10. The failure to notify the Department of the demolition of the regulated structures at least 10 working days prior to demolition constitutes a violation of 40 C.F.R. § 61.145(b)(3)(i), and thus a violation of ADEM Admin. Code r. 335-3-11-.02(12).
11. 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: Hercules failed to submit the required notification to the Department and failed to perform, or have performed, the required certified asbestos inspection of the Site before initiating the demolition. Also, Hercules failed to provide a ten-day notification to the Department for the demolition. The Department considers these violations to be serious.

B. STANDARD OF CARE: There appeared to be no care taken by Hercules to comply with the applicable requirements of the ADEM Admin. Code r. 335-3-11-.02(12), ADEM Admin. Code r. 335-3-11-.05(1), the AAPCA, and 40 C.F.R. §61.145.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Hercules likely derived some economic benefit as a result of the violations referenced herein.

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

E. HISTORY OF PREVIOUS VIOLATIONS: Hercules has no known prior history with the Department for violating demolition/asbestos regulations.

F. THE ABILITY TO PAY: Hercules 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 (See “Attachment A”, which is hereby incorporated into 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, *as amended*, it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Hercules shall pay to the Department a civil penalty in the amount of \$6,500.00 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

H. That, immediately upon receipt of this Order and continuing thereafter, Hercules shall ensure immediate and future compliance with ADEM Admin. Code r. 335-3-11-02(12), ADEM Admin. Code r. 335-3-11-05(1), the AAPCA, and 40 C.F.R. §61.145.

B. 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.

C. 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 Hercules of obligations to comply in the future with any permit or other written direction from the Department.

- D. That, issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Hercules for the violations cited herein.
- E. That, failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against Hercules for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this _____ day of _____, 2025.

Edward F. Poolos, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

CERTIFICATE OF SERVICE

I, Aubrey H. White III, 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 **9589 0710 5270 3494 4624 05** with instructions to forward and return receipt, to:

Hercules Investments, L.L.C
Mr. James M. Brown
P.O. Box 2007
Orange Beach, AL 36561

DONE this the 7th day of November, 2025.



Aubrey H. White III
Chief - Air Division
Alabama Department of
Environmental Management

ATTACHMENT A

Hercules Investments, L.L.C.
Orange Beach, Baldwin County, AL

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to Conduct Asbestos Testing	1	\$1,500	\$750	\$0	
Failure to Submit Notification of Demolition	1	\$1,500	\$750	\$0	
					Total of Three Factors
<i>TOTAL PER FACTOR</i>		\$3,000	\$1,500	\$0	\$4,500

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

Economic Benefit (+)	\$2,000
Amount of Initial Penalty	\$4,500
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$6,500

Footnotes

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