

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
City of Opp)	
Demolition of Commercial Property)	
1033 Douglas Avenue)	PROPOSED
Opp, Covington County, Alabama)	CONSENT
)	ORDER NO: 25-XXX-AP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, “the Department” and/or “ADEM”) and the City of Opp, pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 through 22-22A-17, *as amended*, the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23, *as amended*, and the regulations promulgated pursuant thereto.

1. The City of Opp; (“Opp”) is responsible for the demolition of a structure that was located at 1033 Douglas Avenue (“Site”), Opp, Covington 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-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.”

DEPARTMENT’S CONTENTIONS

6. On July 9, 2025, Department personnel conducted an inspection and observed demolition debris from a commercial structure located at the Site.

7. On July 18, 2025, the Department issued a Notice of Violation (NOV) to the City of Opp for failure to perform an inspection for the presence asbestos at the Site before demolition activity and for failure to submit a 10-day notification of demolition activity to ADEM.

8. On September 4, 2025, the Department received a response from Opp confirming they demolished the structure at the Site without a proper asbestos inspection and submittal of a 10-day notification.

9. 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:** Opp 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, Opp failed to provide a ten-day notification to the Department for the demolition. The Department considers these violations to be serious.

B. **THE STANDARD OF CARE:** There appeared to be no care taken by Opp 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.-3-.01(2)(b)1, 335-3-3-.01(2)(b)2, and 335-3-3-.01(2)(b)4 at the time of the violations.

C. **ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED:** Opp likely derived an economic benefit by failing to have a thorough asbestos inspection performed.

D. **EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT:** Opp took efforts to mitigate possible effects of these violations upon the environment prior to the completion of the demolition.

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

F. THE ABILITY TO PAY: Opp 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 Contentions).

10. The Department neither admits nor denies Opp’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 unwarranted expenditure of State resources in 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.

OPP’S CONTENTIONS

11. Opp neither admits nor denies the Department’s contentions. Opp consents to abide by the terms of this Consent Order and pay the civil penalty assessed herein.

12. After becoming aware of the potential violation, Opp hired a certified asbestos contractor to oversee the remediation and removal of the demolition waste that was disposed of at the Coffee County Landfill.

13. The alleged violation occurred during the city’s previous administration. Opp’s new administration has implemented new policies to ensure that future demolition projects comply with the AAPCA.

ORDER

THEREFORE, Opp, 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 has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Opp agree to enter this Consent Order with the following terms and conditions:

A. Opp agrees to pay the Department a civil penalty in the amount of \$3,000.00 in settlement of the violations alleged herein. Failure to pay the civil penalty within the specified timeframe after the issuance of this Consent Order may result in the Department filing a civil action in the Circuit Court of Montgomery County to recover the unpaid civil penalty.

B. Opp 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. Opp agrees that it, immediately upon receipt of this Order and continuing thereafter, Opp 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.

D. 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.

E. 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 alleged violations and/or deviations which are cited in this Consent Order.

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

G. For purposes of this Consent Order only, Opp 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. Innovative also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Opp 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 Opp, including his 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 Opp) and which delays or prevents performance by a date required by the Consent Order. Events such as unanticipated or increase 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 Opp, 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.

H. The Department and Opp 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 reference herein. Should additional facts and circumstances be discovered in the future concerning illegal open burning 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 Innovative 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 addresses new matters not raised in this Consent Order.

I. The Department and Opp agree that this Consent Order shall be considered final and effective immediately upon the signature of all parties. This Consent Order shall not be appealable, and Opp does hereby waive any hearing on the terms and conditions of the same.

J. The Department and Opp agree that this Order shall not affect its obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and Opp 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.

L. The Department and Opp 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.

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

N. The Department and Opp 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 Opp of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

CITY OF OPP

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Edward F. Poolos
Director

Chance T. McCurley

(Printed Name)

Mayor

(Printed Title)

2-12-2026

(Date)

(Date Executed)

ATTACHMENT A

**City of Opp
Opp, Covington County**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to Notify	1	\$2,000	\$1,000	\$0	
Failure to Inspect	1	\$3,000	\$1,500	\$0	Total of Three Factors
<i>TOTAL PER FACTOR</i>		<i>\$5,000</i>	<i>\$2,500</i>	<i>\$0</i>	<i>\$7,500</i>

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	-6,500
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) <i>Enter at Right</i>	-6,500

Economic Benefit (+)	\$2,000
Amount of Initial Penalty	\$7,500
Total Adjustments (+/-)	-\$6,500
FINAL PENALTY	\$3,000.00

Footnotes

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