

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

AFIN: 28-00529

LIS No. 19-064

MICHELLE'S EXCAVATING, INCORPORATED  
406 SAINT FRANCIS STREET  
MARKED TREE, AR 72365

**CONSENT ADMINISTRATIVE ORDER**

This Consent Administrative Order (CAO) is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this CAO is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act (the Act), Ark. Code Ann. § 8-4-101 *et seq.*, the Removal of Asbestos Material Act, Ark. Code Ann. § 20-27-1001 *et seq.*, Arkansas Pollution Control and Ecology Commission (APC&EC) Regulation 7, APC&EC Regulation 8, and APC&EC Regulation 21.

The issues herein having been settled by agreement of Michelle's Excavating, Incorporated (Respondent) and the Director of the Arkansas Department of Environmental Quality (ADEQ), it is hereby agreed and stipulated that the following FINDINGS OF FACT and ORDER AND AGREEMENT be entered.

**FINDINGS OF FACT**

1. On or before May 29, 2018, Respondent demolished or caused to be demolished structures formerly located at 406 Saint Francis Street, Marked Tree, Poinsett County, AR 72365 (the Site). These demolished structures were part of the Marked Tree High School and were identified as the Band Building and Library Building.

2. Ark. Code Ann. § 20-27-1007(2) and (4) provides:

It shall be unlawful for any person:

...

(2) To participate in any response action, demolition, or renovation contrary to the regulations or orders issued under this subchapter or contrary to the Arkansas Water and Air Pollution Control Act § 8-4-101 *et seq.*, and the Arkansas Solid Waste Management Act § 8-6-201 *et seq.*, and the regulations promulgated thereunder, whether or not such person is required to have a license or certificate pursuant to this subchapter;

...

(4) To violate any provision of this subchapter or any regulation or order adopted or issued under this subchapter.

3. Ark. Code Ann. § 8-4-103(c)(1)(A) as referenced by Ark. Code Ann. §20-27-1002(a) authorizes ADEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any regulation or permit issued pursuant to the Act.

4. Pursuant to Ark. Code Ann. § 8-4-103(c)(1)(B) as referenced by Ark. Code Ann. § 20-27-1002(a), “Each day of a continuing violation may be deemed a separate violation for purposes of penalty assessment.”

5. The structure(s) in question constitutes a “facility” as defined in APC&EC Regulation 21, Chapter 4.

6. Respondent meets the definition of an “owner or operator of a demolition or renovation activity” as defined in APC&EC Regulation 21, Chapter 4.

7. On August 21, 2018, ADEQ personnel investigated a demolition complaint at the Site. It was revealed that demolition activities had begun on May 29, 2018, and were still in progress at the time of the investigation.

8. ADEQ personnel observed a DuraTech Grindmaster 512 (Grinder) on the Site. This piece of equipment is used to grind large volume debris into relatively small density debris

for ease of transporting the material. Piles of material were observed on the Site that appeared to have been processed through the Grinder. These piles contained insulation, sheetrock, and roofing material that were exposed and dry.

9. The structures being demolished were part of the Marked Tree High School, which was in session at the time of the investigation. These structures were identified as the Band Building that had measured 40 feet by 60 feet (2400 square feet) and the Library Building that had measured 80 feet by 80 feet (6400 square feet).

10. The investigation revealed that Respondent failed to conduct or have conducted a thorough asbestos inspection of the affected structures prior to demolition. Such failure violates APC&EC Reg.21.501 and therefore violates Ark. Code Ann. § 20-27-1007(4).

11. The investigation revealed that Respondent failed to meet the licensing and/or certification provisions of APC&EC Regulation 21 prior to engaging in demolition at the Site. Such failure violates APC&EC Reg.21.503 and therefore violates Ark. Code Ann. § 20-27-1007(4).

12. The investigation revealed that Respondent failed to submit a written NOI and appropriate NOI fee to ADEQ at least ten (10) working days prior to commencing the demolition activity. As noted in paragraph 10 of the Findings of Fact, no asbestos inspection was conducted prior to the demolition activity; therefore, the appropriate fee amount could not be determined at this time. Such failure violates APC&EC Reg.21.601, and therefore violates Ark. Code Ann. § 20-27-1007(4).

13. At the time of the investigation, ADEQ personnel requested that the current demolition activities at the Site be put on hold and that an asbestos inspection be conducted given the proximity of the demolition activities to the children and staff at the school.

14. On September 6, 2018, Terracon Consultants, Inc. performed a limited asbestos survey of the debris piles from the demolition activities on the Site. The findings of the survey indicate asbestos was identified in the coating on concrete masonry unit block and associated cove base, ceiling tile, and floor tile and associated black mastic. The survey report stated that due to the condition of the material, segregation of the identified asbestos containing material was not possible and the entire waste debris piles were considered regulated asbestos containing material (RACM).

15. On September 6, 2018, Respondent submitted a NOI (NOI-11331) and two (2) disposal tickets representing the RACM removed from the Site after demolition activities that were conducted from May 29, 2018, through August 21, 2018. The disposal tickets, dated May 31, 2018 and August 14, 2018, reported a total of seventy (70) cubic yards, or 1890 cubic feet, of loose material was deposited at the Northeast Arkansas Regional Solid Waste Management District landfill.

16. The investigation revealed that Respondent failed to remove any of the RACM from the structures before they were demolished. Such failure violates APC&EC Reg.21.901(A) and therefore violates Ark. Code Ann. § 20-27-1007(4).

17. The investigation revealed that Respondent failed to comply with disposal preparation and disposal procedures when it did not: a) Ensure that the material was adequately wetted and remain wetted; b) Contain the RACM in leak-tight wrapping; c) Mark the vehicles used to transport the RACM with the required signage; d) Properly label the containers or wrapped materials as specified by Occupational Safety and Health Standards of the Department of Labor, Occupational Safety and Health Administration; e) Prepare waste shipment papers to accompany the shipment; and f) Deposit the RACM as soon as is practical at a disposal site.

Such failures violate APC&EC Reg.21.1001(A)(B) and APC&EC Reg.21.1101 and therefore violate Ark. Code Ann. § 20-27-1007(4). The period between the first (May 31, 2018) and second (August 14, 2018) disposal of RACM was seventy-five (75) days.

18. The investigation revealed that Respondent failed to comply with the waste generator and waste transporter standards when it did not prepare, maintain, and provide the waste disposal site with a copy of the shipping papers that accurately described the contents of the shipment. Such failures violate APC&EC Reg.21.1102 and APC&EC Reg.21.1103 and therefore violate Ark. Code Ann. § 20-27-1007(4).

19. In correspondence dated September 28, 2018, Environmental Protection Associates of Russellville, Inc. submitted an emergency NOI (NOI-12428) to remove the RACM that remained from Respondent's demolition of the Band Building and the Library Building.

20. This material was properly deposited at the Mississippi County Landfill on October 8-9, 2018. The landfill is approved to accept asbestos-containing waste material.

21. In correspondence dated November 15, 2018, ADEQ informed Respondent of the compliance issue identified during the August 21, 2018, complaint investigation of the Site. This was intended to provide Respondent with the opportunity to review the violations and submit any additional information Respondent deemed appropriate regarding the compliance issues.

22. In correspondence dated December 18, 2018, ADEQ informed Respondent that formal enforcement action is proceeding in the case in which Respondent was found to have violated sections of APC&EC Regulation 21.

23. In correspondence dated June 7, 2019, Respondent provided, as a corrective action to the findings of the August 21, 2018 complaint investigation, a summary of its revised procedures of handling demolition waste material.

## ORDER AND AGREEMENT

WHEREFORE, Respondent, neither admitting nor denying the factual and legal allegations contained in this CAO, and ADEQ do hereby agree and stipulate as follows:

1. Immediately, discontinue using the Duratech Grindmaster or other grinding equipment in performing demolitions, renovations, and/or response actions which involve asbestos-containing waste materials.
2. Within 90 calendar days of the effective date of this CAO, an employee/owner of Respondent shall satisfactorily complete an approved asbestos Two-Hour Arkansas Regulatory Awareness training course provided by an Arkansas licensed provider. The course shall adequately address the topics outlined in APC&EC Reg.21.1907.
3. Within ten (10) calendar days of completing the asbestos Two-Hour Arkansas Regulatory Awareness training course referenced in Paragraph 1 of the ORDER AND AGREEMENT of this CAO, Respondent shall submit a copy of the course completion certificate to:

ADEQ, Office of Air Quality  
- Enforcement Section  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317.

4. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **FIFTEEN THOUSAND SIX HUNDRED SEVENTY-FIVE DOLLARS (\$15,675.00)**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

ADEQ, Fiscal Division  
5301 Northshore Drive  
North Little Rock, Arkansas 72118-5317.

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In the event that Respondent fails to pay the civil penalty within the prescribed time, ADEQ shall be entitled to attorneys' fees and costs associated with collection.

5. All applicable submissions required by this CAO are subject to approval by ADEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by ADEQ, submit any additional information requested. Failure to adequately respond to the notice of deficiency within fifteen (15) calendar days constitutes a failure to meet a deadline and is subject to the civil penalties established in the following Paragraph.

6. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of said CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on demand, to ADEQ civil penalties according to the following schedule:

- |  |                |
|--|----------------|
| (a) First day through the fourteenth day:    | \$100 per day  |
| (b) Fifteenth day through the thirtieth day: | \$500 per day  |
| (c) More than thirty days:                   | \$1000 per day |

Stipulated penalties shall be paid within thirty (30) calendar days of receipt of ADEQ's demand to Respondent for such penalties. These stipulated penalties may be imposed for delay in scheduled performance and shall be in addition to any other remedies or sanctions which may be available to ADEQ by reason of Respondent's failure to comply with the requirements of this CAO. ADEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

7. If any event, including, but not limited to, an occurrence of nature, causes or may cause a delay in the achievement of compliance by Respondent with the requirements or deadlines of this CAO, Respondent shall notify ADEQ in writing as soon as reasonably possible after it is apparent that a delay will result, but in no case after the due dates have passed. The

notification shall describe in detail the anticipated length of the delay, the precise cause of the delay, the measures being taken and to be taken to minimize the delay, and the timetable by which those measures will be implemented.

8. ADEQ may grant an extension of any provision of this CAO, provided that Respondent requests such an extension in writing and provided that the delay or anticipated delay has or will be caused by circumstances beyond the control of and without the fault of Respondent. The time for performance may be extended for a reasonable period, but in no event longer than the period of delay resulting from such circumstances. The burden of proving that any delay is caused by circumstances beyond the control of and without the fault of Respondent and the length of the delay attributable to such circumstances shall rest with Respondent. Failure to notify ADEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

9. This CAO is subject to public review and comment in accordance with Ark. Code Ann. § 8-4-103(d), and therefore is not effective until thirty (30) calendar days after public notice of the CAO is given. ADEQ retains the right and discretion to rescind this CAO based on comments received within the thirty-day public comment period.

10. As provided by APC&EC Regulation 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this CAO is granted by the Commission.

11. Nothing contained in this CAO shall relieve Respondent of any obligations imposed by any other applicable local, state, or federal laws.

12. Nothing in this CAO shall be construed as a waiver by ADEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO does



not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of the responsibilities for obtaining any necessary permits.

13. By virtue of the signature appearing below, the individual represents that he or she is an Officer of Respondent, being duly authorized to execute and bind Respondent to the terms contained herein. Execution of this CAO by an individual other than an Officer of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 12 DAY OF July, 2019.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR  
ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

MICHELLE'S EXCAVATING, INCORPORATED

BY: Michelle Cushing (Signature)

Michelle Cushing (Typed or printed name)

TITLE: President

DATE: 7-11-19



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