

**ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

AFIN: 40-00321

LIS No. 21-063

MOSER CONSTRUCTION, LLC
411 MILLBROOK DRIVE
BRYANT, AR 72022

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.*, Pollution Control and Ecology Commission (PC&EC) Regulation 7, PC&EC Regulation 8, and PC&EC Regulation 21.

The issues herein having been settled by agreement of Moser Construction, LLC (Respondent) and the Director of the Division of Environmental Quality¹ (DEQ), 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 June 4, 2020, Respondent demolished or caused to be demolished a structure formerly located at 400 East Arkansas Street in Star City, Lincoln County, Arkansas (the Site).

¹Pursuant to Act 910 of 2019, the Arkansas Transformation and Efficiencies Act, the former Arkansas Department of Environmental Quality is now the Division of Environmental Quality in the newly created Arkansas Department of Energy and Environment.

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 rules 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 rules 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 rule or order adopted or issued under this subchapter.

3. Ark. Code Ann. § 8-4-103(c)(1)(A) provides, “Any person that violates any provision of this chapter and rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.”

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 PC&EC Regulation 21, Chapter 4.

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

7. On May 14, 2020, a Notice of Intent (NOI) was submitted for the Site and indicated Respondent as the operator.

8. On June 4, 2020, DEQ personnel conducted an inspection of the Site. During the inspection, it was observed that the Site had been demolished by Brian Caughman Construction. At the time of inspection, DEQ personnel noted that the concession stand and Building 19 had

already been demolished. DEQ personnel took photographs of the completed demolition activities.

9. PC&EC Reg. 21.610 states that changes in operator will require the submittal of a new NOI with a new notification period and a new fee as described in Chapter 22 of Regulation 21.

10. Respondent failed to submit a new NOI to represent the change in operator for the demolition at the site. Such failure violates PC&EC Reg. 21.610, and therefore violates Ark. Code Ann. § 20-27-1007(4).

11. In an email correspondence dated June 16, 2020, Respondent submitted a Notice of Intent Revision (NOIR) notifying DEQ that there was change in the operator. DEQ received the new NOI that changed the operator for the Site to Brian Caughman Construction.

12. In a letter dated July 9, 2020, DEQ personnel notified Respondent of the violations of Regulation 21. The letter was intended to give Respondent an opportunity to review the violations found and submit any additional information Respondent deemed appropriate.

13. In correspondence dated February 8, 2021, DEQ informed Respondent that formal enforcement action was proceeding in this matter.

ORDER AND AGREEMENT

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

1. Within ninety (90) calendar days of the effective date of this CAO, an employee or an owner of Respondent shall satisfactorily complete an approved asbestos Two-Hour Regulatory Awareness training course offered by an Arkansas licensed provider. The course

ORIGINAL

shall adequately address the topics outlined in PC&EC Reg. 21.610.

2. Within ten (10) calendar days of completing the asbestos Two-Hour 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 to:

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

3. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **SEVEN HUNDRED DOLLARS (\$700.00)**. Payment is due within thirty (30) calendar days of the effective date of this CAO.

Such payment shall be made payable to:

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

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

4. All applicable submissions required by this CAO are subject to approval by DEQ. In the event of any deficiency, Respondent shall, within fifteen (15) calendar days of notification by DEQ, submit any additional information requested. Failure to respond adequately 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.

5. Failure to meet the limits, requirements, or deadlines of this CAO or the applicable approved schedules provided for herein constitutes a violation of this CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent shall pay, on

demand, to DEQ 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 DEQ'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 that may be available to DEQ by reason of Respondent's failure to comply with the requirements of this CAO. DEQ reserves its rights to collect other penalties and fines pursuant to its enforcement authority in lieu of the stipulated penalties set forth above.

6. 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 DEQ 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.

7. DEQ 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 DEQ promptly, as provided in the previous Paragraph of the ORDER AND AGREEMENT, shall be grounds for a denial of an extension.

8. 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. DEQ retains the right and discretion to rescind this CAO based on comments received within the thirty (30) day public comment period.

9. As provided by PC&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.

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

11. Nothing in this CAO shall be construed as a waiver by DEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO neither exonerates Respondent from any past, present, or future conduct that is not expressly addressed herein, nor does it relieve Respondent of the responsibilities for obtaining any necessary permits.

12. By virtue of the signature appearing below, the individual represents that he/ she is an Officer of Respondent being duly authorized to execute and bind Respondent to the terms contained herein.

SO ORDERED THIS 24 DAY OF June ~~October~~, 2021.

Becky W. Keogh
BECKY W. KEOGH, DIRECTOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

MOSER CONSTRUCTION, LLC

BY: [Signature] (Signature)

Robert Mosier (Typed or printed name)

TITLE: CEO

DATE: 6/11/21

ORIGINAL