

ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY

IN THE MATTER OF:

AFIN: 58-00897

LIS No. 21-113

CLAY COLE CONSTRUCTION CORPORATION  
711 BUTTERFIELD STAGECOACH BYPASS  
POTTSVILLE, ARKANSAS 72858

**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 Clay Cole Construction Corporation (Respondent) and the Director of the Division of Environmental Quality<sup>1</sup> (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 May 7, 2021, Respondent demolished or caused to be demolished a structure formerly located at 133 South 40<sup>th</sup> Street, Springdale, Washington County, Arkansas 72762 (the Site).

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<sup>1</sup> Pursuant 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.

ORIGINAL

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 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. APC&EC Regulation 21.501 requires that the owner or operator of a demolition, renovation, or response action shall conduct, or have conducted, a thorough inspection of the affected facility or part of the facility for the presence of asbestos including category I and category II nonfriable asbestos prior to the commencement of the demolition, renovation, or response action.

8. APC&EC Regulation 21.601 requires that for any demolition of a facility or facility component (even if no asbestos is present), the owner or operator shall submit a written Notice of Intent (NOI) to the Department by either hand delivery, post-marked by U.S. Postal Service, or post-marked by a commercial delivery service at least 10 working days before any demolition activity begins. Such notice must be accompanied by the required fee which is described in Chapter 22 of this regulation.

9. On May 6, 2021, DEQ received a complaint of demolition activities occurring at the Site.

10. On May 7, 2021, DEQ personnel investigated the demolition complaint. During the investigation, DEQ personnel observed evidence of demolition activities including piles of construction and demolition waste and dust emissions.

11. During the investigation, it was discovered that Respondent failed to conduct or have conducted a thorough asbestos inspection of the Site prior to demolition. Such failure violates APC&EC Reg. 21.501, and therefore violates Ark. Code Ann. § 20-27-1007(4).

12. During the investigation, it was also discovered that Respondent failed to submit a written NOI and appropriate NOI fee to DEQ at least ten (10) working days prior to commencing the demolition activity. As noted in paragraph 11 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. On May 10, 2021, Respondent informed DEQ personnel via a telephone conversation that an NOI for the job was not submitted and that possibly an asbestos inspection had not been conducted at the Site.

14. In email correspondence dated May 13, 2021, DEQ personnel notified Respondent of the deficiencies found at the Site and requested that the Respondent submit an NOI and waste disposal receipts and to perform a thorough asbestos inspection.

15. On May 14, 2021, Respondent submitted an NOI, waste disposal receipts, bulk sample analysis results, and a copy of the demolition permit issued by the City of Springdale to DEQ for the demolition conducted at the Site.

16. In a letter dated June 28, 2021, DEQ informed Respondent of the compliance issues identified during the May 7, 2021 investigation. 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.

17. On July 28, 2021, DEQ sent Respondent a formal enforcement letter for the compliance issues identified during the March 5, 2020 investigation.

18. On September 8, 2021, DEQ sent Respondent a proposed CAO for the violations referenced in paragraphs 11 and 12 above.

19. On September 20, 2021, Respondent submitted a response to the proposed CAO and stated that an asbestos inspection was completed prior to the commencement of demolition. The response included results from the bulk sampling conducted on April 20, 2021.

20. APC&EC Regulation 21.503(B) requires a person conducting an inspection for ACM in a facility must be trained, certified as an Inspector, and meet all other requirements of Regulation 21.

21. A review of the bulk sampling results by DEQ personnel indicated that the samples were not collected by an Arkansas licensed Asbestos Inspector and therefore determined to be invalid.

## 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 thirty (30) calendar days of the effective date of this CAO, Respondent shall take an Asbestos Two Hour Regulatory Awareness Class.

2. Within forty five (45) calendar days of the effective date of this CAO, Respondent shall submit to DEQ a certificate of completion for the Asbestos Two Hour Regulatory Awareness Class. Such certificate of completion shall be mailed 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 **THREE THOUSAND TWO HUNDRED TEN DOLLRS (\$3,210.00)**. 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 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.

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 20<sup>th</sup> DAY OF OCTOBER, 2021.

Julie Linck  
JULIE LINCK, CHIEF ADMINISTRATOR  
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,  
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

CLAY COLE CONSTRUCTION CORPORATION

BY: [Signature] (Signature)

Clay Cole (Typed or printed name)

TITLE: President

DATE: 10-12-21