

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

IN THE MATTER OF:

AFIN: 61-01076

LIS No. 22-054

SIFF'S CUSTOM TILE & FLOORING INC
P.O. BOX 1131
POCAHONTAS, AR 72455

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 Siff's Custom Tile & Flooring Inc (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 May 31, 2021, Respondent renovated or caused to be renovated a structure located at 382 W. Chestnut Street, Marianna, Lee County, Arkansas 72360 (Site-1).
2. On or before May 29, 2021, Respondent renovated or caused to be renovated a

¹ 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.

structure located at 6275 Heber Springs Road, Quitman, Van Buren County, Arkansas 72131 (Site-2).

3. On or before June 21, 2021, Respondent renovated or caused to be renovated a structure located at 199 School Drive, Shirley, Van Buren County, Arkansas 72153 (Site-3).

4. On or before September 9, 2021, Respondent renovated or caused to be renovated a structure located at 166 Schoolhouse Road, Donaldson, Hot Spring County, Arkansas 71941 (Site-4).

5. 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.

6. 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.”

7. 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.”

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

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

10. Respondent holds a current license, issued on May 26, 2021, as an Asbestos Abatement Contractor/Supervisor in the State of Arkansas. Additionally, six (6) of Respondent’s personnel hold various asbestos licenses issued by DEQ.

11. APC&EC Reg. 21.603 requires that for any renovation project involving at least 160 square feet of resilient floor and/or associated mastic covering that contains Asbestos Containing Material (ACM), the owner or operator shall submit a Notice of Intent (NOI) to DEQ. The NOI shall be submitted by either hand-delivery, post-marked by U.S. Postal Service, or post-marked by commercial delivery service at least ten (10) working days before asbestos stripping, removal work, or any other activity begins.

12. APC&EC Reg. 21.701(A)-(D) requires an owner or operator to keep at the site copies of the Asbestos Inspection Report, the NOI or any revised NOI submitted in compliance with this regulation, the Project design, and the Certifications and licenses of personnel participating in demolition, renovation, or response actions.

Site 1: 382 W. Chestnut Street, Marianna, Arkansas

13. On April 21, 2021, DEQ received a complaint alleging renovation activities at Site-1.

14. On April 28, 2021, DEQ personnel conducted a complaint investigation of Site 1. Prior to the investigation, Respondent provided a copy of the asbestos survey, but did not provide a copy of an NOI.

15. During the investigation, DEQ personnel observed evidence of renovation activity. A trailer outside of the affected structure contained floor tile waste material and inside

the structure ceiling material and flooring were missing.

16. On May 6, 2021, DEQ received an NOI (Number 14327) post-marked by the U.S. Postal Service on May 4, 2021, pertaining to renovation activities conducted by Respondent at Site 1. A review of the NOI by DEQ personnel revealed that renovation activities started on April 22, 2021, and ended on May 31, 2021. Thus, the NOI was not post-marked by the U.S. Postal Service at least ten (10) working days before renovation activities began.

17. Additionally, Respondent stated in the NOI that approximately 6,600 square feet of resilient floor tile and/or associated mastic covering containing ACM was removed during the renovation activities at Site 1. Such acts violate APC&EC Reg. 21.603, and therefore violate Ark. Code Ann. § 20-27-1007(4).

18. In correspondence dated May 12, 2021, DEQ informed Respondent of the compliance issue identified during the investigation of Site 1 that was conducted on April 28, 2021. This was intended to provide Respondent with the opportunity to review the violation and submit any additional information Respondent deemed appropriate regarding the compliance issue.

Site 2: 6275 Heber Springs Road, Quitman, Arkansas

19. On June 3, 2021, DEQ received an NOI (Number 14406) post-marked by the U.S. Postal Service on May 29, 2021, pertaining to renovation activities conducted by Respondent at Site 2. A review of the NOI by DEQ personnel revealed that renovation activities started on May 29, 2021, and ended May 29, 2021. Thus, the NOI was not post-marked by the U.S. Postal Service at least ten (10) working days before renovation activities began.

20. Additionally, Respondent stated in the NOI that approximately 2,500 square feet of resilient floor tile and/or associated mastic covering containing ACM was removed during the

renovation activities at Site 2. Such acts violate APC&EC Reg. 21.603, and therefore violate Ark. Code Ann. § 20-27-1007(4).

21. In correspondence dated September 1, 2021, DEQ informed Respondent of the compliance issues identified during the review of the NOI post-marked May 29, 2021. This was intended to provide Respondent with the opportunity to review the violation and submit any additional information Respondent deemed appropriate regarding the compliance issue.

Site 3: 199 School Drive, Shirley, Arkansas

22. On June 23, 2021, DEQ received an NOI (Number 14457) post-marked by the U.S. Postal Service on June 17, 2021, pertaining to renovation activities conducted by Respondent at Site 3. A review of the NOI by DEQ personnel revealed that renovation activities started on June 19, 2021, and ended June 21, 2021. Thus, the NOI was not post-marked by the U.S. Postal Service at least ten (10) working days before renovation activities began.

23. Additionally, Respondent stated in the NOI that approximately 6,000 square feet of resilient floor tile and/or associated mastic covering containing ACM was removed during the renovation activities at Site-3. Such acts violate APC&EC Reg. 21.603, and therefore violate Ark. Code Ann. § 20-27-1007(4).

24. In correspondence dated September 1, 2021, DEQ informed Respondent of the compliance issues identified during the review of the NOI post-marked June 17, 2021. This was intended to provide Respondent with the opportunity to review the violation and submit any additional information Respondent deemed appropriate regarding the compliance issue.

Site 4: 166 Schoolhouse Road, Donaldson, Arkansas

25. On August 31, 2021, DEQ received, via email, a revised NOI (Number 14647) pertaining to renovation activities scheduled to be conducted by Respondent at Site 4. A review

of the NOI by DEQ personnel revealed that renovation activities were to start at 8:00 a.m. on September 9, 2021, and end at 6:00 p.m. on September 10, 2021.

26. On September 9, 2021, DEQ personnel arrived at Site 4 at 9:18 a.m. to conduct an inspection of the scheduled renovation.

27. The inspection revealed Respondent failed to keep at the site copies of an Asbestos Inspection Report, the NOI or any revised NOI submitted in compliance with this regulation, the Project design, and Certifications and licenses of personnel participating in demolition, renovation, or response actions. Such failures violate APC&EC Reg. 21.701(A-D), and therefore violate Ark. Code Ann. § 20-27-1007(4).

28. On September 16, 2021, DEQ received Respondent's revised NOI for renovation activities at Site 4. The revised NOI reported renovation began on September 9, 2021, at 4:00 p.m. and ended at 12:00 a.m. on September 9, 2021.

29. In correspondence dated October 7, 2021, DEQ informed Respondent of the compliance issues identified during the investigation of Site 4 that was conducted on September 9, 2021. This was intended to provide Respondent with the opportunity to review the violation and submit any additional information Respondent deemed appropriate regarding the compliance issue.

30. In correspondence dated October 26, 2021, DEQ informed Respondent that a formal enforcement action is proceeding for the compliance issues associated with Site 1, Site 2, Site 3, and Site 4.

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. This CAO addresses all violations contained in the FINDINGS OF FACT.

2. In compromise and full settlement for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **FOUR THOUSAND THREE HUNDRED FIVE DOLLARS (\$4,305.00)**. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

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

10. 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.

11. 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 26th DAY OF April, 2022.


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

APPROVED AS TO FORM AND CONTENT:

SIFF'S CUSTOM TILE & FLOORING INC

BY:  (Signature)

Jody Sifford (Typed or printed name)

TITLE: President

DATE: 4-18-22