

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

IN THE MATTER OF:

AFIN: 14-00050

LIS No. 24-048

CITY OF WALDO
308 EAST MAIN STREET
WALDO, AR 71770

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) Rule 7, APC&EC Rule 8, and APC&EC Rule 21.

The issues herein having been settled by agreement of City of Waldo (Respondent) and the Director of the Division of Environmental Quality (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 August 16, 2022, Respondent renovated or caused to be renovated a structure formerly the Home Economics Building at the Old Waldo High School located at 203 East Askew Street, Waldo, Columbia County, Arkansas 71770 (the Site).

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 in question constitutes a "facility" as defined in APC&EC Rule 21, Chapter 4.

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

7. On August 16, 2022, DEQ personnel conducted a complaint investigation of the renovation activities taking place at the Site. Although no active demolition was taking place, evidence of demolition activities, including four concrete foundations where structures once stood and another structure with partially removed brick and exposed transite siding, was observed. Further investigation of the Site revealed suspect asbestos containing materials including white floor tile, tan floor tile, blue floor tile, ceramic floor tile, and backer board on the concrete

foundations.

8. During the investigation, DEQ personnel requested a copy of the thorough asbestos inspection report for the Site. Subsequently, a thorough asbestos inspection report was provided; however, a review of the report revealed that the structure with the partially removed brick and exposed transite siding was not included.

9. APC&EC Rule 21.501 states 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.

10. Respondent failed to conduct or have conducted a thorough asbestos inspection of the affected facility prior to renovation. Such a failure violates APC&EC Rule 21.501, and therefore violates Ark. Code Ann. § 20-27-1007(4).

11. APC&EC Rule 21.603 states that for the activities listed below, the owner or operator shall submit a Notice of Intent (NOI) to DEQ by either hand-delivery, post-marked by U.S. Postal Service, or post-marked by commercial delivery service at least 10 working days before asbestos stripping, removal work, or any other activity begins (such as site preparation that would break up or dislodge or similarly disturb asbestos containing material). Such notice must be accompanied by the required fee which is described in Chapter 22 of this rule. For any renovation project, including any non-scheduled renovation operation involving the following amounts of RACM: at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or at least one cubic meter (35 cubic feet) where the length could not be measured previously.

12. Respondent failed to submit a written NOI and appropriate NOI fee to DEQ at least ten (10) working days prior to commencing the renovation activity. Such a failure violates APC&EC Rule 21.603, and therefore violates Ark. Code Ann. § 20-27-1007(4).

13. In correspondence dated February 1, 2023, DEQ informed Respondent of the APC&EC Rule 21 violations identified during the August 16, 2022 investigation. This was intended to provide Respondent with the opportunity to review the violations and submit any additional information Respondent deemed appropriate.

14. In correspondence dated June 1, 2023, DEQ informed Respondent that formal enforcement action was proceeding regarding 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, Respondent shall select personnel employed by Respondent to satisfactorily complete an approved asbestos Two-Hour Regulatory Awareness training course offered by an Arkansas licensed provider. The course shall adequately address the topics in APC&EC Rule 21.501 and APC&EC Rule 21.601.

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 Program
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 FOUR HUNDRED EIGHTY DOLLARS (\$3,480.00)**. Respondent shall make payment of **ONE THOUSAND SEVEN HUNDRED FORTY DOLLARS (\$1,740.00)** of the assessed monetary penalty within thirty (30) calendar days of the effective date of this CAO. The remaining **ONE THOUSAND SEVEN HUNDRED FORTY DOLLARS (\$1,740.00)** will be held in abeyance conditional on Respondent completing the asbestos Two-Hour Regulatory Awareness training course referenced in paragraphs 1 and 2 of the ORDER AND AGREEMENT section of this CAO.

4. In the event that Respondent fails to complete the asbestos Two-Hour Regulatory Awareness training course referenced in Paragraphs 1 and 2 of the ORDER AND AGREEMENT section of this CAO, then payment of the remaining **ONE THOUSAND SEVEN HUNDRED FORTY DOLLARS (\$1,740.00)** shall be due within thirty (30) calendar days of being notified by DEQ.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. As provided by APC&EC Rule 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.

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

13. 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.


14. This Order has been reviewed and approved by the City Council of the City of

Waldo in a duly convened meeting with a quorum present. It is the intention of the City Council to be bound by the terms appearing in the Order.

15. The City Council of the City of Waldo has authorized the Mayor and the City Clerk/Treasurer to sign this Order on behalf of the City.

16. The City Council of the City of Waldo has authorized the Mayor and City Clerk/Treasurer to expend funds for compliance activities required by this Order including but not limited to the payment of a civil penalty in the amount listed above.

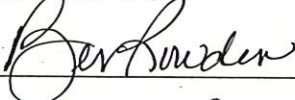
SO ORDERED THIS 15th DAY OF March, 2024.



CALEB J. OSBORNE
DIVISION OF ENVIRONMENTAL QUALITY, DIRECTOR
CHIEF ADMINISTRATOR, ENVIRONMENT
ARKANSAS DEPARTMENT OF ENERGY & ENVIRONMENT

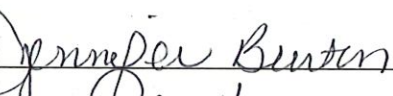
APPROVED AS TO FORM AND CONTENT:

CITY OF WALDO

BY:  (Signature)
Beverly Bowden (Typed or printed name)

TITLE: Mayor

DATE: 2-27-24

BY:  (Signature)
Jennifer Burton (Typed or printed name)

TITLE: Bookkeeper

DATE: 2/21/24