

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:)	DIVISION OF AIR POLLUTION CONTROL
)	
)	
TOWN OF SELMER,)	
)	
)	
RESPONDENT.)	CASE NO. APC21-0180

TECHNICAL SECRETARY'S ORDER AND ASSESSMENT OF CIVIL PENALTY

Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, states:

PARTIES

I.

Michelle Walker Owenby is the Technical Secretary of the Air Pollution Control Board ("Board") and Director of the Division of Air Pollution Control ("Division"), Tennessee Department of Environment and Conservation ("Department").

II.

Town of Selmer ("Respondent") is a municipality authorized to do business in the state of Tennessee. Respondent's business address is 144 North Second Street, Selmer, Tennessee 38375-2192. Service of process may be made upon Respondent at this same address.

AUTHORITY

III.

The Technical Secretary may assess a civil penalty of up to \$25,000.00 per day for each day of violation of the Tennessee Air Quality Act, Tenn. Code Ann. §§ 68-201-101 to -121 ("Act"), or Tennessee Air Pollution Control Regulations, Tenn. Comp. R. & Regs. 1200-03-01 to -36; 0400-30-01 to -39, ("Rules"). Tenn. Code Ann. § 68-201-116. The Technical Secretary may issue an order for correction to the responsible person when provisions of the Act or Rules are violated, and such person may be liable for resulting damages to the State. *Id.*

IV.

Respondent is a “person,” Tenn. Code Ann. § 68-201-102(7), and has violated the Act and Rules.

V.

“Air contaminant” means particulate matter, dust, fumes, gas, mist, smoke, vapor, or any combinations thereof. Tenn. Code Ann. § 68-201-102(1).

VI.

“Air contaminant source” means any and all sources of emission of air contaminants, whether privately or publicly owned or operated. Tenn. Code Ann. § 68-201-102(2).

VII.

Asbestos is an “air contaminant” within the meaning of the Act, Tenn. Code Ann. § 68-201-102, and is designated as a hazardous air contaminant, Tenn. Comp. R. & Regs. 1200-03-11-.01(a).

VIII.

“Facility” means any institutional, commercial, public, industrial, or residential structure, installation, or building (excluding any residential buildings having four or fewer dwelling units); any ship; and any active or inactive waste disposal site. Tenn. Comp. R. & Regs. 1200-03-11-.02(1)(p). The property located at 305 East Poplar Avenue, Selmer, Tennessee 38375 is a facility (hereafter, the “Facility”).

IX.

“Demolition” means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility. Tenn. Comp. R. & Regs. 1200-03-11-.02(1)(m).

X.

“Renovation” means altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos containing material (RACM) from a facility component. Tenn. Comp. R. & Regs. 1200-03-11-.02(1)(kk). Operations in which load-

supporting structural members are wrecked or taken out are demolitions. Tenn. Comp. R. & Regs. 1200-03-11-.02(1)(m).

XI.

“Owner or operator of a demolition or renovation activity” means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both. Respondent is a supervisor of the demolition or renovation activities conducted at the Facility.

XII.

Demolition or renovation activity may emit asbestos into the air and is a potential air contaminant source.

FACTS

XIII.

On December 20, 2017, Division personnel sent an outreach email explaining the regulations concerning the demolition or renovation of buildings to the Town of Selmer’s (the “Town”) Building Inspector and Code Enforcement Officer.

XIV.

On May 1, 2019, Division personnel sent an outreach letter to the Town of Selmer’s Mayor. The letter explained that because the Town of Selmer’s codes enforcement office may issue permits for demolition or renovation of buildings, the Division requested their assistance in making applicants aware of the asbestos inspection and notification requirements.

XV.

On October 21, 2021, a Division inspector conducted an inspection at the Facility in response to a complaint, and discovered that the building had been demolished and the demolition waste had been removed from the Facility. The Division inspector observed a remaining building slab that contained approximately 585 square feet of floor tile. The Division inspector collected a sample of the floor tile for laboratory analysis. At the time of inspection, the floor tile was intact and in good condition. On this date, the Division inspector was informed by Respondent that the building had been condemned by the Town and ordered to be demolished. The property owner of the Facility did not demolish the building; instead the Town hired a contractor to demolish the

building. Notification of demolition was not provided to the Division prior to demolition activity. An asbestos survey was not conducted prior to demolition. On October 21, 2021, the Division received a Notification of Demolition and/or Asbestos Renovation from the Town of Selmer.

XVI.

On or about November 10, 2021, the Division received a copy of the Condemnation Notice that had been served to the property owner of the Facility by the Town of Selmer on August 27, 2020. On or about November 10, 2021, the Division also received a copy of the Order of the Code Enforcement to Demolish the Facility that had been served to the property owner of the Facility by the Town of Selmer on October 7, 2020. On or about November 10, 2021, The Division also received a copy of the final letter served on August 26, 2021, informing the property owner of the Facility that due to inaction, the Town of Selmer must proceed with the demolition of the Facility.

XVII.

On November 11, 2021, the Division received the laboratory analytical results from the samples taken at the time of inspection. The presence of asbestos in the floor tiles was confirmed. The floor tile is considered a non-friable asbestos material.

XVIII.

On November 17, 2021, the Division issued a Notice of Violation to Respondent for failing to submit a Notification of Demolition and/or Asbestos Renovation and for failing to thoroughly inspect for the presence of asbestos prior to the demolition activity at the Facility.

VIOLATIONS

XIX.

By failing to provide the Technical Secretary with proper written notice of intention to demolish, the Respondent has violated Tenn. Comp. R. & Regs. 1200-03-11-.02(2)(d)(2)(i) and – (iii)(I) which state, in pertinent part:

Notification requirements. Each owner or operator of a demolition or renovation activity to which this subparagraph applies shall:

(i) Provide the Technical Secretary with written notice of intention to demolish or renovate.

...

(iii) Postmark or deliver the notice as follows:

(I) At least 10 working days before asbestos stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material) . . .

XX.

By failing to thoroughly inspect the facility prior to renovation, the Respondent has violated Tenn. Comp. R. & Regs. 1200-03-11.-02(2)(d)(1), which states, in pertinent part:

1. Applicability. To determine which requirements of parts 1, 2, and 3 of this subparagraph apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of parts 2 and 3 of this subparagraph apply to each owner or operator of a demolition or renovation activity, including the removal of RACM. . . .

ORDER AND ASSESSMENT OF CIVIL PENALTY

XXI.

- 1) Respondent is assessed a civil penalty of \$3,000.00, for violation of the Act and Rules.
- 2) Respondent is assessed \$11.50 in damages.

All payments shall be paid to the Department at the following address:

Division of Fiscal Services - Consolidated Fees Section
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 10th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

The civil penalty shall be delivered to the Department on or before the 31st day after receipt of this Order and Assessment of Civil Penalty. The case number, APC21-0180, should be clearly written on all correspondence.

RESERVATION OF RIGHTS

In issuing this Order and Assessment of Civil Penalty, the Department does not implicitly or expressly waive any provision of the Act or Rules promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against the Respondent(s). The

Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action(s).

NOTICE OF RIGHTS

The Respondent may appeal this Order and Assessment. Tenn. Code Ann. §§ 68-201-108(a) and 68-201-116(b). To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Technical Secretary within 30 days of the date Respondent received this Order and Assessment or this Order and Assessment becomes final. Any petition for review must be directed to:

Commissioner of the Department of Environment and Conservation
c/o Jenny L. Howard, General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 2nd Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 68-201-108(a); Tenn. Code Ann. § 4-5-301 to -325; Tenn. Comp. R. & Regs. 1360-04-01. Such hearings are legal proceedings in the nature of a trial. Individual respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Artificial respondents (*e.g.*, corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The ALJ, on behalf of the Board, has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing

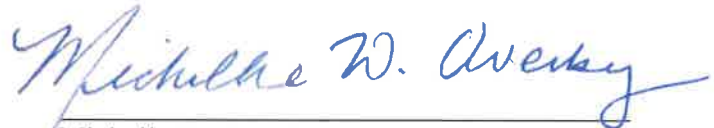
expenses associated with the setting of the matter for a hearing, and hourly fees incurred due to the presence of the ALJ and a court reporter.

Technical questions and other correspondence involving compliance issues should be sent to:

Kevin McLain, Division of Air Pollution Control
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower, 15th Floor
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243

Attorneys should contact the undersigned counsel of record. The case number, APC21-0180, should be written on all correspondence regarding this matter.

Issued by the Technical Secretary, Tennessee Air Pollution Control Board, Department of Environment and Conservation, on this 11th day of May, 2022.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



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