

**ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY**

IN THE MATTER OF:

AFIN: 03-00473

LIS No. 16-091

FREEMAN & HASSELWANDER DEVELOPMENT CO., L.L.C.  
25 AIRPORT PLACE  
MIDWAY, ARKANSAS 72561

**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 Freeman & Hasselwander Development Co., L.L.C. (Respondent) and the Director of the Arkansas Department of Environmental Quality (ADEQ), 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 February 16, 2016, Respondent demolished or caused to be demolished two (2) structures formerly located on or about 1893 US Highway 62 East, Mountain Home, Baxter County, Arkansas 72653 (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 regulations 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 regulations 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 regulation or order adopted or issued under this subchapter.

3. Ark. Code Ann. § 8-4-103(c)(1) as referenced by Ark. Code Ann. §20-27-1002(a) authorizes ADEQ to assess an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation for any violation of any provision of the Act and any regulation or permit issued pursuant to the Act.

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 Regulation 21, § 4.

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

7. On February 16, 2016, ADEQ received a complaint alleging noncompliance with APC&EC Regulation 21 for asbestos renovation and demolition activities at the site.

8. During a complaint investigation conducted on February 18, 2016, an ADEQ inspector discovered that Respondent had demolished two (2) structures at the site without first conducting a thorough asbestos inspection of the affected structures prior to demolition. Such failure violates APC&EC Reg.21.501, and therefore violates Ark. Code Ann. § 20-27-1007(4).

9. During the complaint investigation, it was also discovered that Respondent had

failed to submit a written NOI and appropriate NOI fee to ADEQ at least ten (10) working days prior to commencing the demolition activity. As noted in paragraph 8 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).

### **ORDER AND AGREEMENT**

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

1. This CAO addresses all violations set forth in the FINDINGS OF FACT.
2. In compromise and full settlement of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **THREE THOUSAND FIVE HUNDRED DOLLARS (\$3,500.00)**, or one-half of the penalty, **ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750.00)** if this CAO is signed and returned to Air Enforcement Section, ADEQ, 5301 Northshore Drive, North Little Rock, Arkansas 72118-5317, prior to 4:00 p.m. on **November 14, 2016**. Payment is due within thirty (30) calendar days of the effective date of this CAO. Such payment shall be made payable to:

ADEQ, 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, ADEQ shall be entitled to attorneys' fees and costs associated with collection.

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

respond 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 said CAO. If Respondent fails to meet any limits, requirements, or deadlines, Respondent consents and agrees to pay, on demand, to ADEQ 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 ADEQ'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 which may be available to ADEQ by reason of Respondent's failure to comply with the requirements of this CAO. ADEQ 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 ADEQ 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. ADEQ 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 ADEQ 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. ADEQ retains the right and discretion to rescind this CAO based on comments received within the thirty-day public comment period.

8. As provided by APC&EC Regulation Number 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 ADEQ of its enforcement authority over alleged violations not specifically addressed herein. In addition, this CAO does not exonerate Respondent from any past, present, or future conduct which is not expressly addressed herein, nor does it relieve Respondent of the responsibilities for obtaining any applicable permits.

11. By virtue of the signature appearing below, the individual represents that he or she is a Managing Member of Respondent, being duly authorized to execute and bind

Respondent to the terms contained herein. Execution of this CAO by an individual other than a Managing Member of Respondent shall be accompanied by a resolution granting signature authority to said individual as duly ratified by the governing body of the entity.

SO ORDERED THIS 17 DAY OF November, 2016.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

FREEMAN & HASSELWANDER DEVELOPMENT CO., L.L.C.

BY: Brad Hasselwander (Signature)

Brad Hasselwander (Typed or printed name)

TITLE: Managing Member

DATE: 11-11-2016

SO ORDERED THIS 15 DAY OF November, 2016.

Becky W. Keogh  
BECKY W. KEOGH, DIRECTOR

ARKANSAS DEPARTMENT OF  
ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

TERRA PIANITA, LLC

BY: Mark Bryant (Signature)

Mark Bryant (Typed or printed name)

TITLE: owner

DATE: 11-14-16