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Asbestos Enforcement: Arkansas Department of Energy and Environment - Division of Environmental Quality and El Dorado Property Owner Enter into Consent Administrative Order

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The Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) and Cunningham Apartment Homes, LLC (“Cunningham”) entered into a December 7th Consent Administrative Order (“CAO”) addressing an alleged violation of Arkansas Pollution Control and Ecology Regulation 21 (Asbestos Regulations). See LIS No. 20-196.

The CAO indicates that Cunningham owns a structure identified as Cunningham Court Apartments (“Apartments”) in El Dorado, Arkansas.

The Apartments are stated to constitute a facility as defined in Regulation 21, Chapter 4. Further, Cunningham is stated to meet the definition of an owner or operator of a demolition or renovation activity as defined in Regulation 21, Chapter 4.

A complaint investigation by DEQ personnel is stated to have been conducted on April 2nd . This investigation is stated to have determined that renovation had begun on a structure at the Apartments. DEQ personnel are state to have observed:

. . . that sheetrock, ceiling tiles, and carpet had been removed from Apartment Unit 1 as part of a renovation of the Site.

Cunningham is stated to have indicated to DEQ that there had been a failure to conduct or have conducted an asbestos inspection of the apartment. Cunningham is indicated to have stated that:

. . . they were told by the City of El Dorado Code Enforcement that an asbestos inspection was not required because the structure had been a residence for over 30 years.

DEQ personnel are stated to have explained to Cunningham that the structure constitutes a facility because it was a building used for commercial purposes and, therefore, subject to the requirements of Regulation 21. As a result, the Complaint states that Cunningham was unable to provide DEQ with an inspection report or results of any bulk sample analysis, violating:

- Reg. 21.501

- Reg. 21.701(A)
- Reg. 21.703

Cunningham also is stated to have indicated in correspondence that in early January 2020 a contractor had been hired to renovate an apartment but was dismissed in late February or early March without having completed the renovation project. The contractor is stated to have not provided Cunningham with waste disposal receipts of the material removed as part of the renovation.

Cunningham is stated to have provided DEQ on April 27th with a copy of an asbestos polarized light microscopy (“PLM”) report of analyses that were performed by a lab on 13 samples collected from the relevant apartment. The lab report is stated to have identified four of the 13 samples as containing asbestos. Further, it is noted that the sample material containing asbestos included:

. . . tan floor tile, black mastic, and ceiling plaster varying in content of 3 to 5 percent chrysotile asbestos.

Cunningham disclosed that the materials that were found to contain asbestos had not been part of the renovation nor had they been disturbed in the renovation project.

Cunningham neither admits nor denies the factual allegations in the CAO.

The CAO assesses a civil penalty of \$1,680.

A copy of the CAO can be downloaded [here](#).