

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

IN THE MATTER OF:

AFIN: 04-02552

LIS No. 19-114

ESMERKI DE LOS SANTOS
1101 WEST CHESTNUT STREET
ROGERS, ARKANSAS 72756

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 Esmerki De Los Santos (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 October 29, 2018, Respondent renovated or caused to be renovated a structure located at 1101 West Chestnut Street, Rogers, Benton County, Arkansas 72756 (the Site).

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.

ORIGINAL

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)(A) as referenced by Ark. Code Ann. §20-27-1002(a) authorizes DEQ 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(s) in question constitutes a “facility” as defined in APC&EC Regulation 21, Chapter 4.

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

7. On October 29, 2018, DEQ received a complaint regarding the removal of material from the Site without an asbestos inspection being conducted prior to renovation and removal.

8. On November 6, 2018, DEQ personnel visited the Site to conduct an investigation into the complaint; however, there was no one on-site. On November 7, 2018, DEQ personnel

spoke with Respondent regarding the requirements of the Arkansas Asbestos Abatement Regulation 21 (Regulation 21). Respondent stated that renovation was performed prior to an asbestos inspection and started on July 1, 2018, through the end of August 2018. The renovation included the removal of 12x12 floor tiles, mastic, and carpet. The investigation revealed that Respondent failed to conduct or have conducted a thorough asbestos inspection of the affected facility prior to renovation. Such failure violates APC&EC Reg.21.501, and therefore violates Ark. Code Ann. § 20-27-1007(4).

9. On October 9, 2018, Respondent had an asbestos inspection conducted on suspect building materials at the Site. The asbestos inspection report results indicated that some of the suspect building materials at the Site contained regulated asbestos containing material including the 12x12 floor tiles and the mastic. Furthermore, the asbestos inspection report provided that the Site had already experienced considerable demolition before the inspection and that a licensed abatement contractor would be needed to comply with Regulation 21 to continue renovations.

10. Subsequently, Respondent stated that Snyder Environmental was contacted for renovation of the Site; however, they refused to renovate the Site because suspect building material was removed prior to the asbestos inspection being performed.

11. On October 29, 2018, Respondent submitted an example of a NOI form to DEQ. The NOI form stated that the majority of the facility had experienced demolition when the inspection was conducted on October 9, 2018. The NOI form also stated that approximately 585 square feet of floor tile containing asbestos remain in the building, an estimated 2,000 square feet of tile floor presumed to contain asbestos was removed.

12. In a letter dated November 20, 2018, DEQ informed Respondent of the compliance issues identified during the investigation conducted on November 6, 2018. This letter

was intended to give Respondent an opportunity to review the issues identified and submit any additional information Respondent deems appropriate.

13. In a letter dated December 4, 2018, DEQ informed Respondent that the case is proceeding through formal enforcement channels and to contact DEQ if Respondent had any further information that was pertinent to the matter.

14. On December 5, 2018, Respondent submitted an email response to the December 4, 2018 letter. Respondent stated that renovation activities were not conducted, but only the cleaning out of some of the carpet and the removal of some of the cabinets.

15. Respondent retained ATOKA, Inc. to develop a corrective action plan (the Plan) for asbestos clean-up after renovations at the Site.

16. On January 3, 2019, ATOKA, Inc. personnel conducted an assessment of the Site.

17. On January 21, 2019, Respondent submitted the Plan prepared by ATOKA, Inc. to DEQ. The Plan stated that all debris had been cleaned up prior to the assessment. The Plan also stated that according to Respondent's future renovation plans, none of the existing asbestos containing material would be disturbed.

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 of the violations specified in the FINDINGS OF FACT, Respondent agrees to pay a civil penalty of **FIVE HUNDRED DOLLARS (\$500.00)**. 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.

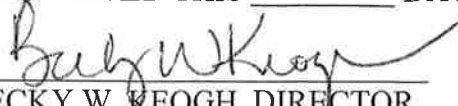
8. As provided by APC&EC Regulation 8, this matter is subject to being reopened upon Commission initiative or in the event a petition to set aside this CAO is granted by the Commission.

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.

SO ORDERED THIS 16th DAY OF December, 2019.


BECKY W. KEOGH, DIRECTOR
ARKANSAS DEPARTMENT OF ENERGY AND ENVIRONMENT,
DIVISION OF ENVIRONMENTAL QUALITY

APPROVED AS TO FORM AND CONTENT:

ESMERKI DE LOS SANTOS

BY:  (Signature)

Esmerki De los Santos (Typed or printed name)

TITLE: Pastor

DATE: 11/13/2019

