

ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
Martin-Aycock Properties, LLC)
Demolition of Commercial Property)
Florence, Lauderdale County, Alabama)
CONSENT ORDER No. 20-__-CAP

PREAMBLE

This Special Order by Consent is made and entered into by the Alabama Department of Environmental Management (hereinafter, "the Department" and/or "ADEM") and Martin-Aycock Properties, LLC (hereinafter, "Owner") pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code, §§22-22A-1 through 22-22A-17, as amended, the Alabama Air Pollution Control Act, Ala. Code §§22-28-1 to 22-28-23, as amended, and the regulations promulgated pursuant thereto.

- 1. Owner is the owner of real property, namely: Former AlSCO, Inc., located at 1161 Florence Blvd in Florence, Lauderdale County, Alabama (hereinafter, the "Site").
2. The Department is a duly constituted department of the State of Alabama pursuant to Ala. Code §§ 22-22A-1 to 22-22A-17, as amended.
3. Pursuant to Ala. Code § 22-22A-4(n), as amended, the Department is the state air pollution control agency for the purposes of the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, as amended.

4. The U.S. Environmental Protection Agency's National Emission Standard for Hazardous Air Pollutants (NESHAP), found at 40 C.F.R. Part 61, Subpart M, is incorporated by reference in ADEM Admin. Code r. 335-3-11-.02(12).

5. 40 C.F.R. § 61.141 defines Regulated asbestos-containing material (RACM) as (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

6. 40 C.F.R. § 61.145(a)(1) states that in a facility being demolished, all the requirements of paragraphs (b) and (c) of this section apply, except as provided in paragraph (a)(3) of this section, if the combined amount of RACM is at least 260 linear feet on pipes, at least 160 square feet on other facility components, or at least 35 cubic feet off facility components where the length or area could not be measured previously.

7. 40 C.F.R. § 61.145(b)(3)(i) requires the owner or operator of a demolition or renovation activity for a subject facility to provide written Notice of Intention to Demolish or Renovate (hereinafter, "Notice") at least ten workdays before demolition, asbestos stripping or removal work, or any other activity which disturbs the asbestos.

8. 40 C.F.R. § 61.145(c)(1) requires the removal of all RACM from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

9. ADEM Admin. Code r. 335-3-11-.05(1) states that any person, firm, organization, or corporation who is the owner or operator of any asbestos removal project

for which notification is required pursuant to the requirements of rule 335-3-11-.02(12) shall ensure that the parties executing the asbestos removal project are certified by the Department.

DEPARTMENT'S CONTENTIONS

10. On August 13, 2019, the Department learned about the demolition of the Site through a news article in the Times Daily. The demolition of the building was conducted without the Department having received the required notification, in violation of ADEM. Admin. Code r. 335-3-11-.02(12).

11. On September 4, 2019, the Department issued a Notice of Violation to Owner based upon the information in the news article concerning demolition at the Site.

12. On September 26, 2019, the Department received a response to the Violation letter from the Owner. The response stated that Owner contracted Geo-Source, Inc. to perform a Phase 1 Environmental Site Assessment on the property. Based on the Phase 1 Owner states no asbestos was present

13. On October 4, 2019, the Department received follow up information from Geo-Source, Inc. This follow up clarifies that Geo-Source, Inc. did not address asbestos in their Phase 1 Environmental Site Assessment nor were they hired by Owner to conduct a thorough asbestos inspection. Therefore, the Department did not received the required Notice prior to the demolition beginning and there was no thorough asbestos inspection conducted by an Alabama Accredited Asbestos Inspector of the Site.

14. Pursuant to Ala. Code § 22-22A-5(18)c., *as amended*, in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic

benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: Owner failed to have the required asbestos inspection of the Site performed and failed to submit the required notification to the Department prior to demolishing the structures. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: Owner failed to have performed the required asbestos inspection of the Site and failed to submit the required notification to the Department prior to demolishing the building. The Department considers these violations to be serious.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Owner likely derived an economic benefit by not notifying the Department and not performing the required asbestos inspection before demolishing the Site.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Owner to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Owner has no known prior history with the Department for violating demolition/asbestos regulations.

F. THE ABILITY TO PAY: Owner has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: The Owner, by failing to have the required asbestos inspection of the Site performed prior to demolition, risked exposing its employees, contractors, and other individuals to asbestos.

15. The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement, and has concluded that a civil penalty herein is appropriate (*See* “Attachment A” which is hereby made a part of the Department’s contentions).

16. The Department neither admits nor denies Owner’s contentions, which are set forth below. The Department has agreed to the terms of this Consent Order in an effort to resolve the alleged violations cited herein without unwarranted expenditure of State resources in prosecuting the above violations. The Department has determined that the terms contemplated in this Consent Order are in the best interests of the citizens of Alabama.

OWNER’S CONTENTIONS

17. Owner neither admits nor denies the Department’s contentions. As such, this Consent Order shall not be deemed or construed as an admission of liability by Owner. Notwithstanding the foregoing, Owner consents to abide by the terms of this Consent Order and pay the civil penalty assessed herein.

18. Owner contends that it contracted with Geo-Source, Inc. to perform a Phase 1 Environmental Site Assessment on the property and that the assessment performed only

result in a finding of environmental conditions for a petroleum release. Owner incorrectly concluded this to mean no asbestos was present. Furthermore, Owner contracted with EDSU, Inc. to demolish the building on the property at a price of \$140,000.00, and Owner relied upon EDSU, Inc. to fulfill its contract obligations, including, prior to beginning demolition work, to comply with permitting requirements of the city, county and state.

ORDER

THEREFORE, Owner, along with the Department, desires to resolve and settle the compliance issues cited above. The Department has carefully considered the facts available to it and has considered the six penalty factors enumerated in Ala. Code § 22-22A-5(18)c., *as amended*, as well as the need for timely and effective enforcement and has determined that the following conditions are appropriate to address the violations alleged herein. Therefore, the Department and Owner agree to enter into this Consent Order with the following terms and conditions:

A. Owner agrees to pay to the Department a civil penalty in the amount of \$7,500.00 in settlement of the violations alleged herein within forty-five days from the effective date of this Consent Order. Failure to pay the civil penalty within forty-five days from the effective date may result in the Department's filing a civil action in the Circuit Court of Montgomery County to recover the civil penalty.

B. Owner agrees that all penalties due pursuant to this Consent Order shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

C. Owner agrees, that immediately upon receipt of this Order and continuing thereafter, to comply with 40 C.F.R. Part 61, Subpart M, as adopted by ADEM Admin. Code r. 335-3-11-.02, particularly as it applies to renovation and demolition operations.

D. The parties agree that this Consent Order shall apply to and be binding upon both parties, their directors, officers, and all persons or entities acting under or for them. Each signatory to this Consent Order certifies that he or she is fully authorized by the party he or she represents to enter into the terms and conditions of this Consent Order, to execute the Consent Order on behalf of the party represented, and to legally bind such party.

E. The parties agree that, subject to the terms of these presents and subject to provisions otherwise provided by statute, this Consent Order is intended to operate as a full resolution of the alleged violations and/or deviations which are cited in this Consent Order.

F. Owner agrees that it is not relieved from any liability if it fails to comply with any provision of this Consent Order.

G. For purposes of this Consent Order only, Owner agrees that the Department may properly bring an action to compel compliance with the terms and conditions contained herein in the Circuit Court of Montgomery County. Owner also agrees that in any action brought by the Department to compel compliance with the terms of this Agreement, Owner shall be limited to the defenses of *Force Majeure*, compliance with this Agreement and physical impossibility. A *Force Majeure* is defined as any event arising from causes that are not foreseeable and are beyond the reasonable control of Owner, including its contractors and consultants, which could not be overcome by due diligence (i.e., causes which could have been overcome or avoided by the exercise of due diligence will not be considered to have been beyond the reasonable control of Owner) and which delays or prevents performance by a date required by the Consent Order. Events such as

unanticipated or increase costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, state, or local permits shall not constitute *Force Majeure*. Any request for a modification of a deadline must be accompanied by the reasons (including documentation) for each extension and the proposed extension time. This information shall be submitted to the Department a minimum of ten working days prior to the original anticipated completion date. If the Department, after review of the extension request, finds the work was delayed because of conditions beyond the control and without the fault of Owner, the Department may extend the time as justified by the circumstances. The Department may also grant any other additional time extension as justified by the circumstances, but it is not obligated to do so.

H. The Department and Owner agree that the sole purpose of this Consent Order is to resolve and dispose of all allegations and contentions stated herein concerning the factual circumstances reference herein. Should additional facts and circumstances be discovered in the future concerning the facility which would constitute possible violations not addressed in this Consent Order, then such future violations may be addressed in Orders as may be issued by the Director, litigation initiated by the Department, or such other enforcement action as may be appropriate, and Owner shall not object to such future orders, litigation, or enforcement action based on the issuance of this Consent Order if future orders, litigation, or other enforcement action addresses new matters not raised in this Consent Order.

I. The Department and Owner agree that this Consent Order shall be considered final and effective immediately upon signature of all parties. This Consent Order shall not be appealable, and Owner does hereby waive any hearing on the terms and conditions of the same.

J. The Department and Owner agree that this Order shall not affect its obligation to comply with any Federal, State, or local laws or regulations.

K. The Department and Owner agree that final approval and entry into this Order are subject to the requirements that the Department give notice of proposed Orders to the public, and that the public have at least thirty days within which to comment on the Order.

L. The Department and Owner agree that, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

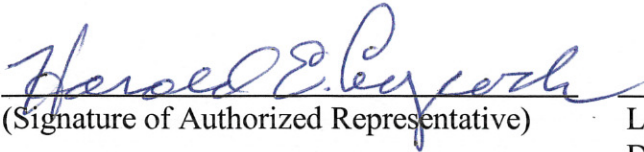
M. The Department and Owner agree that any modifications of this Order must be agreed to in writing signed by both parties.

N. The Department and Owner agree that, except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State, or local law, and shall not be construed to waive or relieve Owner of its obligations to comply in the future with any permit.

Executed in duplicate, with each part being an original.

MARTIN-AYCOCK PROPERTIES, LLC

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT



(Signature of Authorized Representative)

Lance R. LeFleur
Director

Harold E. Aycock
(Printed Name)

Authorized Member
(Printed Title)

04/14/2020
(Date Executed)

(Date Executed)

ATTACHMENT A

**Martin-Aycock Properties , LLC
Demolition of Commercial Property
Florence, Lauderdale County n Capture Center**

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to notify the Department before demolishing the Site	1	\$2,000	\$2,000	\$0	
Failure to have Site inspected by an Alabama certified asbestos inspector	1	\$2,000	\$2,000		Total of Three Factors
TOTAL PER FACTOR		\$4,000	\$4,000	\$0	\$8,000

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	2,500
Total Adjustments (+/-) Enter at Right	\$2,500

Economic Benefit (+)	\$2,000
Amount of Initial Penalty	\$10,000
Total Adjustments (+/-)	\$2,500
FINAL PENALTY	\$7,500.00

Footnotes

* See the "Department's Contentions" portion of the Order for a detailed description of each violation and the penalty factors.