



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, TN 37243

February 7, 2022

Bryce A. Powers
46 Union St
Clarksville, Tennessee 37040-3653

Certified Article Number

9414 7266 9904 2170 1008 51

SENDER'S RECORD

RE: Providence Builders, LLC
Case No. APC20-0105

Dear Mr. Powers:

Enclosed please find an Order and Assessment of Civil Penalty issued by Michelle Walker Owenby, Technical Secretary of the Air Pollution Control Board, Tennessee Department of Environment and Conservation (TDEC), in the above-referenced matter. Please read it carefully and pay special attention to the Notice of Rights section.

If you have any questions regarding this Order and Assessment of Civil Penalty, please contact Michael D. Lewis at (615) 253-5337 or via e-mail at michael.d.lewis@tn.gov. For all other questions, please contact the TDEC Division of Air Pollution Control at (615) 532-0554 or via e-mail at air.pollution.control@tn.gov.

Sincerely,

A handwritten signature in blue ink that reads "Kevin M. McLain".

Kevin McLain
Section Manager, Enforcement
Division of Air Pollution Control

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Enclosure

TENNESSEE AIR POLLUTION CONTROL BOARD

IN THE MATTER OF:)	DIVISION OF AIR POLLUTION
)	CONTROL
)	
PROVIDENCE BUILDERS, LLC,)	
)	
)	
RESPONDENT.)	CASE NO. APC20-0105

**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.

Providence Builders, LLC (“Respondent”) is a domestic limited liability company authorized to do business in the state of Tennessee. Respondent’s business address is 46 Union St, Clarksville, Tennessee 37040-3653. Respondent’s registered agent for service of process is Bryce A. Powers. The Respondent’s worksite is located at 128 Franklin Street, Clarksville TN 37040. Service of process may be made upon Respondent at 46 Union St, Clarksville, Tennessee 37040-3653.

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 Respondent’s property is a 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 supervises the demolition or renovation operation conducted at 128 Franklin Street, Clarksville TN 37040 and is an owner or operator of a demolition or renovation activity. Tenn. Comp. R. & Regs. 1200-03-11-.02(1)(ee).

XII.

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

FACTS

XIII.

On or about August 3, 2020, a Division inspector conducted a site inspection at Respondent’s facility. The Division inspector was conducting inspections in the area and discovered renovation activities occurring at the vacant retail space located at 128 Franklin Street, Clarksville, Tennessee 37040. During the inspection, the Division inspector observed removal of the plaster ceiling, which had a spray applied surfacing material. The material was dry, and it was not contained in leak-tight containers. The Division inspector asked Respondent’s representative if an asbestos survey had been conducted prior to the renovation. Respondent’s representative acknowledged that an asbestos survey had not been conducted. The Division inspector collected a sample of the material and submitted the sample for laboratory analysis.

XIV.

On or about August 11, 2020, the Division received the laboratory analytical results confirming the presence of asbestos.

XV.

On or about August 19, 2020, the Division received from Respondent a Notification of Demolition and or Asbestos Renovation listing an asbestos removal work start date of August 21, 2020 at the facility.

XVI.

On August 26, 2020, the Division issued a Notice of Violation to Respondent for failure to adequately wet all exposed regulated asbestos containing material (RACM), failure to provide a 10-day notification prior to demolition/renovation activity, failure to seal all asbestos-containing waste material in leak-tight containers, and failure to thoroughly inspect for the presence of asbestos.

XVII.

On September 8, 2020, the Division received a letter from Respondent in which Respondent acknowledged the receipt of the Notice of Violation and conceded responsibility for the violations alleged in the notice.

VIOLATIONS

XVIII.

By failing to ensure the RACM remained wet until collected and contained for disposal, Respondent has violated Tenn. Comp. R. & Regs. 1200-03-11-02(2)(d)3. subpart (vi)(I), which states: Each owner or operator of a demolition or renovation activity . . . shall comply with the following procedures:

Adequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 1200-03-11-.02(2)(j);

XIX.

By failing to provide the Technical Secretary with proper written notice of intention to renovate, 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:

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 seal all asbestos-containing waste material in leak-tight containers/wrapping, the Respondent has violated Tenn. Comp. R. & Regs. 1200-03-11-.02(2)(j)1.(i)(III), which states, in pertinent part:

(j) Standard for waste disposal for manufacturing, fabricating, demolition, renovation, and spraying operations. Each owner or operator of any source covered under the provisions of 1200-03-11-.02(2)(c), 1200-03-11-.02(2)(d), 1200-03-11-.02(2)(e), and 1200-03-11-.02(2)(h) shall comply with the following provisions:

1. Discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, or use one of the emission control and waste treatment methods specified in subparts 1.(i) through (iv) of this subparagraph.

(i) Adequately wet asbestos-containing waste material as follows:

(III) After wetting, seal all asbestos-containing waste material in leak-tight containers while wet; or, for materials that will not fit into containers without

additional breaking, put materials into leak-tight wrapping; and . . .

XXI.

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:

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

XXII.

Respondent is assessed a civil penalty of \$17,500, for violation of the Act and Rules, to 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, APC20-0105, 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, APC20-0105, 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 7th day of February, 2022.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



Michael D. Lewis
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Department of Environment & Conservation
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Nashville, Tennessee 37243
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