

**STATE OF TENNESSEE
AIR POLLUTION CONTROL BOARD**

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

SETTLEMENT AGREEMENT AND ORDER

On or about February 7, 2022, a Technical Secretary's Order and Assessment of Civil Penalties (the "Original Order") was issued to Providence Builders, LLC ("Respondent") in Case Number APC20-0105. The Respondent filed a timely appeal to the Original Order on or about May 3, 2022. Pursuant to Tennessee Code Annotated ("Tenn. Code Ann.") §§ 4-5-105 and 68-201-116, the Technical Secretary and the Respondent have reached a settlement. To implement this settlement, (1) the Technical Secretary has agreed and by entering into this Settlement Agreement and Order and does hereby also dismiss the Original Order, and (2) the Respondent has agreed and by entering into this Settlement Agreement and Order does also hereby waive its right to a contested case hearing before the Board in this matter and withdraws its appeal of the Original Order. This Settlement Agreement and Order resolves and supersedes the Original Order.

PARTIES

The Parties stipulate and agree to the following:

I.

Michelle Walker Owenby is the Technical Secretary of the 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.

JURISDICTION AND AUTHORITY

The Parties stipulate and agree to the following:

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 TDEC alleges that Respondent has violated the Act and Rules as hereinafter stated.

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 property at issue herein 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

The Division alleges the following 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 discussed the violations alleged in the notice.

ALLEGED VIOLATIONS

The Division alleges the following violations of the Act and Rules resulting from the alleged facts:

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.

Pursuant to the authority vested by Tenn. Code Ann. § 68-201-116, the Technical Secretary orders and the Respondent agrees, as follows:

1. Respondent is assessed a Civil Penalty in the amount of **\$8,750.00** for the violation of Division Rules, as discussed herein.

2. Respondent shall pay the assessed Civil Penalty in full as follows: Payments of the civil penalty and/or damages shall be made payable to the “Treasurer, State of Tennessee” and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 10th Floor, Nashville, Tennessee 37243. The case number, **APC20-0105**, should be clearly shown on the check or money order to ensure that the payment is properly credited. Payment shall be made on or before the thirty-first day after receipt of this Order and Assessment.

3. Responded shall complete the following asbestos training class by no later than August 15, 2023: *Hazards of Asbestos in the Workplace (General Industry)* ([Hazards of Asbestos in the Workplace \(GI\) | 360training](#)).

4. The Technical Secretary does not expressly or implicitly waive their authority pursuant to any provision of the Act or Division Rules by issuing this Settlement Agreement and Order.

5. The Technical Secretary may, for good cause shown, extend the compliance dates contained within this Settlement Agreement and Order. To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the Division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

6. Failure to comply with any of the requirements of this Settlement Agreement and Order could lead to further enforcement actions which may include additional civil penalties, assessment of damages and/or recovery of costs.

DEPARTMENT'S RESERVATION OF RIGHTS

XXIII.

In entering this Settlement Agreement and Order, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess costs, civil penalties, and/or damages incurred by the State against Respondent with respect to any violations not addressed herein. 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, with respect to any violations not addressed herein. Compliance with this order will be considered as a mitigating factor in determining the need for enforcement action(s) against Respondent in the future for any violation occurring then.

RESPONDENT'S RESERVATION OF RIGHTS

XXIV.

Respondent does not admit or deny the factual allegations or the alleged violations of law contained in this Settlement Agreement and Order. The Respondent reserves its rights to contest the factual allegations and alleged violations contained in this Settlement Agreement and Order in any proceeding other than a proceeding brought by the Department to enforce the terms of this Settlement Agreement and Order.

WAIVER OF RIGHT TO APPEAL

XXV.

This Settlement Agreement and Order fully resolves all matters and violations set forth herein. By signing below, Respondent knowingly and voluntarily waives any right it may have to appeal this Settlement Agreement and Order pursuant to Tennessee Code Annotated section sections 68-201-108(a) and 68-201-116(b).

AUTHORITY TO SIGN

XXVI.

The undersigned representatives of the Department and Respondent hereby agree the foregoing Settlement Agreement and Order is a fair and reasonable resolution of this case and represent and warrant that they are fully authorized and competent to execute this Settlement Agreement and Order on behalf of the entity for which they are signing.

Issued by the Technical Secretary and agreed to by the Respondent on this 5th day of July, 2023.



Michelle Walker Owenby
Technical Secretary
Tennessee Air Pollution Control Board

Reviewed by:



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BPR # 033408
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PROVIDENCE BUILDERS, LLC

By: 

Print Name: BRUCE POWERS

Print Title: CHIEF MANAGER