



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

Certified Article Number

9414 7266 9904 2170 1012 78

SENDER'S RECORD

January 25, 2022

Tujuana Redd  
115 Liberty Branch Lane  
Athens, Tennessee 37303-7076

RE: ACN Lodge of Athens, LLC  
Case No. APC21-0146

Dear Tujuana Redd:

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 Grant Ruhl at (615) 313-5682 or via e-mail at [Grant.Ruhl@tn.gov](mailto:Grant.Ruhl@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](mailto:air.pollution.control@tn.gov).

Sincerely,

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

Kevin McLain  
Section Manager, Enforcement  
Division of Air Pollution Control

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Enclosure

**TENNESSEE AIR POLLUTION CONTROL BOARD**

<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF AIR POLLUTION</b>
	)	<b>CONTROL</b>
	)	
<b>ACN LODGE OF ATHENS, LLC,</b>	)	
	)	
	)	
<b>RESPONDENT.</b>	)	<b>CASE NO. APC21-0146</b>

**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.**

ACN Lodge of Athens, LLC ("Respondent") is a foreign Limited Liability Company authorized to do business in the state of Tennessee. Respondent's registered agent for service of process is Tujuana Redd. Respondent owns property at 115 Liberty Branch Lane, Athens, Tennessee 37303-7076 ("Facility"). Service of process may be made upon Respondent at this same address.

**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 owns the facility and supervises the demolition or renovation operation conducted at 115 Liberty Branch Lane, Athens, Tennessee 37303 + 7076 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 August 25, 2021, Division personnel conducted a site inspection at Respondent’s Facility and discovered ongoing renovation activities. Division personnel observed that the Facility’s rooms had been stripped down to their concrete foundations and spray-applied surfacing material from approximately 100 rooms (over 32,000 square feet) had been removed from the ceilings. Division personnel also observed remnants of the ceiling material that had been scraped and left on the floor. Division personnel collected samples of the ceiling material and submitted them for laboratory analysis by Polarized Light Microscopy Point Count Method, which confirmed the presence of asbestos. Division personnel determined there was not a trained supervisor onsite during the Facility’s renovation to monitor the asbestos removal activities. The Facility RACM was dry and not sealed in a leak tight container.

#### **XIV.**

The Respondent did not provide waste shipment records to the Division documenting proper disposal of RACM in an approved landfill. Further, a Notification of Asbestos Renovation and an asbestos survey report were not provided to the Division prior to Respondent's renovation activity.

#### **XV.**

On September 16, 2021, the Division issued a Notice of Violation to Respondent for asbestos inspection, notification and work practice violations resulting from renovation activities.

### **VIOLATIONS**

#### **XVI.**

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

(I) 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)[.]

#### **XVII.**

By failing to thoroughly inspect the facility prior to renovation, the Respondent violated Rule 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.

### **XVIII.**

By failing to ensure RACM remained wet until collected and contained for disposal, the Respondent violated Rule 1200-03-11-02(2)(d)3.(vi)(I), which states, in pertinent part:

Each owner or operator of a demolition or renovation activity . . . shall comply with the following procedures:

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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 have a trained supervisor onsite, the Respondent violated Rule 1200-03-11-.02(2)(d)3(viii), which states, in pertinent part:

Procedures for asbestos emission control. Each owner or operator of a demolition or renovation activity to whom this subparagraph applies, according to subpart 1. of this subparagraph, shall comply with the following procedures:

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(viii) No RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this subparagraph unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them is present[.]

### **XX.**

By failing to seal the asbestos containing material in leak tight containers, the Respondent has violated Rule 1200-03-11-02(2)(j)1. subpart (i)(III), which states, in pertinent part:

Each owner or operator [of a demolition or renovation activity] shall comply with the following procedures:

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 deposit the asbestos containing material at an approved disposal site, the Respondent violated Rule 1200-03-11-.02(2)(j)2. subpart (i), which states, in pertinent part:

All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

(i) A waste disposal site operated in accordance with the provisions of 1200-03-11-.02(5)[.]

#### **XXII.**

By failing to maintain waste shipment records, the Respondent violated Rule 1200-03-11-.02(2)(j)4., subpart (i), which states, in pertinent part:

For all asbestos-containing waste material transported off the facility site:

(i) Maintain waste shipment records, using the form shown in Figure 4, and include the following information[.]

### **ORDER AND ASSESSMENT OF CIVIL PENALTY**

#### **XXIII.**

Respondent is assessed a civil penalty of \$20,500.00, 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, 10<sup>th</sup> 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, APC21-0146, 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, 2<sup>nd</sup> 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.

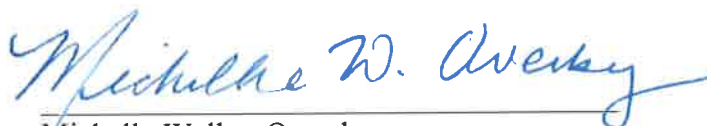
At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny this Order and Assessment of Civil Penalty, including the authority to increase or decrease the penalty. Tenn. Code Ann. § 68-201-116. The ALJ, on behalf of the Board, has the authority to assess additional 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, 15<sup>th</sup> Floor  
312 Rosa L. Parks Avenue  
Nashville, Tennessee 37243

Attorneys should contact the undersigned counsel of record. The case number, APC21-0146, 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 25th day of January, 2022.



Michelle Walker Owenby  
Technical Secretary  
Tennessee Air Pollution Control Board

Reviewed by:



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Grant LeMaster Ruhl  
BPR # 036182  
Assistant Counsel  
Department of Environment & Conservation  
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(615) 313-5682  
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