

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

IN THE MATTER OF:

AFIN: 26-01758

LIS No. 21-001

DENNIS PRINCE
130 RIVER PARK DRIVE
MALVERN, AR 72104

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.

The issues herein having been settled by agreement of Dennis Prince (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 March 31, 2020, Respondent began demolition of the former Petty's Knives structure located at 1801 W. Highway 270, Rockport, Hot Spring County, Arkansas 72104 (the Site).

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.

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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 rules 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 rules 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 rule or order adopted or issued under this subchapter.

3. Ark. Code Ann. § 8-4-103(c)(1)(A) provides, “Any person that violates any provision of this chapter and rules, permits, or plans issued pursuant to this chapter may be assessed an administrative civil penalty not to exceed ten thousand dollars (\$10,000) per violation.”

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. APC&EC Reg. 21.501 requires an owner or operator of a demolition, renovation, or response action, such as Respondent, to conduct, or have conducted, a thorough inspection of the affected facility or part of the facility for the presence of asbestos including category I and category II nonfriable asbestos prior to the commencement of the demolition, renovation, or response action.

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8. APC&EC Reg. 21.602 requires an owner or operator, such as Respondent, to submit a written NOI to DEQ by either hand delivery, postmarked by U.S. Postal Service, or commercial delivery service as early as possible before, but not later than one working day following commencement of demolition for any facility being demolished under order of a State or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse.

9. On April 2, 2020, DEQ personnel conducted a complaint investigation of a reported demolition of a facility located at the Site. Upon arriving at the Site, DEQ personnel observed that only a partial wall of the facility remained standing and that the demolition crew was in the process of loading and hauling away the waste material generated by the demolition. Photographs of the Site at the time of the investigation were included in the complaint investigation report.

10. At the time of the investigation, DEQ personnel requested a copy of the required NOI for the demolition of the facility. Respondent disclosed that it failed to submit a NOI to DEQ.

11. At the time of the investigation, Respondent furnished DEQ personnel with an order Respondent received from the Code Enforcement office of the City of Rockport requesting that the structure be [demolished] or repaired to code.

12. At the time of the investigation, DEQ personnel requested a copy of the report on the results of the asbestos inspection that was to have been conducted on the facility before the commencement of its demolition. Respondent disclosed that it failed to conduct an asbestos inspection of the facility. Such failure violates APC&EC Reg. 21.501 and therefore violates Ark. Code Ann. § 20-27-1007(4).

13. DEQ personnel recommended that Respondent stop any further demolition activities at the Site until the appropriate documents had been submitted to DEQ.

14. On April 6, 2020, Safety & Environmental Investigations, Inc. conducted a thorough asbestos inspection of the demolition waste material. Samples of roofing debris, fiberboard debris, sheet rock debris, floor tile and mastic were collected for analysis. The mastic collected from beneath the floor tile covered approximately eighty-four square feet and was considered a Category II Non-Friable material that was in fair condition.

15. On April 14, 2020, Respondent provided DEQ with a copy of the Asbestos Inspection Report prepared by Safety & Environmental Investigations, Inc. The report stated the analysis revealed that 5% Chrysotile asbestos was detected in the samples of mastic that had been collected from the Site.

16. On April 17, 2020, DEQ received a copy of the NOI along with the required fee. The NOI was postmarked April 14, 2020 by the U.S. Postal Service, eight (8) working days after the complaint investigation revealed that demolition activities had commenced. Such act violates APC&EC Reg. 21.602 and therefore violates Ark. Code Ann. § 20-27-1007(4).

17. In correspondence dated May 5, 2020, DEQ informed Respondent of the compliance issues identified during the April 2, 2020 complaint investigation of the Site. This was intended to provide Respondent with the opportunity to review the violations and submit any additional information Respondent deemed appropriate regarding the compliance issues.

18. In correspondence dated June 16, 2020, DEQ informed Respondent that formal enforcement action was proceeding in this matter. On November 18, 2020, the DEQ Air Enforcement Section sent Respondent a proposed CAO for violation of APC&EC Reg. 21.501 and APC&EC Reg. 21.602.

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19. On November 25, 2020, Respondent provided a written response to the proposed CAO. Respondent's justification for the penalty reduction request included the following: 1) Respondent inherited the building 25 years ago and the building was never used for commercial purposes during Respondent's ownership; 2) Respondent had the building demolished at the request of the City of Rockport; 3) Respondent was told by an official of the City of Rockport that there were no other actions required of him before performing the demolition; and 4) Respondent cooperated with DEQ personnel after the demolition by, among other things, having an asbestos inspection conducted of the demolition waste material.

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 for instances of noncompliance specified in the FINDINGS OF FACT, Respondent agrees to pay the sum of **ONE THOUSAND SIX HUNDRED TWELVE DOLLARS AND FIFTY CENTS (\$1,612.50)**. 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

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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.

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SO ORDERED THIS 12 DAY OF January, ~~2020~~ 2021.

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

APPROVED AS TO FORM AND CONTENT:

DENNIS PRINCE

BY: DPrince (Signature)

Dennis W. Prince (Typed or printed name)

TITLE: Owner

DATE: 12-21-2020

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