LANCE R. LEFLEUR
DIRECTOR

KAY IVEY
GOVERNOR

Alabama Department of Environmental Management
adem.alabama.gov
1400 Coliseum Blvd. 36110-2400 ▪ Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700 ▪ FAX (334) 271-7950

January 29, 2021

CERTIFIED MAIL NO: 9489 0090 0027 6294 8975 20

CLEAR PROPERTIES ALBERTVILLE LLC
ATTN MELISSA DOHNER
459 MAIN STREET
SUITE 101-336
TRUSSVILLE AL 35173

Re: Administrative Order No. 21-024-AP

Dear Ms. Dohner:

Please find enclosed ADEM Administrative Order No. 21-024-AP which requires certain actions to be taken regarding violations of the Alabama Air Pollution Control Act. In issuing this Order, the Department took into consideration all available information concerning these violations, including any written response or oral comments submitted on behalf of Clear Properties Albertville, LLC. Please note that the assessed civil penalty is due within 45 days.

Please be advised that failure to comply with the terms of this Order can result in penalties of up to $25,000 per day for each violation as well as possible criminal penalties. Pursuant to Code of Alabama 1975, § 22-22A-7(c)(1), this Order may be appealed by filing a request for hearing before the Environmental Management Commission and should comply with the requirements of ADEM Admin. Code R. 335-2-1-.04. Copies of ADEM Admin. Code, Division 2, Environmental Management Commission regulations may be viewed or downloaded from ADEM's Webpage at http://www.adem.state.al.us/Regulations/regulations.htm or may be obtained by submitting a request in writing to the ADEM-Permits & Services Division.

If you have any questions concerning this matter, please contact Don Barron by email at drb@adem.alabama.gov or by phone at (334) 271-7879.

Sincerely,

Ronald W. Gore, Chief
Air Division

Issued: 01-29-2021

Served: 02-01-2021

RWG/DWB/mcn
Enclosure

cc: Shawn Sibley, Office of General Counsel

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
Clear Properties Albertville, LLC	)	
	)	ADMINISTRATIVE
Demolition of Commercial Property	)	ORDER NO: 21-024-AP
Albertville, Marshall County, Alabama	)	
	)	

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-17, *as amended*, the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23, *as amended*, the Alabama Department of Environmental Management (hereinafter, the "Department" or "ADEM") Administrative Code of Regulations (hereinafter, "ADEM Admin. Code R.") promulgated pursuant thereto, and the federal Clean Air Act, 42 U.S.C. 7401 to 7671q, *as amended*, the Department makes the following FINDINGS:

1. Clear Properties Albertville, LLC (hereinafter, "Owner"), is the real property owner of, and is responsible for the demolition of, the Commercial Property located at 210 AL-75 in Albertville, Marshall 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.

10. On June 9, 2020, the Department learned through an inspection that the Site had been demolished, in violation of ADEM. Admin. Code r. 335-3-11-.02(12).

11. On June 12, 2020, the Department issued a Notice of Violation (NOV) to Owner based on the inspection.

12. On August 5, 2020, the Department received a response to the NOV from the Owner. The response stated that Owner hired a sub-contractor, Maynard Construction, to perform the demolition. The demolition activities took place on March 13 and March 14, 2020. The Owner did not have an asbestos inspection conducted by an Alabama Accredited inspector and the Owner did not send a Notice of Demolition prior to work taking place, in violation of ADEM. Admin. Code r. 335-3-11-.02(12).

13. 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: The Owner did not have an asbestos inspection conducted by an Alabama Accredited inspector and failed to submit the required notification to the Department prior to demolishing the building. The Department considers these violations to be serious.

B. THE STANDARD OF CARE: There appeared to be no standard of care taken by Owner to comply with the applicable requirements of the ADEM Admin. Code.

C. NO ECONOMIC BENEFIT: The Department has determined that there was a significant economic benefit gained by Owner as a result of the violations referenced herein.

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 risked exposing its employees, contractors, and other individuals to asbestos.

14. 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 these Findings).

ORDER

Based upon the foregoing FINDINGS and pursuant to Ala. Code §§22-22A-5(10), 22-22A-5(12), 22-22-5(18), and 22-28-18, *as amended*, it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Owner shall pay to the Department a civil penalty in the amount of $4,000.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be submitted to:

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

B. That, immediately upon receipt of this Order and continuing thereafter, Owner shall ensure immediate and future compliance with 40 C.F.R. Part 61, Subpart M, as adopted in ADEM Admin. Code r. 335-3-11-.02, particularly as it applies to renovation and demolition operations.

C. 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.

D. 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 their obligations to comply in the future with any permit or other written direction from the Department.

E. That, issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against Owner for the violations cited herein.

F. That, failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against Owner for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 29th day of January, 2021.

Marilyn Elliott

Lance R. LeFleur, Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

CERTIFICATE OF SERVICE

I, Ronald W. Gore, do hereby certify that I have served this Administrative Order upon the person(s) listed below by sending the same, postage paid, through the United States Mail **9489 0090 0027 6294 8975 20** with instructions to forward and return receipt, to:

Ms. Melissa Dohner
Clear Properties Albertville, LLC
459 Main Street, Suite 101-336
Trussville, AL 35173

DONE this the 29th day of January, 2021.

Ronald W. Gore
Chief - Air Division
Alabama Department of
Environmental Management

ATTACHMENT A

Clear Properties Albertville, LLC

Demolition of Commercial Property
Albertville, Marshall County

Violation*	Number of Violations*	Seriousness of Violation*	Standard of Care*	History of Previous Violations*	
Failure to notify the Department before demolishing the Site	1	***$1,000***	***$500***	$0	
Failure to have inspection by Alabama Accredited Inspector prior to demolition	1	***$1,000***	***$500***		**Total of Three Factors**
TOTAL PER FACTOR		***$2,000***	***$1,000***	***$0***	***$3,000***

Adjustments to Amount of Initial Penalty	
Mitigating Factors (-)	
Ability to Pay (-)	
Other Factors (+/-)	
Total Adjustments (+/-) ***Enter at Right***	$0

Economic Benefit (+)	***$1,000***
Amount of Initial Penalty	$4,000
Total Adjustments (+/-)	$0
FINAL PENALTY	$4,000.00

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

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Tracking Number: 9489009000276294897520

Your item has been delivered to an agent for final delivery in TRUSSVILLE, AL 35173 on February 1, 2021 at 11:04 am.

Delivered to Agent

February 1, 2021 at 11:04 am
Delivered to Agent for Final Delivery
TRUSSVILLE, AL 35173

Feedback

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Tracking History

February 1, 2021, 11:04 am
Delivered to Agent for Final Delivery
TRUSSVILLE, AL 35173
Your item has been delivered to an agent for final delivery in TRUSSVILLE, AL 35173 on February 1, 2021 at 11:04 am.

February 1, 2021, 7:59 am
Arrived at Post Office
TRUSSVILLE, AL 35173

January 31, 2021, 6:26 am
Departed USPS Regional Facility
BIRMINGHAM AL DISTRIBUTION CENTER ANNEX

January 30, 2021, 11:29 pm
Arrived at USPS Regional Facility
BIRMINGHAM AL DISTRIBUTION CENTER ANNEX

January 30, 2021, 12:42 pm
Departed USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

January 29, 2021, 11:06 pm
Arrived at USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

Product Information

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