



Alabama Department of Environmental Management
adem.alabama.gov

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Montgomery, Alabama 36130-1463
(334) 271-7700 ■ FAX (334) 271-7950

May 8, 2018

CERTIFIED MAIL NO 91 7199 9991 7037 0309 1923
RETURN RECEIPT REQUESTED

SOUTHERN SAND AND GRAVEL INC
ATTN MR WAYNE BUTTS
540 NORTH CONECUH STREET
GREENVILLE AL 36037

Re: Administrative Order No. 18-061-AP

Please find enclosed ADEM Administrative Order No. 18-061-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 Southern Sand and Gravel, Inc. 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

RWG/DWB/mcn

Issued: 05-08-2018

Served: 05-14-2018

Enclosure

cc: Tom Johnston, Office of General Counsel



ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)

Southern Sand and Gravel, Inc.)

Demolition of Commercial Building)
Greenville, Butler County, Alabama)

ADMINISTRATIVE
ORDER NO: 18-061-AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22- 22A-16 (2006 Rplc. Vol.), the Alabama Air Pollution Control Act, Ala. Code §§ 22-28-1 to 22-28-23 (2006 Rplc. Vol.), 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. Southern Sand and Gravel, Inc. (hereinafter, “Southern”), a construction/demolition contractor operating in and from Butler County, Alabama, was contracted to demolish a commercial building located at 213 Washington Street, Greenville, Butler 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-16 (2006 Rplc. Vol.).

3. Pursuant to Ala. Code § 22-22A-4(n) (2006 Rplc. Vol.), 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 (2006 Rplc. Vol.).

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 September 5, 2017, the Department received from Ark Remediation, LLC, written notification for abatement of exterior asbestos siding at the Site. This notice did not reflect that demolition of the remaining structure was to be taking place after the abatement of the exterior asbestos siding was complete. Upon conducting an inspection of the Site on September 21, 2017 it was evident that demolition of the entire structure had taken place without the Department having received the required notification, in violation of ADEM. Admin. Code r. 335-3-11-.02(12).

11. On October 2, 2017, the Department issued a Notice of Violation (NOV) to the City of Greenville, the owner of the Site, to determine who had conducted the demolition of the structure at the Site.

12. On October 18, 2017, the City of Greenville responded to the NOV. On November 14, 2017, during a follow up telephone conversation with Eddie Anderson with the City of Greenville it was established that Southern was hired to demolish the remaining structure at the Site. Demolition began on September 14, 2017. The owner's representative also stated that the required thorough asbestos inspection was not performed prior to the Site being demolished.

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: Southern failed to submit the required notification to the Department and failed to perform, or have performed, the required certified asbestos inspection of the Site before it was demolished. The Department considers these violations to be serious.

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

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Southern likely derived economic benefit by not notifying the Department and by not performing the required asbestos inspection before demolishing the Site.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts by Southern to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Southern has no known prior history with the Department for violating demolition/asbestos regulations.

F. THE ABILITY TO PAY: Southern has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: 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 (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Southern shall pay to the Department a civil penalty in the amount of \$3,500.00 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, Southern 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.

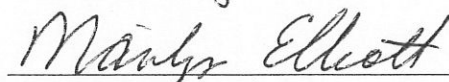
C. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

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 Southern 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 Southern 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 Southern for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 8th day of May, 2018.



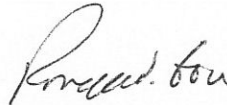
Lance R. LeFleur, Director
Alabama Department of Environmental
Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700

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 **91 7199 9991 7037 0309 1923** with instructions to forward and return receipt, to:

Mr. Wayne Butts
Southern Sand and Gravel, Inc.
540 North Conecuh Street
Greenville, Alabama 36037

DONE this the 8th day of May, 2018.



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

ATTACHMENT A

Southern Sand and Gravel, Inc.

Demolition of Commercial Building
Greenville, Butler 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 Site inspected by an Alabama certified asbestos inspector	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 (+)	\$500
Amount of Initial Penalty	\$3,500
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$3,500.00

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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 **Delivered**

May 14, 2018 at 12:13 pm

Delivered

GREENVILLE, AL 36037

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Tracking History



May 14, 2018, 12:13 pm

Delivered

GREENVILLE, AL 36037

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May 11, 2018, 6:44 am

Available for Pickup

GREENVILLE, AL 36037

May 11, 2018, 6:42 am

Arrived at Unit

GREENVILLE, AL 36037

May 10, 2018, 11:42 am

Departed USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

May 9, 2018, 9:58 pm

Arrived at USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

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