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

June 14, 2021

CERTIFIED MAIL NO: 9489 0090 0027 6294 8942 53

MR CHUCK PICKETT
MCDONALD CONSTRUCTION CO INC
10790 HIGHWAY 82
UNION SPRINGS AL 36089

Re: Administrative Order No. 21-071-AP

Dear Mr. Pickett:

Please find enclosed ADEM Administrative Order No. 21-071-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 McDonald Construction Co., Inc. Please note that the assessed civil penalty has been received by the Department.

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,

Issued: 07-14-2021

Served: 07-16-2021

Ronald W. Gore, Chief
Air Division

9489 0090 0027 6294 8942 53

RWG/DWB/mcn
Enclosure

cc: Shawn Sibley, Office of General Counsel

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1603 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-9359 (FAX)

Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2593 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1189 (FAX)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:	)	
	)	
McDonald Construction Co., Inc.	)	
	)	ADMINISTRATIVE
Demolition of Commercial Property	)	ORDER NO: 21-071-AP
Prattville, Autauga 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. McDonald Construction Co., Inc. (hereinafter, "Contractor"), is a contractor located in Union Springs, Alabama, and is responsible for the demolition of the structures located at Pratt Cotton Gin Factory, 131 Bridge Street, Prattville, Autauga 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. § 61.145(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.

6. 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.

7. On March 15, 2021, the Department learned through a news article that the Site had been demolished, in violation of ADEM. Admin. Code r. 335-3-11-.02(12).

8. On March 17, 2021, the Department issued a Notice of Violation (NOV) to Contractor.

9. On April 23, 2021, the Department received a response to the NOV from Contractor. The response stated that demolition began in December 2020 and ended in January 2021. Prior to demolition an asbestos inspection had been conducted on Site. The buildings that had been demolished at the time of the NOV did not contain asbestos

containing material. However, Contractor failed to notify the Department prior to starting demolition activities, in violation of ADEM. Admin. Code r. 335-3-11-.02(12).

10. 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: Contractor failed to submit the required notification to the Department prior to demolishing the building. The Department considers this violation to be serious.

B. THE STANDARD OF CARE: There appeared to be some standard of care taken by Contractor prior to demolition by partially complying with the applicable requirements of the ADEM Admin. Code.

C. NO ECONOMIC BENEFIT: The Department has determined that there was not a significant economic benefit gained by Contractor as a result of the violations referenced herein.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were efforts by Contractor to mitigate possible effects of these violations upon the environment.

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

F. THE ABILITY TO PAY: Contractor 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, *as amended*, it is hereby ORDERED:

A. That, not later than forty-five days after the issuance of this Order, Contractor shall pay to the Department a civil penalty in the amount of $1,500.00 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, Contractor 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 Contractor 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 Contractor 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 Contractor for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this 14th day of July, 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 8942 53** with instructions to forward and return receipt, to:

Mr. Chuck Pickett
McDonald Construction Co., Inc.
10790 Highway 82
Union Springs, AL 36089

DONE this the 14th day of July, 2021.

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

ATTACHMENT A

McDonald Construction Co., Inc.

Demolition of Commercial Property
Prattville, Autauga 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	
					Total of Three Factors
TOTAL PER FACTOR		*$1,000*	*$500*	*$0*	*$1,500*

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

Economic Benefit (+)	*$0*
Amount of Initial Penalty	$1,500
Total Adjustments (+/-)	$0
FINAL PENALTY	$1,500.00

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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July 16, 2021 at 3:12 pm
UNION SPRINGS, AL 36089

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Return Receipt Electronic

Tracking History

July 16, 2021, 3:12 pm
Delivered, Left with Individual
UNION SPRINGS, AL 36089
Your item was delivered to an individual at the address at 3:12 pm on July 16, 2021 in UNION SPRINGS, AL 36089.

July 16, 2021, 12:07 am
Departed USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

July 15, 2021, 9:40 pm
Arrived at USPS Regional Facility
MONTGOMERY AL DISTRIBUTION CENTER

July 15, 2021, 8:25 pm
Accepted at USPS Origin Facility
MONTGOMERY, AL 36104

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