

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

September 30, 2019

CERTIFIED MAIL NO: 91 7199 9991 7037 0284 1772

MR RYAN OTT
ROGERS & WILLARD INC
451 ST LOUIS STREET
MOBILE ALABAMA 36602

Re: Administrative Order No. 19-119-AP

Dear Mr. Ott:

Please find enclosed ADEM Administrative Order No. 19-119-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 Rogers & Willard, Inc. Please note that the assessed civil penalty is due to the Department 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
Enclosure

cc: Shawn Sibley, Office of General Counsel

Issued: 09-30-2019

Served: 10-03-2019

Birmingham Branch
110 Vulcan Road
Birmingham, AL 35209-4702
(205) 942-6168
(205) 941-1602 (FAX)

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, AL 35603-1333
(256) 353-1713
(256) 340-0259 (FAX)



Mobile Branch
2204 Perimeter Road
Mobile, AL 36615-1131
(251) 450-3400
(251) 479-2502 (FAX)

Mobile-Coastal
3664 Dauphin Street, Suite B
Mobile, AL 36608
(251) 304-1176
(251) 304-1100 (FAX)

ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)	
)	
Rogers & Willard, Inc.)	
)	
Demolition of Commercial Properties)	ADMINISTRATIVE
Mobile, Mobile County, Alabama)	ORDER NO: 19-119-AP
)	

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. Rogers & Willard, Inc. (hereinafter, “Rogers”), is a general contractor operating in and from Mobile, Mobile County, Alabama, and was contracted to demolish the Commercial Properties located at 108 West I-65 Service Road and 7311 Airport Blvd in Mobile, Mobile 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, *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 February 18 and March 19, 2019, the Department received the Notice of Asbestos Abatement and/or Demolition (ADEM Form 496) for the Site. The notifications were incomplete and the demolitions occurred prior to the Department receiving the required completed notifications, in violation of ADEM. Admin. Code r. 335-3-11-.02(12). The Department responded by email requesting the additional information to complete the notifications but no response was received by Rogers.

11. On March 7, 2019, the Department conducted an inspection to verify if demolition had occurred at 108 West I-65 Service Road. The demolition had taken place at the time of the inspection.

12. On March 19, 2019, the Department issued a Letter of Inquiry to Rogers requesting more information concerning the incomplete notifications. Certified mail tracking indicated that the Department's letter was delivered on March 21, 2019. As of this date the Department has not received a response to the Letter of Inquiry.

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: Rogers failed to have performed the required asbestos inspection of the Site before it was demolished and failed to submit the required completed 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 care taken by Rogers to comply with the applicable requirements of the ADEM Admin. Code.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: Rogers likely derived economic benefit by not notifying the Department and 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 Rogers to mitigate possible effects of these violations upon the environment.

E. HISTORY OF PREVIOUS VIOLATIONS: Rogers has a prior history with the Department for violating demolition/asbestos regulations.

F. THE ABILITY TO PAY: Rogers 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, Rogers shall pay to the Department a civil penalty in the amount of \$2,500.00 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, Rogers 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.

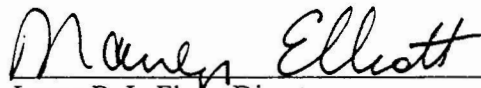
C. That, should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

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

ORDERED and ISSUED this 30th day of September, 2019.

A handwritten signature in black ink, appearing to read "Lance R. LeFleur", is written over a horizontal line.

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 0284 1772** with instructions to forward and return receipt, to:

Mr. Ryan Ott
Rogers & Willard, Inc.
451 St. Louis Street
Mobile, AL 36602

DONE this the 30th day of September, 2019.



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

ATTACHMENT A

Rogers & Willard, Inc.

Demolition of Commercial Properties Mobile, Mobile 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	\$700	\$150	\$150	
Failure to have Site inspected by an Alabama certified asbestos inspector	1	\$700	\$150	\$150	Total of Three Factors
TOTAL PER FACTOR		\$1,400	\$300	\$300	\$2,000

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	\$2,500
Total Adjustments (+/-)	\$0
FINAL PENALTY	\$2,500.00

Footnotes

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