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STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

Division of Air Pollution Control  
9th Floor, L & C Annex  
401 Church Street  
Nashville, TN 37243-1531

JAN 11 2013

Kenneth Chadwell  
City Attorney  
P.O. Box 1250  
Crossville, TN 38557

CERTIFIED MAIL # 7007 1490 0001 0737 5559  
RETURN RECEIPT REQUESTED

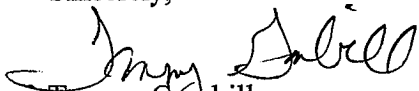
RE: City of Crossville  
File No. 18-40,000-G2  
Case No. APC10-0246

Dear Counsel Chadwell:

Enclosed please find an Order issued by Barry R. Stephens, Technical Secretary of the Air Pollution Control Board, Tennessee Department of Environment and Conservation, in the above referenced matter. Please read it carefully and pay special attention to the NOTICE OF RIGHTS section.

If the City of Crossville declines the Division's offer to resolve this matter without appeal for the reduced penalty amount, it may exercise its right to appeal. However, if the City of Crossville neither accepts the Division's offer nor timely appeals, then the entire civil penalty amount of \$3,750.00 will become due and subject to collection. If you have any questions regarding this matter, please contact Tammy Gambill at (615) 532-0531 or via email at [Tammy.Gambill@tn.gov](mailto:Tammy.Gambill@tn.gov).

Sincerely,

  
Tammy Gambill  
Program Manager, Enforcement  
Division of Air Pollution Control

TG/jmr

Enclosure

cc:

**TENNESSEE AIR POLLUTION CONTROL BOARD**

**IN THE MATTER OF:  
CITY OF CROSSVILLE**

)  
)  
)  
) **DIVISION OF AIR POLLUTION  
CONTROL**  
)  
) **CASE NO. APC10-0246**  
)

**RESPONDENT**

**TECHNICAL SECRETARY'S ORDER AND ASSESSMENT OF  
CIVIL PENALTY**

Comes now, Barry R. Stephens, Technical Secretary of the Air Pollution Control Board,  
and states that:

**PARTIES**

**I.**

Barry R. Stephens is the Technical Secretary (hereinafter referred to in both below mentioned capacities as the "Secretary") of the Air Pollution Control Board (the "Board") and Director of the Division of Air Pollution Control (the "Division"), Tennessee Department of Environment and Conservation.

**II.**

City of Crossville (hereinafter referred to as the "Respondent") is a government entity in the State of Tennessee. The Respondent ordered the demolition of property formerly known as the Jet Motel located adjacent to 364 Highway 70 E in Crossville, Tennessee,. The Respondent's registered agent for service of process is Kenneth Chadwell, City Attorney, at P.O. Box 1250, Crossville, Tennessee 38557.

## **JURISDICTION**

### **III.**

Pursuant to T.C.A. Section 68-201-116, the Secretary may assess a civil penalty of up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per day for each day of violation of the Tennessee Air Quality Act (the "Act") or any rules or regulations promulgated there under against any person who violates said Act or rules and/or the Secretary may issue an order for correction to the responsible person when provisions of the Act are being violated. In addition, such person may also be liable for any damages to the State resulting there from.

### **IV.**

The Respondent is a "person" within the meaning of T.C.A. Section 68-201-102, and has violated the Division Rules as hereinafter stated.

## **FACTS**

### **V.**

On or about September 30, 2010, a Division inspector conducted a site inspection at the Respondent's demolition site located adjacent to 364 Highway 70 E in Crossville, Tennessee. The following violations were identified:

1. The Respondent failed to provide the Technical Secretary with written notification prior to commencing a demolition/renovation activity in accordance with Division Rule 1200-03-11-.02(2)(d)2. Subparts (i) and (iii)(I).
2. The Respondent failed to thoroughly inspect the affected facility for the presence of asbestos prior to the commencement of demolition activities in accordance with Division Rule 1200-03-11-.02(2)(d)1.

## VIOLATIONS

### VI.

By conducting a demolition project without providing proper notification, as discussed herein, the Respondent has violated Division Rule 1200-03-11-.02(2)(d)2., subparts (i) and (iii)(I). Said Rule states, in pertinent part, as follows:

2. Notification requirements. Each owner or operator of a demolition...activity to which this subparagraph applies shall:

(i) Provide the Technical Secretary with written notice of intention to demolish...

(iii) Postmark or deliver the notice as follows:

(I) At least ten (10) working days before stripping or removal work or any other activity begins (such as site preparation that would break up, dislodge or similarly disturb asbestos material) ...

### VII.

By conducting demolition prior to conducting a thorough inspection as discussed herein, the Respondent has violated Division Rule 1200-03-11.02(2)(d)1. Said rule states, in pertinent part:

1. Applicability. To determine which requirements of parts 1, 2, and 3 of this subparagraph apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of parts 2 and 3 of this subparagraph apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows...

**RELIEF**

**VIII.**

WHEREFORE, PREMISES CONSIDERED, I, Barry R. Stephens, Technical Secretary, under the authority vested in me, hereby ORDER the Respondent to perform the following actions:

1. The Respondent is assessed and shall pay a CIVIL PENALTY in the amount of **THREE THOUSAND and SEVEN HUNDRED and FIFTY DOLLARS (\$3,750.00)** for the violation of Division Rules, as discussed herein.

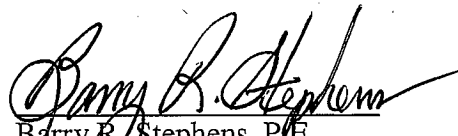
(a.) If the Respondent waives the right to appeal this Order and Assessment, as provided below, **TWO THOUSAND and EIGHT HUNDRED DOLLARS (\$2,800.00)** shall be paid to the "Treasurer, State of Tennessee." All correspondence, including civil penalty payments, should be addressed to Tammy Gambill, Division of Air Pollution Control, Tennessee Department of Environment and Conservation, 9th Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243. The case number, "**APC10-0246**" should be clearly shown on the check or money order to insure that the payment is properly credited. Payment shall be made within thirty (30) days of receipt of this ORDER AND ASSESSMENT OF CIVIL PENALTY.

2. (b.) If the Respondent neither timely appeals this Order nor waives the right to appeal, then, in that event, the entire CIVIL PENALTY (**\$3,750.00**) is due and payable to the State of Tennessee within thirty (30) days of the Respondent's receipt of this Order.

3. The Respondent shall pay the assessed CIVIL PENALTY to the "Treasurer, State of Tennessee." All correspondence, including civil penalty payments, should be addressed to Tammy Gambill, Division of Air Pollution Control, Tennessee Department of Environment and Conservation, 9th Floor L&C Annex, 401 Church Street, Nashville, Tennessee 37243. The case number, "APC10-0246" should be clearly shown on the check or money order to ensure that the payment is properly credited. Payment shall be made within thirty (30) days of receipt of this ORDER AND ASSESSMENT OF CIVIL PENALTY.

The Secretary does not expressly or implicitly waive his authority pursuant to any provision of the Tennessee Air Quality Act or Department Rules promulgated there under by issuing this ORDER AND ASSESSMENT OF CIVIL PENALTY.

Issued the 11 day of January, 2013, in the Office of the Technical Secretary of the Tennessee Air Pollution Control Board.

  
Barry R. Stephens, P.E.  
Technical Secretary  
Tennessee Air Pollution  
Control Board

#### **NOTICE OF RIGHTS**

Pursuant to Tennessee Code Annotated §§ 68-201-108(a) and 68-201-116(b), the Respondent may secure review of this Assessment. In order to secure review of this Assessment, the Respondent must file with the Technical Secretary at the address below a written petition setting forth the grounds and reasons for objecting to the assessment and asking for a hearing before the Air Pollution Control Board. The Respondent must file the written petition within thirty (30) days of receiving of this Order and Assessment. The Technical Secretary's address is:

Department of Environment and Conservation  
Division of Air Pollution Control  
9<sup>th</sup> Floor, L & C Annex  
401 Church Street  
Nashville, TN 37243-1531

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, then the Respondent will be deemed to have consented to the Order and it shall become final. This means that unless the appeal is filed on time that the Board will not hear any appeal.

Any hearing of this case before Air Pollution Control Board for which a Respondent properly petitions is a contested case hearing governed by Tenn. Code Ann. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act.) and the Dept. of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is **an individual**, the Respondent may **either** obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or **proceed without an attorney**. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization. This does not mean that the Department is obligated to provide counsel. If the Respondent is a **corporation, Limited Liability Partnership, Limited Liability Company or any other artificial entity created by law**, then it is the Department's position that the Respondent **must obtain legal counsel to represent it in this matter**.

JMR/APC10-0246

**WAIVER OF RIGHT TO APPEAL**

The Respondent may resolve this matter by consenting to this Order and Assessment and waiving the right to appeal. To do so, an authorized representative of the Respondent must sign the waiver below and return one copy of this Order and Assessment, along with a check or money order for the penalty amount of **TWO THOUSAND and EIGHT HUNDRED DOLLARS (\$2,800.00)** to the State of Tennessee. If both the signed waiver and payment are not received by the Division within thirty (30) days of your receipt of this Order the full assessed penalty is due, unless an appeal has been timely filed.

The Respondent knowingly and voluntarily waives the right to appeal this Order and Assessment as evidenced by the signature below.

**CITY of CROSSVILLE**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

APC10-0246