



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

Office of the
Secretary

Phone: (302) 739-9000
Fax: (302) 739-6242

**NOTICE OF ADMINISTRATIVE PENALTY ASSESSMENT
SECRETARY'S ORDER**

Order No. 2019-AQ-0034

***PERSONALLY SERVED BY
AN ENVIRONMENTAL
PROTECTION OFFICER***

Issued To:

EcoServices, LLC
Suite 500
407 Lincoln Highway
Exton, PA 19341

Derrick Maxwell
c/o EcoServices, LLC
407 Lincoln Highway
Exton, PA 19341

To EcoServices LLC and Derrick Maxwell:

The Secretary of the Department of Natural Resources and Environmental Control ("DNREC") has found EcoServices, LLC ("EcoServices") and Derrick Maxwell ("Maxwell") in violation of 7 *Del.C.* Chapter 60 and 7 Del. Admin. Code §1121, the DNREC *Emission Standards for Hazardous Air Pollutants*. Accordingly, the Department is issuing this Notice of Administrative Penalty Assessment and Secretary's Order, pursuant to 7 *Del.C.* §6005.

BACKGROUND

EcoServices is a licensed environmental contractor. On August 17, 2018, EcoServices notified DNREC of plans to perform asbestos abatement services at the former General Motors plant in Boxwood, New Castle County, Delaware. On November 26, 2018, Atlantic Coastal Dismantling notified DNREC of plans to demolish the Boxwood facility. Representatives of the DNREC Division of Air Quality held a site visit at the Boxwood facility on December 4, 2018 and met with staff from both EcoServices and Atlantic Coastal Dismantling to discuss how the asbestos on site would be abated, and to arrange a schedule of inspections.

On or about March 10, 2019, the federal Occupational Safety and Health Administration ("OSHA") received information alleging improper asbestos removal procedures by EcoServices at the Boxwood site. OSHA officials subsequently met at the Boxwood site with DNREC representatives on March 21, 2019. Representatives from the site owner, Harvey Hanna, Atlantic Coastal Dismantling, and EcoServices reported that all site abatement work conducted prior to the meeting had been completed without issues.

On March 26, 2019, DNREC reviewed video taken at the Boxwood site that depicted the process of asbestos removal by EcoServices personnel. One video was recorded on February 25, 2019, and appeared to depict numerous particles suspended in the air and blowing through the workplace. A second video recorded on March 8, 2019 depicted a machine being used to crush what appeared to be transite (asbestos/cement) panels in a dumpster, generating considerable dust in the air. DNREC launched an investigation into the asbestos removal process by EcoServices at the Boxwood facility.

Workers employed by EcoServices who were present at the Boxwood plant and engaged in asbestos removal gave statements to DNREC confirming that the materials containing asbestos were not handled properly, according to the training they had received through EcoServices. The witnesses complained to their foreman, Derrick Maxwell; but he refused to take any action. When State and Federal inspectors were on site, the workers were prevented by Maxwell from having any contact with the inspectors.

When Mr. Maxwell was interviewed, he denied any impropriety, and claimed that proper asbestos handling procedures had been followed.

Investigation revealed that EcoServices and Maxwell had failed to take precautions to prevent material containing asbestos from becoming airborne. The transite panels being removed at the plant were known to contain asbestos. Witnesses stated that the material was not properly wetted before removal or transport. Appropriate work practices to minimize the dispersal of particulate asbestos were not followed, leaving a visible residue of asbestos. The transite panels were pulverized and crushed in a way that generated large amounts of particles in the air. The panels were not wetted before, during, or after the dismantling.

VIOLATIONS

EcoServices and Maxwell ("Respondents") violated the DNREC *Emission Standards for Hazardous Air Pollutants*, 7 Del.Admin.Code 1121, Section 10.9, by failing to take precautions to prevent asbestos from becoming airborne. That section reads as follows:

10.9 Control of asbestos from any non-NESHAP asbestos project. A person engaged in any asbestos project not subject to NESHAP shall take precautions to prevent asbestos from becoming airborne, including, but not limited to:

10.9.1 Wetting the asbestos material (except asbestos to be encapsulated);

10.9.2 Taking measures such as sealing the work area and using appropriate work practices to minimize the dispersal of particulate asbestos;

10.9.3 Leaving no visible residue of asbestos after completing the project;

10.9.4 Sealing asbestos waste in an appropriate container;

10.9.5 Disposing of the asbestos at a site or landfill approved by the Department in a manner that prevents asbestos from becoming airborne; and

10.9.6 Receipts and records of proper disposal shall be made available to the Department upon request.

Respondents violated the *Regulations* on February 25, 2019 and March 8, 2019 at the Boxwood plant, by improperly handling transite panels known to contain asbestos. The violations include the following:

- failure to properly wet the material containing asbestos before, during, and after the time it was crushed and pulverized;
- failure to properly seal the work area and to use appropriate work practices to minimize the dispersal of particulate asbestos;
- leaving a visible residue of asbestos after crushing and pulverizing the transite panels;
- failing to properly seal and contain the crushed and pulverized panels containing asbestos for disposal in a manner that prevented particles containing asbestos from becoming airborne.

CONCLUSIONS

Based on the foregoing evidence, and applying the referenced *Regulations*, Respondents have violated the regulatory provisions cited above on February 25, 2019 and on March 8, 2019 at the Boxwood site.

ASSESSMENT OF PENALTY AND COSTS

Pursuant to the provisions of 7 *Del.C.* §6005(b)(3), this Order is written notice to the Respondents that DNREC is assessing each Respondent an administrative penalty of \$20,000.00 (\$10,000 for each date) for the violations on distinct dates as identified in this Order.

In addition to the penalty assessment, Respondents are hereby assessed, pursuant to 7 *Del.C.* §6005(c), costs in the amount of \$12,947.71 each which were incurred by the Department in the investigation of the noted violations, and the abatement and control of any pollution incident to the violations. Such expenses include, but are not limited to, legal fees and assistance, materials, equipment, human resources, and contractual assistance. Attached to this Order is a detailed billing of these expenses.

Respondents shall each submit one check to DNREC in the amount of \$20,000.00 to pay the penalty and one check to DNREC in the amount of \$12,947.71 to pay DNREC's expenses. The payments shall be made in full within 30 days from the receipt of this Order. The checks shall be made payable to the "State of Delaware" and shall be directed to: Ralph K. Durstein III, Deputy Attorney General, Department of Justice, 102 W. Water Street, Dover, Delaware 19904.

PUBLIC HEARING AND APPEAL RIGHTS

This Assessment and Order is effective and final upon receipt by Respondents. Pursuant to §6008 of Title 7 of the Delaware Code, any person whose interest is substantially affected by this action of the Secretary may appeal to the Environmental Appeals Board within **20 days** of the receipt of the Assessment and Order. In the alternative, Respondents may, pursuant to 7 *Del.C.* §6005(b)(3), request a public hearing on the Order, within **30 days** of receipt of the Order. A hearing would be conducted pursuant to 7 *Del.C.* §6006, and the Secretary's Order following the hearing would be subject to appeal, pursuant to 7 *Del.C.* §6008, by any person substantially affected.

In the event that either Respondent desires to challenge the detailed billing for expenses submitted by the Secretary, that person must request an administrative hearing before the Secretary, within **twenty days** of the receipt of this Order.

The Department reserves the right to take additional enforcement actions regarding these and other violations at Respondent's facility, including but not limited to one or more of the following: an action under 7 *Del.C.* §6005(b)(1) seeking penalties for past violations, an action in the Court of Chancery pursuant to 7 *Del.C.* §6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of civil penalties and recovery of the Department's costs and attorney's fees pursuant to 7 *Del.C.* §§6005(b)(3) & (c)(1). Nothing in this document shall be deemed to estop, or in any way preclude, any additional enforcement action for these or any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating these violations.

To request a hearing, please submit your request, in writing, to:

Department of Natural Resources and Environmental Control
Office of the Secretary
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

To submit an appeal to the Environmental Appeals Board, there is a \$50.00 filing fee,
with a check made payable to the: "Environmental Appeals Board" and sent to:

Department of Natural Resources and Environmental Control
Office of the Secretary
Attn: Assistant to the Environmental Appeals Board
89 Kings Highway
Dover, DE 19901
Ph: (302) 739-9000

8/14/19

Date



Shawn M. Garvin, Secretary

cc: Ralph K. Durstein III, Deputy Attorney General

WAIVER OF STATUTORY RIGHT TO A HEARING

ECOSERVICES LLC hereby waives its right to a hearing and its opportunity to appeal or contest this Order and agrees to the following:

1. **ECOSERVICES LLC** will pay the administrative penalty in the amount of \$20,000.00 by issuing a check payable to the "State of Delaware" within 30 days of receipt of this Order. The check shall be directed to Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street, Dover, Delaware 19904; and
2. **ECOSERVICES LLC** will reimburse the Department in the amount of \$12,947.71 which represents DNREC'S expenses incurred in the investigation of these violations. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street, Dover, Delaware 19904.

ECOSERVICES LLC

Date: _____

By: _____

Title: _____

WAIVER OF STATUTORY RIGHT TO A HEARING

DERRICK MAXWELL hereby waives his right to a hearing and his opportunity to appeal or contest this Order and agrees to the following:

1. **DERRICK MAXWELL** will pay the administrative penalty in the amount of \$20,000.00 by issuing a check payable to the "State of Delaware" within 30 days of receipt of this Order. The check shall be directed to Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street, Dover, Delaware 19904; and
2. **DERRICK MAXWELL** will reimburse the Department in the amount of \$12,947.71 which represents DNREC'S expenses incurred in the investigation of these violations. The reimbursement shall be paid within 30 days of receipt of this Assessment and Order. The check shall be made payable to the "State of Delaware" and be directed to Ralph K. Durstein III, Deputy Attorney General, Department of Justice, Environmental Unit, 102 W. Water Street, Dover, Delaware 19904.

DERRICK MAXWELL

Date: _____

97-19-00681 Investigation ECU Costs

3/26/19	ECU Receives Complaint	2 hours (9707)
3/27/19	ECU accompanies Air on Inspection	1 hour (9707)
3/28/19	Conference Call with OSHA	1 hour (9707)
4/1/19	ECU drafts request letter to OSHA	1 hour (9707)
4/2/19	ECU reviews survey information	1 hour (9707)
4/3/19	ECU accompanies Air on inspection	1 hour (9704 & 9707)
4/8/19	ECU notified by Air about asbestos disturbance at site	1 hour (9707)
4/15/19	Meeting to discuss concerns with Air, Director Emory	3 hours (9701 & 9707)
4/16/19	ECU reviews information from OSHA	2 hours (9707)
4/17/19	ECU meeting about concerns from public meeting	6 hours (9701,9703,9704,9707)
4/18/19	ECU interviews witnesses at DSP Troop 2	3 hours (9704 & 9707)
4/19/19	ECU has soil samples taken around facility	3 hours (9704)
4/22/19	ECU interviews witnesses at DSP Troop 2	3 hours (9704 & 9707)
4/23/19	ECU reviews video from witness	1 hour (9707)
4/30/19	ECU inspects facility with Air	1 hour (9707)
5/2/19	ECU inspects facility with Air	1 hour (9707)
5/6/19	ECU send email to OMB Facilities about licenses	1 hour (9707)
5/16/19	ECU inspects facility with Air	1 hour (9707)
5/21/19	ECU inspects facility with Air & Meeting	2 hours (9707) 1 hour (9701)
5/29/19	ECU inspects facility with Air	1 hour (9707)
6/3/19	ECU inspects facility with Air	1 hour (9707)
6/12/19	ECU inspects facility with Air	1 hour (9707)

6/13/19	ECU meeting to discuss case	1 hour (9701, 9704, 9707)
6/17/19	ECU phone call with OSHA	1 hour (9707)
6/19/19	ECU meeting in Dover	1 hour (9701, 9704, 9707)
6/24/19	ECU inspects facility with Air	1 hour (9707)
6/26/19	ECU has soil samples taken around facility	1.5 hours (9704)
7/8/19	ECU meeting with AG	1 hour (9707)
7/11/19	ECU inspects facility with Air	1 hour (9707)
7/31/19	ECU meeting to discuss case	1 hour (9701 & 9707)

Total Cost Per Officer:

9701: 13 hours = \$466.19

9703: 6 hours = \$209.46

9704: 19.5 hours = \$632.31

9707: 42 hours = \$1271.25

Additional Expenses for Investigation:

Lorena Harnett – Transcription of taped interviews: \$1657.50

Batta Environmental for soil sampling: \$8,711

Total Cost: \$12,947.71