

ADEM



ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

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MONTGOMERY, ALABAMA

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(334) 271-7700

ONIS "TREY" GLENN, III, P.E.

DIRECTOR

BOB RILEY

GOVERNOR

January 10, 2006

CERTIFIED MAIL (7004 2510 0002 3292 0306)

RETURN RECEIPT REQUESTED

Mr. David Bulger
David Bulger, Incorporated
3904 Birmingham Highway
Montgomery, Alabama 36108-1423

Dear: Mr. Bulger:

Enclosed please find Administrative Order No. 06-019-AP which requires David Bulger, Incorporated to take certain actions regarding violations of applicable environmental laws and regulations. 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 David Bulger, Incorporated.

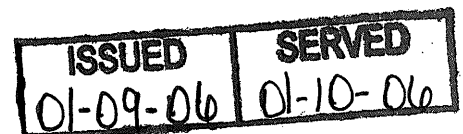
Please be advised that failure to comply with the terms of this Order can result in penalties of up to \$25,000 per day for each violation as well as possible criminal penalties. Pursuant to Code of Alabama 1975, §22-22A-7(c)(1) this Order may be appealed by filing a request for hearing before the Environmental Management Commission within 30 days after receiving this Order. The request should be addressed to the Chair of 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 obtained on our website at www.adem.state.al.us or by submitting a request in writing to ADEM-Permits & Services Division.

If you have any questions, please feel free to contact me at (334) 271-7868.

Yours very truly,

Ronald W. Gore, Chief
Air Division

RWG/kk
Enclosure



Birmingham Branch
110 Vulcan Road
Birmingham, Alabama 35209-4702
(205) 942-6168
(205) 941-1603 [Fax]

Decatur Branch
2715 Sandlin Road, S.W.
Decatur, Alabama 35603-1333
(256) 353-1713
(256) 340-9359 [Fax]

Mobile Branch
2204 Perimeter Road
Mobile, Alabama 36615-1131
(251) 450-3400
(251) 479-2593 [Fax]

Mobile - Coastal
4171 Commanders Drive
Mobile, Alabama 36615-1421
(251) 432-6533
(251) 432-6598 [Fax]



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**ALABAMA DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT**

IN THE MATTER OF:)

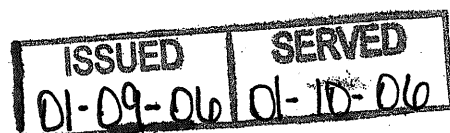
David Bulger, Inc.)
Montgomery, Alabama)

ORDER No. 06-019-AP

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended, the Alabama Air Pollution Control Act, §§22-28-1 through 22-28-23, Code of Alabama (1975), as amended, and the ADEM Administrative Code of Regulations ("ADEM Admin. Code R.") promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter, "the Department") makes the following FINDINGS:

1. **David Bulger, Incorporated** is a general contractor engaged in site preparation, construction and demolition operations with offices located in Montgomery, Alabama.
2. The Alabama Department of Environmental Management is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 through 22-22A-16, Code of Alabama (1975), as amended.
3. Pursuant to § 22-22A-4(n), Code of Alabama (1975), 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 through 7671(q), as amended. In addition, the Department is authorized to administer and enforce the provisions of the Alabama Air Pollution Control Act, §§ 22-28-1 through 22-28-23, Code of Alabama (1975), as amended.



4. On February 4, 2005 the Department observed that a large number of apartment buildings had been demolished just north of Lee High School on the east side of Ann Street in Montgomery. It was found that approximately ten (10) apartment buildings of the Savannah Heights Apartments were demolished and on the ground. Approximately four (4) buildings were still standing.

5. David Bulger, Incorporated was the demolition contractor and had various personnel and equipment on site until the end of April, 2005.

6. 40 C.F.R. 61, Subpart M is incorporated by reference in ADEM Admin. Code R. 335-3-11-.02(12).

7. 40 C.F.R. 61§145(a) requires, prior to a renovation or demolition, a thorough inspection for the presence, including types and amounts, of asbestos-containing material (ACM). This was not accomplished.

8. 40 C.F.R. 61§145(b) requires, 10 weekdays prior to the start of demolition, written notification to the Air Division of ADEM. This was not accomplished.

9. The property owner and the demolition contractor are both responsible for compliance with these requirements/regulations.

10. Mr. David Bulger was informed of the requirements for building inspection and written notification during ADEM's initial inspection on February 4, 2005.

11. On February 22, 2005 David Bulger, Incorporated received a Notice of Violation (NOV) explaining these violations. The company was required to respond in writing by March 11, 2005 explaining any information which could affect ADEM's future actions to address these violations. The company was also given the name and telephone number of an ADEM staff member that could be contacted to find out more information or answer questions.

12. David Bulger, Incorporated did not respond to the issues raised by ADEM.

13. Pursuant to Code of Alabama (1975), § 22-22A-5(18)(c), 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 and 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.

In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATION: David Bulger, Incorporated failed to determine if ACM was present at the work site. There is a high school adjacent to the work site and a junior high school across the street from the site. If ACM was present, children were possibly exposed to asbestos fibers.

B. THE STANDARD OF CARE: No steps were taken to minimize dust, which may have contained asbestos fibers.

C. ECONOMIC BENEFIT WHICH NONCOMPLIANCE MAY HAVE CONFERRED: No funds were expended for building inspections. This could have ranged from \$800 to several thousand dollars.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATION UPON THE ENVIRONMENT: There were no efforts to minimize possible asbestos fibers in the immediate area.

E. HISTORY OF PREVIOUS VIOLATIONS: David Bulger, Incorporated has no record of previous violations.

F. THE ABILITY TO PAY: David Bulger, Incorporated has not alleged an inability to pay the civil penalty.

ORDER

Based upon the foregoing FINDINGS and pursuant to §§ 22-22A-5(10), 22-22A-5(12), 22-22A-5(18), 22-28-10(2) and 22-28-18, Code of Alabama (1975), as amended, it is hereby ORDERED:

A. That, not later than forty-five (45) days after receipt of this Order, David Bulger, Incorporated shall pay to the Department a civil penalty in the amount of Three Thousand Dollars (\$3,000.00) 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 remitted 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, David Bulger, Incorporated, shall conduct all renovation and demolition operations in compliance with 40 C.F.R. 61, Subpart M.

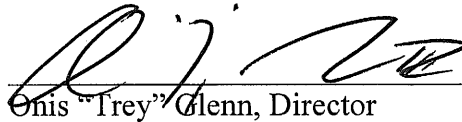
C. Should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions hereof shall remain in full force and effect.

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 the Permittee of its obligations to comply in the future with any permit.

E. That the issuance of this Order does not preclude the Department from seeking criminal fines or other appropriate relief or sanctions against David Bulger, Incorporated for the violations stated herein.

F. That the failure to comply with the provisions of this Order shall constitute cause for the commencement of legal action for the recovery of civil penalties, criminal fines, or other appropriate relief by the Department against David Bulger, Incorporated.

ORDERED and ISSUED this 9th day of January, 2006.

A handwritten signature in black ink, appearing to read 'Onis 'Trey' Glenn', is written over a horizontal line.

Onis "Trey" Glenn, Director
Alabama Department of
Environmental Management
1400 Coliseum Boulevard
Montgomery, Alabama 36110-2059
(334) 271-7700