

**ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM**

In the Matter of:

PRISM Response, Inc.
102 Technology Lane
Export, PA 15632

ACHD Violation No. 180903

Violations of Article XXI (“Air
Pollution Control”) at facility:

Sheraton Pittsburgh Airport Hotel
1160 Thorn Run Road,
Coraopolis, PA 15108

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement (hereinafter “Consent Agreement” or “Agreement”) is entered into this 22nd day of September 2020 (hereinafter “Effective Date”) by and between the Allegheny County Health Department (hereinafter “ACHD” or “Department”) and PRISM Response, Inc. (the “Appellant,” and together with the ACHD, the “Parties”).

I. PROCEDURAL STATEMENT

A. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. §§ 7401 et seq., and the Pennsylvania Air Pollution Control Act, 35 P.S. §§ 4001 et seq., and the ACHD is a local health agency organized under Local Health Administration Law, Act 315 of August 24, 1951, P.S. 1304, as amended, 16 Pa.C.S. § 12001 et seq., whose powers and duties include the enforcement of laws relating to public health within Allegheny County, including the Allegheny County Health Department’s Rules and Regulations, Article XXI, Air Pollution Control (hereinafter “Article XXI”).

B. The ACHD, through its powers under Article XXI, maintains the authority to regulate all asbestos abatement activity within the boundaries of Allegheny County. With regard to regulations concerning asbestos abatement activity in Allegheny County, Article XXI incorporates the federal asbestos abatement regulations. Article XXI § 2105.62.b.

II. BACKGROUND

A. The Sheraton Pittsburgh Airport Hotel (hereinafter “Sheraton Hotel”) is a “facility” as defined by 40 C.F.R. § 61.141 and as a “facility” the building is subject to the asbestos abatement requirements of Article XXI § 2105.62 and 40 C.F.R. § 61.145.

B. PRISM Response, Inc. (hereinafter “PRISM”), is a Pennsylvania limited liability company with a principal place of business at 102 Technology Lane, Export, Pennsylvania 15632. PRISM is licensed by the ACHD as an Asbestos Abatement Contractor (License No. ACAL-18-0412).

C. On May 19, 2017, a guest of the Sheraton Hotel triggered the sprinkler system in a room on floor six that discharged a large volume of water and caused water damage to areas of floors one to six at the Sheraton Hotel (the “Water Damage Incident”). PRISM was involved in the response and remediation related to the Water Damage Incident, which completed in September 2017.

D. The ACHD issued an Administrative Order against PRISM, dated September 21, 2018 (ACHD Violation No. 180903), for alleged violations of the ACHD’s asbestos regulations set forth in Article XXI. The Administrative Order assessed a civil penalty against PRISM in the amount of \$20,770.00.

E. On October 19, 2018, PRISM filed a Notice of Appeal of the Administrative Order, disputing the nature and extent of the allegations and violations set forth within the Order. Pursuant to Article XXI, §§ 2109.06.a.2-3, PRISM forwarded \$20,770.00 to the ACHD for placement in an escrow account.

F. Following the issuance of the Administrative Order and the filing of the Appeal by PRISM, the ACHD continued its investigation into the facts which had previously led to the

Administrative Order, with the cooperation of PRISM. As part of that continued investigation, PRISM produced a significant amount of additional information to the ACHD.

G. In light of the results of the ACHD's additional investigation, and after a full and complete negotiation of all matters set forth in this Agreement and upon mutual exchange of covenants contained herein, the ACHD and PRISM agree that settlement of this matter without protracted litigation is in the Parties' best interest and that of the public.

H. PRISM has denied and continues to deny the facts and violations alleged in the Administrative Order. PRISM maintains that it is not liable for the civil penalties stated in the Administrative Order and states that it is agreeing to the obligations imposed by this Agreement solely to settle the disputed claims without incurring the time and expense of additional contested litigation.

III. AGREEMENT

A. After full and complete negotiation of all matters set forth in this Agreement, and without admitting to the factual accuracy of any alleged fact or claim contained in the Administrative Order, upon mutual exchange of the covenants contained herein, the Parties intending to be legally bound, it is hereby AGREED to by the Parties as follows:

1. PRISM consents to the assessment of a civil penalty of Thirteen Thousand, Four Hundred Dollars (\$13,400) (the "Civil Penalty").

2. Because of the production of additional documents to the ACHD and upon additional investigations by the ACHD, some of the findings in the Administrative Order are not representative of the full facts and actions of PRISM.

3. The ACHD agrees that for each alleged violation in the Administrative Order issued against PRISM, the ACHD shall remove the adjustment factor for intentional or reckless conduct after finding that there were no violations that were

intentional or done with knowledge that the relevant conduct or omission was unlawful or that resulted from a reckless disregard of applicable regulatory or legal requirement or good operating practices.

4. The ACHD shall refund PRISM the amount of Seven Thousand, Three Hundred and Seventy Dollars (\$7,370.00). The amount refunded to PRISM is the difference between the amount that PRISM forwarded to the ACHD for placement in an escrow account and the Civil Penalty amount

5. Upon execution of this Agreement, the ACHD shall be deemed to have fully released PRISM for the violations set forth in the Administrative Order dated September 21, 2018, and all other violations or claims under ACHD's authority related to the Water Damage Incident at the Sheraton Hotel and the response and remediation efforts related thereto, whether or not claimed in the Administrative Order. This release applies to all parents, subsidiaries, affiliates, divisions, successors, heirs, executors, administrators and assigns of PRISM, in all capacities whatsoever, including without limitation, all officers, directors, employees, representatives, designees, agents, and shareholders thereof.

6. Within ten (10) days from the receipt of the refund from the ACHD as described in section III.A.4 of this Agreement, PRISM or its counsel shall withdraw their Notice of Appeal of ACHD Violation No. 180903.

7. Nothing in this Agreement shall be interpreted or construed as a release or waiver by the ACHD of the violations against Green Maple Enterprises LLC d/b/a SERVPRO of West Hills set forth in the Administrative Order against this entity (ACHD Violation No. 180902) or for any violations of Article XXI that the ACHD has not yet

brought against Green Maple Enterprises LLC d/b/a SERVPRO of West Hills.

8. PRISM hereby waives any right it may have under law to appeal or otherwise challenge the civil penalty assessed by the ACHD pursuant to this Agreement.

IV. GENERAL TERMS

A. The provisions of this Agreement shall apply to, be binding upon, and inure to the benefit of the ACHD and PRISM and upon its respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

B. Except to enforce the terms of this Agreement, the Parties do not authorize any other Party or other persons to use the findings in this Agreement in any matter or proceeding.

C. The provisions of this Agreement are severable. If any provisions or part thereof is declared invalid or unenforceable, or is set aside for any reason, the remainder of the Agreement shall remain in full effect.

D. This Agreement shall constitute the entire integrated agreement of the Parties. No prior or contemporaneous communications or prior drafts shall be relevant or admissible for purposes of determining the meaning or extent of any provisions herein in any litigation or any other proceeding.

E. No changes, additions, modifications, or amendments to this Agreement shall be effective unless they are set forth in writing and signed by the Parties hereto.

F. This Agreement shall become effective upon signature by the Parties as of the Effective Date first noted above.

G. Each Party shall bear their own attorney's fees incurred in this matter.

H. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

In addition, signatures sent via facsimile or electronic mail shall constitute original signatures for purposes of this Agreement and a photocopy may be used in place of originals for any purpose.

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SIGNATURE PAGE TO FOLLOW

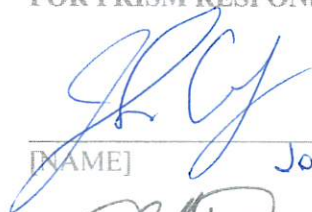
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WHEREFORE, PRISM Response, ~~LLC~~ and the Allegheny County Health Department enter into this Agreement.

IWC

FOR PRISM RESPONSE, ~~LLC~~

Date: 9/16/20



[NAME] JOHN C. REGAN

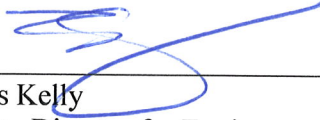


Chad Wissinger, Esq.
Dentons Cohen & Grigsby P.C.
Attorney for PRISM Response, LLC

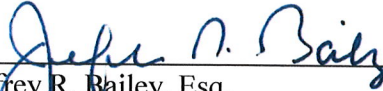
**FOR THE ALLEGHENY COUNTY HEALTH
DEPARTMENT**

Date:

9/22/2020



James Kelly
Deputy Director for Environmental Health
Allegheny County Health Department



Jeffrey R. Bailey, Esq.
ACHD Assistant Solicitor
Allegheny County Health Department