

4. Article XXI also incorporates the federal asbestos abatement regulations (National Emissions Standards for Hazardous Air Pollutants hereinafter referred to as "NESHAP") regarding asbestos abatement activity in Allegheny County, Article XXI § 2105.62.b.

5. On May 16, 2019, ACHD received information via a citizen complaint that The NorthSide Properties Residences II., LLC, Mistick Construction Company, Northside Properties Residence II, LLC, Northside Associates, LP; and Tom Mistick and Sons, Inc. (hereinafter collective referred to as "Respondents") were engaged in a multi-phase renovation project concerning no fewer than 49 individual properties situated in the North Side of Pittsburgh, Allegheny County, PA.

6. Upon further investigation and cooperation of Respondents, ACHD determined that the 49 properties constituted "Phase Two" of the renovation project and that those structures had been renovated without an asbestos survey having been conducted prior to the renovations.

7. On June 11, 2019, ACHD issued Administrative Field Orders (also known as "Stop Work Orders") to Respondents for violations of Article XXI, specifically Section 2105.62(b) of Article XXI.

8. Respondents received the Administrative Field Orders on June 17, 2019.

9. Prior to the issuance of the Administrative Field Orders, ACHD conducted an initial civil penalty assessment attributable to Respondents' violations of Article XXI and the federal NESHAPs concerning renovation projects subject to asbestos abatement regulations. At the time of the initial assessment, ACHD concluded that Respondents would be subject to a civil penalty in the amount of \$4,212,000.00.

10. On July 10, 2019, following multiple conversations and agreements between the parties, ACHD and Respondents entered into a Consent Order and Agreement.

11. The July 10 Consent Order provided the framework for the Stop Work Order to be lifted on a structure by structure basis and to be lifted in such manner that would require each

renovated property to be tested for the presence of asbestos, and, where necessary, said properties were to be cleaned and cleared by final inspections conducted by ACHD inspectors.

12. At all times relevant to the ACHD's investigation and subsequent inspection, Respondents proffered their full cooperation and assistance in rectifying the prior violations.

13. Moreover, during the investigation and inspections, ACHD determined that the presence of asbestos in renovation dust and debris was identified in six of the 49 structures.

14. Notably, although the remaining structures did not reveal a significant presence of asbestos, the properties had been in various stages of renovation by the time of the inspection, and, therefore, the absence of asbestos at the time of the inspection was not evidence that asbestos was neither present nor disturbed during the renovation work.

15. ACHD observes further that violations that gave rise to the Stop Work Order constituted the second violation of Article XXI attributable to Respondents' renovation activity. Specifically, Mistick and the Department entered into the May 6, 2016 Consent Order and Agreement, whereby Respondents were required to obtain an asbestos abatement permit to remediate the unlawful abatement activity with respect to their Brewhouse project in the South Side neighborhood of Pittsburgh, Allegheny County, PA.

16. On August 21, 2019, the Department cleared the last structures that were subject to the July 10, 2019 Stop Work Order, which thereby lifted the Stop Work Order as to all the North Side properties subject to that Order.

17. Pursuant to the Air Pollution Control Act, 35 P.S. § 4009.1(a), and Article XXI, § 2109.06.a.1, ACHD may assess a civil penalty of \$25,000 per day for each violation.

**ASSESSMENT OF PENALTIES FOR VIOLATION OF ARTICLE XXI
OF THE ALLEGHENY COUNTY RULES AND REGULATIONS
 (§2105.62(b) NESHAP ASBESTOS SURVEY REQUIREMENT)**

18. Article XXI, Section 2105.62.b incorporates into Article XXI the provisions of the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) codified by the federal government and applicable to the removal of asbestos containing materials. Specifically, Section 2105.62 provides in relevant part as follows:

§2105.62 ASBESTOS ABATEMENT APPLICABILITY, FEDERAL REQUIREMENTS, NOTICES, AND PERMITS *{Paragraph h amended July 16, 2009, effective July 26, 2009.}*

a. **Applicability.** This Section and Section 2105.63 apply to:

1. The removal, encasement, or encapsulation of ACM at a facility; and
2. The demolition of any facility.

b. **Incorporation by Reference - Federal Regulations.** All federal asbestos abatement regulations adopted at Title 40, Code of Federal Regulations, Part 61, Subpart M, NESHAP's, 40 CFR §61.140 et seq. by the EPA are hereby incorporated into this Article by reference. Additions, revisions, or deletions to such regulations adopted by the EPA are incorporated into this Article and are effective on the date established by the Federal regulations, unless otherwise established by regulation under this Article. Notwithstanding the applicability provisions of the regulations incorporated under this Subsection, the substantive requirements of this Subsection apply to all activities that are subject to this Section as set forth under Subsection a above.

19. The Federal Code of Regulations, specifically, 40 CFR Section 61.145.a prohibits the removal of asbestos containing material without an owner or operator having conducted a NESHAP survey prior to renovation activity. Section 61.145.a states in relevant part, the following:

§ 61.145 Standard for demolition and renovation.

- (a) Applicability. To determine which requirements of paragraphs (a), (b), and (c) of this section 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 paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

20. Respondents failed to conduct a NESHAP survey for all 49 of the subject structures notwithstanding the fact that material from only six of those structures would ultimately test positive for the presence of ACM. Their failure to properly submit such a survey constitutes a violation of Article XXI, Section 2105.62.a.

21. As a consequence of its violation of Article XXI with respect to all 49 subject structures, ACHD has assessed against Respondents, jointly and severally, a civil penalty in the amount of \$150,500.00.

**ASSESSMENT OF PENALTIES FOR VIOLATION OF ARTICLE XXI
OF THE ALLEGHENY COUNTY RULES AND REGULATIONS
(\$2105.62(h)(1) ASBESTOS ABATEMENT PERMIT REQUIREMENT)**

22. Article XXI, Section 2105.62.h.1 prohibits the removal of asbestos without a prior permit. Section 2105.62 sets forth, in pertinent part, the following:

§2105.62 ASBESTOS ABATEMENT APPLICABILITY, FEDERAL REQUIREMENTS, NOTICES, AND PERMITS *{Paragraph h amended July 16, 2009, effective July 26, 2009.}*

* * *

h. Permits.

1. **Generally.** No person shall conduct, or allow to be conducted, the removal, encasement, or encapsulation of:

A. Either:

i. ACM on 260 linear feet or more of pipe or a total of 160 square feet or more of ACM at any facility; or

ii. Any ACM at any facility without a current Operating & Maintenance (O&M) Plan approved by the Department under this Subpart if the Department has determined that a permit is required as a result of recent multiple prior related projects, each involving the removal, encasement, or encapsulation of ACM on less than 260 linear

feet of pipe and a total of less than 160 square feet of ACM at the same facility as the current project,

B. Unless:

i. The owner of the facility has submitted to the Department a properly completed Asbestos Abatement Project Permit (asbestos permit) application, on forms approved by the Department, with the appropriate fee, under this Section;

ii. Such permit has been issued; and

iii. Such abatement is conducted in compliance with this Article and such permit.

23. Respondents failed to notify ACHD of their renovation activity and failed to submit to ACHD a complete asbestos abatement permit application regarding all 49 of the subject structures, notwithstanding the fact that material from only six of those structures tested positive for the presence of ACM. Their failure to properly submit a complete asbestos abatement permit application constitutes a violation of Article XXI, Section 2105.62.h.

24. As a consequence of its violation of Article XXI with respect to all 49 subject structures, ACHD has assessed against Respondents, jointly and severally, a civil penalty in the amount of \$150,500.00.

25. The following counts have been bifurcated to reflect violations in the six properties where ACM was subsequently discovered upon post-renovation inspection. The counts are distinguished below because the potential for harm is evidently higher in those properties where the discoveries were made. Therefore, the penalties below are assessed differently from those properties where potential ACM was beyond detectable limits

**ASSESSMENT OF PENALTIES PERTAINING TO CONFIRMED ASBESTOS
CONTAINING MATERIAL FOR VIOLATION OF
ARTICLE XXI OF THE ALLEGHENY COUNTY RULES AND REGULATIONS
(\$2105.62(b) NESHAP ASBESTOS SURVEY REQUIREMENT)**

26. Article XXI, Section 2105.62.b incorporates into Article XXI the provisions of the National Emission Standards for Hazardous Air Pollutants (“NESHAP”) codified by the federal government and applicable to the removal of asbestos containing materials. Specifically, Section 2105.62 provides in relevant part as follows:

§2105.62 ASBESTOS ABATEMENT APPLICABILITY, FEDERAL REQUIREMENTS, NOTICES, AND PERMITS *{Paragraph h amended July 16, 2009, effective July 26, 2009.}*

b. **Applicability.** This Section and Section 2105.63 apply to:

1. The removal, encasement, or encapsulation of ACM at a facility; and
2. The demolition of any facility.

b. **Incorporation by Reference - Federal Regulations.** All federal asbestos abatement regulations adopted at Title 40, Code of Federal Regulations, Part 61, Subpart M, NESHAP's, 40 CFR §61.140 et seq. by the EPA are hereby incorporated into this Article by reference. Additions, revisions, or deletions to such regulations adopted by the EPA are incorporated into this Article and are effective on the date established by the Federal regulations, unless otherwise established by regulation under this Article. Notwithstanding the applicability provisions of the regulations incorporated under this Subsection, the substantive requirements of this Subsection apply to all activities that are subject to this Section as set forth under Subsection a above.

27. The Code of Federal Regulations, specifically 40 CFR Section 61.145.a, prohibits the removal of ACM without an owner or operator having conducted a NESHAP survey prior to renovation activity. Section 61.145.a states, in relevant part, the following:

§ 61.145 Standard for demolition and renovation.

- (b) Applicability. To determine which requirements of paragraphs (a), (b), and (c) of this section 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 paragraphs (b) and (c) of this section apply to each owner or operator of a demolition or renovation activity, including the removal of RACM as follows:

28. Respondents failed to conduct a NESHAP survey for all 49 of the subject structures, notwithstanding the fact that material from only six of those structures would ultimately test positive for the presence of ACM. Their failure to properly submit such a survey constitutes a violation of Article XXI, Section 2105.62.a.

29. As a consequence of its violation of Article XXI, §2105.62.a, with respect to the six subject structures found to contain ACM, ACHD has assessed against Respondents, jointly and severally, a civil penalty in the amount of \$50,400.00.

**ASSESSMENT OF PENALTIES PERTAINING TO CONFIRMED ASBESTOS
CONTAINING MATERIAL FOR VIOLATION OF ARTICLE XXI OF THE
ALLEGHENY COUNTY RULES AND REGULATIONS
(§2105.62(h)(1) ASBESTOS ABATEMENT PERMIT REQUIREMENT)**

30. Article XXI, Section 2105.62.h.1 prohibits the removal of asbestos without a prior permit. Section 2105.62 sets forth, in pertinent part, the following:

§2105.62 ASBESTOS ABATEMENT APPLICABILITY, FEDERAL REQUIREMENTS, NOTICES, AND PERMITS *{Paragraph h amended July 16, 2009, effective July 26, 2009.}*

* * *

h. Permits.

2. **Generally.** No person shall conduct, or allow to be conducted, the removal, encasement, or encapsulation of:

A. Either:

iii. ACM on 260 linear feet or more of pipe or a total of 160 square feet or more of ACM at any facility; or

iv. Any ACM at any facility without a current Operating & Maintenance (O&M) Plan approved by the Department under this Subpart if the Department has determined that a permit is required as a result of recent multiple prior related projects, each involving the removal, encasement,

or encapsulation of ACM on less than 260 linear feet of pipe and a total of less than 160 square feet of ACM at the same facility as the current project,

C. Unless:

i. The owner of the facility has submitted to the Department a properly completed Asbestos Abatement Project Permit (asbestos permit) application, on forms approved by the Department, with the appropriate fee, under this Section;

ii. Such permit has been issued; and

iii. Such abatement is conducted in compliance with this Article and such permit.

31. Respondents failed to notify ACHD of their renovation activity and failed to submit to ACHD a complete asbestos abatement permit application regarding all 49 of the subject structures notwithstanding the fact that material from only six of those structures tested positive for the presence of ACM. Their failure to properly submit a complete asbestos abatement permit application constitutes a violation of Article XXI, Section 2105.62.h.

32. As a consequence of its violation of Article XXI, §2105.62.h, with respect to the six subject structures found to contain ACM, ACHD has assessed against Respondents, jointly and severally, a civil penalty in the amount of \$50,400.00.

ASSESSMENT OF PENALTIES PERTAINING TO CONFIRMED ASBESTOS CONTAINING MATERIAL FOR VIOLATION OF ARTICLE XXI OF THE ALLEGHENY COUNTY RULES AND REGULATIONS
(§2105.63(b) FACILITY PROTECTION REQUIREMENT)

33. Because Respondents were required to obtain a permit under Article XXI, Section 2105.62, with respect to the six structures found to contain ACM, the removal of the asbestos containing material is subject to the procedures set forth under Section 2105.63.b. Section 2105.63.b.1-2 provides, in relevant part, as follows:

§2105.63 ASBESTOS ABATEMENT PROCEDURES *{Paragraph k amended July 16, 2009, effective July 26, 2009.}*

* * *

b. Facility Protection. No person shall conduct, or allow to be conducted, asbestos abatement activities at any facility unless:

1. Clearly identifiable signs with, and only with, the following specific warning, word for word, are posted at the facility, at eye level in a conspicuous location easily read by passers-by, at all potential approaches to the work area, a sufficient distance from the work area to permit a person to read the sign and take the necessary protective measures to avoid potential exposure, from the commencement of preparation for the project until acceptance by the Department of all final clearance inspections for the work area:

"- DANGER - ASBESTOS -
- CANCER AND LUNG DISEASE HAZARD -
- AUTHORIZED PERSONNEL ONLY -
- RESPIRATORS AND PROTECTIVE
CLOTHING ARE REQUIRED
IN THIS AREA -", and

2. Negative air pressure is maintained in the work area, the air outside the work area remains uncontaminated by asbestos fibers, and negative air pressure equipment is utilized to provide, at a minimum, one (1) air change in the work area every 15 minutes, at all times, 24 hours per day, from the commencement of preparation for asbestos removal, encasement, or encapsulation until all requirements of this Part have been met.

34. Respondents failed to post clearly identifiable signage anywhere on the worksite in a manner permitting a person to read the sign and take the necessary protective measures to avoid potential exposure prior to the removal of the asbestos containing material.

35. Moreover, Respondents failed to maintain negative air pressure in the work area in six of the subject structures to prevent the contamination of asbestos fibers into the air. Such misconduct constitutes a violation of Article XXI of the Allegheny County Rules and Regulations.

36. As a consequence of their violation of Article XXI, §2105.63.b.1-2, with respect to the six structures found to contain ACM, ACHD has assessed against Respondents, jointly and severally, a civil penalty in the amount of \$50,400.00,

**ASSESSMENT OF PENALTIES PERTAINING TO CONFIRMED ASBESTOS
CONTAINING MATERIAL FOR VIOLATION OF ARTICLE XXI OF THE
ALLEGHENY COUNTY RULES AND REGULATIONS (§2105.63(c) ASBESTOS
ABATEMENT DECONTAMINATION PROCEDURES)**

37. Article XXI, Section 2105.63.c prohibits the removal of asbestos unless all openings to and from the work areas are sealed off. Section 2105.63.c sets forth the following:

§2105.63 ASBESTOS ABATEMENT PROCEDURES *{Paragraph k amended
July 16, 2009, effective July 26, 2009.}*

* * *

c. Decontamination Outside the Work Area.

1. Any area outside of the work area which becomes contaminated as a result of the asbestos abatement activity shall be immediately decontaminated in accordance with all requirements of this Part, including but not limited to the requirements for permit applications, fees, and permits. Such decontamination activities may, in the sole discretion of the Department, be determined by the Department to constitute emergency asbestos abatement activities under this Part.
2. In addition to the requirements under Paragraph 1 of this Subsection, the contamination of any area outside of a work area as a result of asbestos abatement activity constitutes a breakdown at an air pollution source under this Article requiring compliance with §2108.01.c of this Article.

38. Respondents failed to ensure proper decontamination outside of the work area at six of the subject structures in which the presence of ACM was discovered.

39. As a consequence of their violation of Article XXI, §2105.63.c, with respect to the six structures found to contain ACM, ACHD has assessed against Respondents, jointly and severally, a civil penalty in the amount of \$50,400.00.

**ASSESSMENT OF PENALTIES PERTAINING TO CONFIRMED ASBESTOS
CONTAINING MATERIAL FOR VIOLATION OF ARTICLE XXI OF THE
ALLEGHENY COUNTY RULES AND REGULATIONS (§2105.63(d)(4) ASBESTOS
ABATEMENT SEALING REQUIREMENT)**

40. Article XXI, Section 2105.63.d prohibits, in part, the removal of asbestos unless the work areas are properly sealed off and surfaces are covered to avoid the release of ACM. Section 2105.63.d.4 sets forth the following:

§2105.63 ASBESTOS ABATEMENT PROCEDURES *{Paragraph k amended July 16, 2009, effective July 26, 2009.}*

* * *

d. **Work Area Preparation.** No person shall commence or continue, or allow the commencement or continuation of, the actual removal, encasement, or encapsulation of ACM unless:

* * *

4. All openings, including but not limited to windows, corridors, doorways, skylights, ducts, and grilles are sealed off with minimum six mil plastic sheeting sealed with tape.

5. All floor and wall surfaces are covered with minimum six mil plastic sheeting sealed with tape, all floors with a minimum of two layers of six mil plastic, so that plastic on floors overlaps the plastic on walls by a minimum of 12 inches.

41. Respondents failed to take the steps necessary to ensure the placement of six mil plastic sheeting sealed and affixed with tape to the openings described in subpart 4 above in the six subject structures before the commencement of the actual removal of ACM. Such misconduct constitutes a violation of Article XXI of the Allegheny County Rules and Regulations.

42. Respondents failed to take the steps necessary to ensure the placement of six mil plastic sheeting on the floors and walls in the six subject structures before the commencement of the actual removal of ACM. Such misconduct constitutes a violation of Article XXI of the Allegheny County Rules and Regulations.

43. As a consequence of their violation of Article XXI, §2105.63.d.4-5, with respect to the six structures found to contain ACM, ACHD has assessed against Respondents, jointly and severally, a civil penalty in the amount of \$50,400.00.

**ASSESSMENT OF PENALTIES PERTAINING TO CONFIRMED ASBESTOS
CONTAINING MATERIAL FOR VIOLATION OF ARTICLE XXI OF THE
ALLEGHENY COUNTY RULES AND REGULATIONS (§2105.63(e) ASBESTOS
ABATEMENT DECONTAMINATION ENCLOSURE SYSTEM REQUIREMENT)**

44. Article XXI, Section 2105.63.e prohibits the removal of asbestos unless there is a decontamination enclosure system in place prior to removal. Section 2105.63.e sets forth the following:

**§2105.63 ASBESTOS ABATEMENT PROCEDURES *{Paragraph k amended
July 16, 2009, effective July 26, 2009.}***

* * *

- e. **Decontamination Enclosure Systems.** No person shall commence or continue, or allow the commencement or continuation of, the actual removal, encasement, or encapsulation of ACM unless decontamination enclosure systems are provided, maintained, and properly utilized at all locations where persons or equipment enter or exit the work area.

45. Respondents failed to take the steps necessary to ensure the placement of decontamination enclosure in in the subject structures before the commencement of the actual removal of ACM. Such misconduct constitutes a violation of Article XXI of the Allegheny County Rules and Regulations.

46. As a consequence of their violation of Article XXI, §2105.63.e, with respect to the six structures found to contain ACM, ACHD has assessed against Respondents, jointly and severally, a civil penalty in the amount of \$50,400.00.

**ASSESSMENT OF PENALTIES PERTAINING TO CONFIRMED ASBESTOS
CONTAINING MATERIAL FOR VIOLATION OF ARTICLE XXI OF THE
ALLEGHENY COUNTY RULES AND REGULATIONS (§2105.63(f)(1-7) ASBESTOS
ABATEMENT REMOVAL REQUIREMENT)**

47. Article XXI, Section 2105.63.f prohibits the removal of asbestos unless the required abatement procedures are followed, or the glovebag technique is approved by ACHD as an alternative method. Section 2105.63.f sets forth the following:

§2105.63 ASBESTOS ABATEMENT PROCEDURES *{Paragraph k amended July 16, 2009, effective July 26, 2009.}*

* * *

- f. **Removal Procedures.** No person shall commence or continue, or allow the commencement or continuation of, the actual removal of ACM unless, at a minimum, except when the glovebag technique has been approved by the Department as an alternative procedure:
1. All ACM to be removed, being removed, and having been removed, has been wetted and saturated to the substrate with an amended water solution, using low pressure equipment capable of providing a fine spray mist, and is kept wet and saturated until it can be containerized for disposal, except where an alternative procedure has been approved by the Department in advance due to special circumstances (e.g. live electrical equipment, materials previously coated with an encapsulant) which prohibit the adequate use of such wetting methods.
 2. All ACM to be removed, being removed, and having been removed, is handled in such a manner so as to prevent the release of any fibers from such ACM during such removal and disposal.
 3. All ACM is removed in manageable sections capable of containerization in six mil polyethylene bags and drums, and is so containerized at least once per eight (8) hour work shift.
 4. All ACM is removed as intact sections or components and carefully lowered to the floor or containerized at elevated levels (e.g. on scaffolds) and carefully lowered to the ground, and no ACM removed from facility structures or components is dropped or thrown to the floor at any time.
 5. Except where equivalent alternative procedures have been approved by the Department in advance, all ACM removed and

asbestos-containing waste material is double-bagged in two (2) six-mil polyethylene bags which are securely sealed to prevent accidental opening and leakage, not overfilled, and placed in drums for transportation to an authorized landfill; all bags and drums are sealed prior to removal from the work area and labeled in accordance with the requirements of 40 CFR §61.150(a)(1)(iv) and (v).

6. All oversize components containing or covered with ACM, which are removed intact but do not fit into drums, are wrapped in at least two layers of six-mil polyethylene sheeting and securely sealed for transport to the landfill.
7. After completion of the removal of ACM, all surfaces from which the ACM has been removed are wet cleaned to remove all visible residue.

48. Respondents failed to take the steps necessary to ensure that asbestos containing material was wetted and saturated to the substrate with an amended water solution, using low pressure equipment capable of providing a fine spray mist, or any steps to keep the ACM wet and saturated until it can be containerized for disposal in the subject structures before the commencement of the actual removal of ACM.

49. Respondents failed to take the steps necessary to ensure that the ACM removed from the subject structures was handled in such a manner so as to prevent the release of any fibers from such ACM during such removal and disposal in the subject structures before the commencement of the actual removal of ACM.

50. Respondents failed to take the steps necessary to ensure that the ACM removed from the subject buildings was containerized in six mil polyethylene bags or drums at least once per eight (8) hour work shift during such removal and disposal in the subject structures.

51. Respondents failed to take the steps necessary to ensure that the ACM removed from subject structures was removed as intact sections or components or carefully lowered ACM to the

floor or containerized at elevated levels (e.g. on scaffolds) or ensured that no ACM removed from facility structures or components was dropped or thrown to the floor.

52. Respondents failed to take the steps necessary to ensure that oversized components containing or covering ACM and removed from the structures were double-bagged in two (2) six-mil polyethylene bags. None of the bags removed were securely sealed to prevent accidental opening and leakage. None of the ACM was taken to an authorized landfill.

53. Respondents failed to take the steps necessary to ensure that all surfaces from which ACM has been removed were wet cleaned to remove all visible residue in the six structures found to contain asbestos. Specifically, ACHD inspectors observed a visible residue of ACM on surfaces and floors left behind from abatement activity.

54. All of the misconduct as found in Paragraphs 48 to 53 above constitutes violations of Article XXI's asbestos regulations concerning the lawful removal of asbestos containing material.

55. As a consequence of their violations of Article XXI, §2105.63.f, with respect to the six structures found to contain ACM, ACHD has assessed against Respondents, jointly and severally, a civil penalty attributable to each violation in the amount of \$50,400.00.

**ASSESSMENT OF PENALTIES PERTAINING TO CONFIRMED ASBESTOS
CONTAINING MATERIAL FOR VIOLATION OF ARTICLE XXI OF THE
ALLEGHENY COUNTY RULES AND REGULATIONS (§2105.63(k) ASBESTOS
ABATEMENT FINAL CLEARANCE REQUIREMENT)**

56. Article XXI, Section 2105.63.k prohibits the removal of a critical barrier intended to protect individuals and the public at large from exposure from ACM, and, accordingly, requires owners and operators to maintain protections of the public until ACHD has conducted an inspection and given clearance to remove such protections. Section 2105.63.k sets forth the following:

**§2105.63 ASBESTOS ABATEMENT PROCEDURES *{Paragraph k amended
July 16, 2009, effective July 26, 2009.}***

* * *

k. Final Clearance Inspection.

1. No person shall remove containment barriers, fail to continue to maintain negative air pressure at a project work area, or reopen the work area to the public, or allow any such removal, failure, or reopening, until such time as the Department has accepted the results of a final clearance inspection or reinspection for such work area.

57. Respondents, having failed to take the appropriate action under Article XXI with respect to the six structures that tested positive for the presence of ACM, further failed to ensure that individuals and the public were not exposed to ACM by not maintaining and ensuring the continued presence of critical barriers followed by a compliance inspection in those six structures found to contain ACM.

58. As a consequence of their violations of Article XXI, §2105.63.k, with respect to the six structures found to contain ACM, ACHD has assessed against Respondents, jointly and severally, a civil penalty attributable to each violation in the amount of \$50,400.00.

**ASSESSMENT OF PENALTIES PERTAINING TO CONFIRMED ASBESTOS
CONTAINING MATERIAL FOR VIOLATION OF ARTICLE XXI OF THE
ALLEGHENY COUNTY RULES AND REGULATIONS (§2105.63(l)(1-10) ASBESTOS
ABATEMENT DISPOSAL REQUIREMENTS)**

59. Because the Respondents were required to obtain a permit under Article XXI, Section 2105.62, the removal of the asbestos containing material is subject to the procedures set forth under Section 2105.63.l. Section 2105.63 provides, in relevant part, as follows:

§2105.63 ASBESTOS ABATEMENT PROCEDURES *{Paragraph k amended
July 16, 2009, effective July 26, 2009.}*

* * *

1. Disposal Procedures.

1. All asbestos-containing materials, asbestos-containing waste materials, asbestos contaminated materials including, but not limited to, sealing tape

and plastic, disposable clothing, respirator filters, mop heads, sponges, and rags, shall, at least once per eight (8) hour work shift and prior to removal from the work area, be placed in leaktight containers and properly sealed and labeled, for transportation to and disposal at approved landfills.

2. All such leaktight containers shall be labeled in accordance with the requirements of 40 CFR §61.150(a)(1)(iv) and (v).
3. Alternative forms of containerization may only be approved under the alternative procedures provisions of this Part and upon a satisfactory demonstration that they are equivalent in terms of asbestos containment.
4. Double-bagged material may be carefully removed from drums at the landfill site for disposal and the drums cleaned for re-use, provided the bags are intact.
5. Asbestos-containing waste materials with sharp-edged components (e.g. nails, screws, metal lath, tin sheeting) which may tear the double six mil polyethylene bags and sheeting, shall be placed into drums for disposal together with the drum.
6. Asbestos-containing waste materials which cannot be placed in leaktight containers, shall be adequately wetted, wrapped in two (2) layers of six mil polyethylene, securely sealed, and transported from the work site to the disposal site in an enclosed truck.
7. Asbestos-containing waste materials shall be placed on the ground at the disposal site, not pushed or thrown out of trucks.
8. All asbestos-containing waste materials shall be transported directly to the approved landfill. Temporary storage at any location outside the project work area for more than eight (8) hours is prohibited.
9. All disposal receipts, trip tickets, transportation manifests and/or other documentation of transportation and disposal of the asbestos-containing waste materials shall be maintained and shall be made available to the Department, upon request, for inspection and copying.
10. All asbestos waste transportation vehicles shall be licensed in accordance with Department Rules and Regulations, Article VIII, Solid Waste and Recycling Management, and shall comply with all applicable PA Dept. of Transportation regulations.

60. In this case, Respondents failed to place asbestos containing material into leaktight containers for transportation to and disposal at approved landfills.

61. Respondents failed to label leaktight containers in accordance with the requirements of 40 CFR §61.150(a)(1)(iv) and (v).

62. Respondents, in disposing of asbestos containing material in a manner not set forth under Article XXI, could have but failed to seek approval for an alternative form of containerization. Disposal of asbestos containing material in a manner inconsistent with Article XXI and without approval permitting that inconsistent disposal constitutes a violation of Article XXI.

63. Respondents failed to place asbestos containing material having sharp edges into drums for disposal along with the drums.

64. Respondents failed to adequately wet and wrap in two layers of six mil polyethylene any asbestos containing materials which could not be placed in leaktight containers nor was that material transported from the work site to the disposal site in an enclosed truck.

65. All of the misconduct as found in Paragraphs 59 to 64 above constitutes violations of Article XXI's asbestos regulations concerning the lawful removal of asbestos containing material.

66. As a consequence of their violations of Article XXI, §2105.63.1, with respect to the six structures found to contain ACM, ACHD has assessed against Respondents, jointly and severally, a civil penalty attributable to each violation in the amount of \$50,400.00.

67. Based on the aforementioned facts supporting the violations, ACHD has determined Respondents have failed to adhere to and were, therefore, in violation of Article XXI of the Allegheny County Rules and Regulations and are jointly and severally liable for said violations.

THEREFORE, pursuant to the authority granted to the ACHD by Article XXI Sections 2109.03(a)(1) and 2105.62.e and the Local Health Administration Law, 19 P.S. Section 12010, it is hereby **ORDERED** as follows:

1. For the violations set forth in the preceding paragraphs, Respondents are hereby assessed a civil penalty of Seven Hundred Fifty-Four Thousand, Six Hundred Dollars (\$754,600.00).

2. ACHD has determined the above civil penalty to be in accordance with Article XXI § 2109.06.b reflecting relevant factors including, but not limited to: the nature, severity, and frequency of the alleged violations; the maximum amount of civil and criminal penalties authorized by law; the willfulness of the violation; the impact of such violations on the public and the environment by Respondents' failure to comply with this Article; the deterrence of future violations; the costs to the Department; the degree of cooperation in resolving the violation; and the speed with which compliance is ultimately achieved.

3. The gravity-based component of the civil penalty reflects the severity of the violation and the potential harm to the public or environment from the violation. The gravity-based component may be adjusted for factors and circumstances unique to the violator.

4. Pursuant to Article XI, Allegheny County Rules and Regulations, Hearings and Appeals, you are notified that if you are aggrieved by this Order you have thirty (30) days from the date of receipt of this Order in which to file an appeal. Such Notice of Appeal shall be filed in the Office of the Director at 542 Fourth Avenue, Pittsburgh, PA 15219. In the absence of a timely appeal, the terms of this Order shall become final.

5. This Order is enforceable upon issuance and any appeal of this Order shall not act as a stay unless the Director of ACHD so orders.

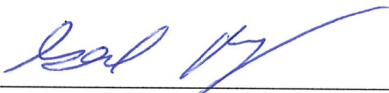
6. Failure to comply with this Order within the times specified herein shall constitute a violation of Article XXI, giving rise to the remedies provided by Article XXI, Section 2109.02 including civil penalties of up to \$25,000 per violation, per day.

7. The provision of this Order shall apply to, be binding upon and inure to the benefit of ACHD and Respondents as well as upon their respective officers, directors, agents, contractors, employees, servants, successors and assigns.

SO ENTERED, this 19 th day of December, 2022, Allegheny County, Pennsylvania.

For:

ALLEGHENY COUNTY HEALTH DEPARTMENT



Geoffrey Rabinowitz
Deputy Director
Allegheny County Health Department

12/19/22

Date