

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR BAY COUNTY, FLORIDA

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION,

Plaintiff,

vs.

CASE NO.:

PHOENIX CONSTRUCTION SERVICES,
INC.,

Defendant.

COMPLAINT

Plaintiff, State of Florida Department of Environmental Protection, files this Complaint against Defendant, Phoenix Construction Services, Inc., and states:

GENERAL ALLEGATIONS

1. This is a civil complaint seeking civil penalties in excess of \$15,000.00 (exclusive of costs, expenses, and attorney's fees) for violations of the Florida Air and Water Pollution Control Act (i.e., Chapter 403, Part I, Florida Statutes).

2. This Court has jurisdiction over these matters pursuant to Article V, Section 5 of the Florida Constitution, and Sections 26.012 and 403.121(1), Florida Statutes.

3. The Department is a Florida administrative agency created by Section 20.255, Florida Statutes. Section 403.061(6), Florida Statutes, charges the Department with the power and duty to administer and enforce the laws, rules, and regulations pertaining to air pollution.

4. Defendant is an active Florida corporation that conducts business in Bay County, Florida. Defendant's principal address is: 1805 Tennessee Avenue, Lynn Haven, Florida 32444. ("Defendant's Property").

5. Defendant's Property encompasses multiple buildings and is used for commercial purposes.

6. On October 16, 2007, Department staff discovered that a building, formerly used as an assisted living facility, had been demolished and removed from Defendant's Property.

7. The General Allegations in paragraphs 1-6 of this Complaint are applicable to each count below and incorporated as if completely restated therein.

COUNT I

FAILURE TO CONDUCT A THOROUGH INSPECTION FOR ASBESTOS PRIOR TO DEMOLITION

8. Prior to commencing a demolition, owners or operators of the demolition activity must thoroughly inspect the part of the facility where the demolition will occur for the presence of asbestos. *See* Fla. Admin. Code R. 62-204.800(10)(b)8. (adopting 40 C.F.R. 61.145 (2004), which is included under subpart M, the National Emission Standard for Asbestos).

9. Defendant did not conduct a thorough inspection for asbestos prior to demolishing the former assisted living facility located on Defendant's Property.

10. Defendant's failure to comply with the National Emission Standard for Asbestos thorough inspection requirement constitutes a violation of Section 403.161(1), Florida Statutes, and is subject to a penalty of up to \$10,000.00 under Section 403.141(1), Florida Statutes.

PRAYER FOR RELIEF

WHEREFORE, The Department respectfully requests that this Court award the Department: **(a)** civil penalties in an amount not to exceed \$10,000.00 pursuant to Section 403.141(1), Florida Statutes; and **(b)** such other relief as this Court deems just and appropriate.

COUNT II

FAILURE TO NOTIFY THE DEPARTMENT PRIOR TO DEMOLITION

11. At least 10 working days prior to the start of the demolition of a facility, the owner or operator of the demolition activity is required to submit a "Notice of Asbestos

Renovation or Demolition" (i.e., DEP Form 62-257.900(1)) to the Department regardless of whether or not any asbestos is present in the facility. *See* Fla. Admin. Code R. 62-257.301; *see also* Fla. Admin. Code R. 62-204.800(10)(b)8. (adopting 40 C.F.R. 61.145 (2004)).

12. Defendant did not submit a Notice of Asbestos Renovation or Demolition prior to demolishing the former assisted living facility located on Defendant's Property.

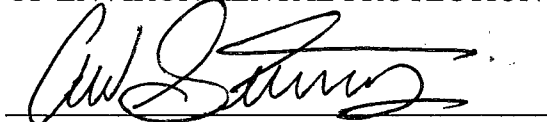
13. Defendant's failure to comply with the asbestos notification requirements set forth in paragraph 11 constitutes a violation of Section 403.161(1), Florida Statutes, and is subject to a penalty of up to \$10,000.00 each day the violation occurred under Section 403.141(1), Florida Statutes.

PRAYER FOR RELIEF

WHEREFORE, the Department respectfully requests that this Court award the Department: (a) penalties in an amount not to exceed \$10,000.00 each day Defendant failed to comply with the asbestos notification requirements pursuant to Section 403.141(1), Florida Statutes; and (b) such other relief as this Court deems just and appropriate.

RESPECTFULLY SUBMITTED this 10th day of December 2008.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION



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