

ALLEGHENY COUNTY HEALTH DEPARTMENT
AIR QUALITY PROGRAM

In the Matter of: Davis Demolition
Enforcement Order ASB-23-1001 –
6027 Verona Rd, Verona, PA 15147,
Article XXI § §2105.60; §2105.62; §2105.63

CONSENT ORDER AND AGREEMENT

This Consent Order and Agreement (“Consent Agreement”) is entered into effective this 4 th day of December, 2023, by and between the Allegheny County Health Department (hereinafter referred to as “ACHD” or the “Department”) and Davis Demolition & Excavating, LLC (hereinafter referred to as “Davis Demolition”).

RECITALS

WHEREAS, the parties have agreed to the following:

1. The Director of the ACHD has been delegated authority pursuant to the federal Clean Air Act, 42 U.S.C. Sections 7401-7671q (hereinafter “CAA”), and the Pennsylvania Air Pollution Control Act, 35 P.S. Sections 4001-4014 (hereinafter “APCA”), and the ACHD is a local health agency organized under Local Health Administration Law, Act 315 of August 24, 1951, P.L. 1304, as amended, 16 Pa.C.S. §12001 et seq. whose Act 315 of August 24, 1951, P.L. 1304, as amended, 16 Pa.C.S. §12001 et seq. whose duties include the enforcement of laws relating to public health within Allegheny County, including the ACHD’s Rules and Regulations, Article XXI, Air Pollution Control (Allegheny County Code of Ordinances Chapters 505, 507, and 535) (“Article XXI”).

2. Davis Demolition & Excavating, LLC, (hereinafter "Davis Demolition") located at 113 Heartland Drive, Butler, PA 16001 is a demolition and excavation contractor that performs demolition projects within Allegheny County.

3. The Municipality of Penn Hills is the owner of the property located at 6027 Verona Rd. As a part of a municipally funded blight remediation project, the Municipality of Penn Hills awarded Davis Demolition a contract to demolish the structure at 6027 Verona Rd.

4. Davis Demolition is the demolition contractor who demolished the structure at 6027 Verona Rd.

5. On January 20, 2022, the Allegheny County Health Department, received an email from Adam Davis of Davis Demolition that included links to an asbestos demolition notification form and an asbestos survey report. On January 21, 2022, an ACHD representative replied they could not access the files via the links in the email and requested Davis Demolition to re-send the reports as attachments. On February 9, 2022, Davis Demolition replied via email with the asbestos demolition notification form and an asbestos survey report. The asbestos survey report stated that a thorough survey could not be completed on the structure at 6027 Verona Road due to poor physical conditions and safety concerns. The survey also stated, "It is recommended that the structure be demolished in accordance with NESHAP Regulations and that the debris be disposed of at a facility that accepts asbestos waste." Within the notification, Davis Demolition marked that no asbestos was present and "Condition of building too poor to get samples."

6. On February 14, 2022, ACHD emailed Davis Demolition stating the asbestos survey was unable to be completed on 6027 Verona Road and the entire structure must be treated as asbestos containing material. The structure would also require an asbestos abatement

permit application and fee to be submitted to ACHD, and an Allegheny County Licensed Asbestos Abatement Contractor must be present for the demolition. On February 21, 2022, Davis Demolition sent an updated notification to ACHD. ACHD inspector Elizabeth Godusky reported on February 18, 2022, that 6027 Verona Road had been demolished. An asbestos abatement permit application and fee were not received by ACHD. Davis Demolition was not an Allegheny County Licensed Asbestos Abatement Contractor between January 1, 2022 through February 21, 2022. Davis Demolition did not apply for an Allegheny County Asbestos Abatement Contractor License until August 18, 2022—Davis Demolition received the License on September 2, 2022.

7. The demolition of 6027 Verona Road was municipally funded and, therefore, had to adhere to Article XXI §§ 2105.60 – 2105.63, 40 C.F.R. § 61.145(b). The structure was required to be treated as asbestos containing material, but Davis Demolition did not treat it as such. The demolition of 6027 Verona Road required an Allegheny County Licensed Asbestos Abatement Contractor to oversee the demolition and apply for an ACHD Asbestos abatement permit. An Allegheny County Licensed Asbestos Abatement Contractor did not oversee the abatement of 6027 Verona Road and an Asbestos Abatement permit application and fee were not received by ACHD.

8. On October 4th, 2023, ACHD issued Enforcement Order ASB-23-1001, in which Davis Demolition was ordered to do the following:

- a. Submit an asbestos abatement permit application and applicable fee of \$350.00 within 30 days of the issuance of the order.
- b. Pay the assessed civil penalty of \$3,465 within 30 days of issuance of the order

9. On October 20th, Davis Demolition requested a meeting with the Department to discuss the enforcement order.

10. On October 31st, Adam Davis of Davis Demolition met with ACHD. A permit application for 6027 Verona Road was submitted during the meeting.

11. On November 1, 2023, payment of \$350.00 for permit PAA224613 was received by ACHD.

NOW, THEREFORE, without any final determination of fact or law, and intending to be legally bound hereby, the Parties hereto agree as follows:

I. JURISDICTION

1. Solely for the purposes of this Consent Agreement, Davis Demolition waives all objections and defenses that it may have to jurisdiction or venue. Davis Demolition shall not challenge ACHD's jurisdiction to enter into or to enforce this Agreement.

II. APPLICABILITY

2. The provisions of this Consent Agreement shall apply to, be binding upon, and inure to the benefit of ACHD and Davis Demolition, upon their respective officers, directors, agents, contractors, employees, servants, successors, and assigns.

3. The duties and obligations under this Consent Agreement shall not be modified, diminished, terminated, or otherwise altered by the transfer of any legal or equitable interest in Davis Demolition or any part thereof. In the event that Davis Demolition proposes to sell or transfer its interest in Davis Demolition after the effective date of this Consent Agreement or any part thereof, Davis Demolition shall provide written notice to ACHD of such purchaser or

transferee at least thirty (30) days prior to the sale or transfer. Davis Demolition shall also provide a copy of this Consent Agreement to any person or entity to whom Davis Demolition intends to make any such sale or transfer at least thirty (30) days prior thereto.

4. The undersigned representatives of Davis Demolition certify that they are fully authorized to execute this Consent Agreement on behalf of Davis Demolition, and to legally bind Davis Demolition to this Agreement.

III. CIVIL PENALTY

5. Davis Demolition consents to the assessment of a civil penalty of \$2,772.00 in full settlement of any and all civil liability for the violations identified in Enforcement Order ASB-23-1001. Davis Demolition agrees further that payment of the aforementioned civil penalty shall be received by the Department no later than 30 days from the date of this Consent Agreement.

IV. GENERAL TERMS

6. Davis Demolition recognize that this Consent Agreement has been negotiated in good faith and that any actions undertaken by Davis Demolition in accordance with this Consent Agreement do not constitute an admission of fault or liability.

7. This Consent Agreement addresses and is intended to resolve all outstanding issues between the Parties relating to the Enforcement Order ASB-23-1001.

8. The Parties do not authorize any other persons to use the findings in this Consent Agreement in any matter or proceeding.

Nothing herein is intended to limit the authority of ACHD with respect to violations that may have occurred prior to the date of this Consent Agreement, if any, that are not intended to be the subject of resolution hereunder, or to limit the authority of ACHD to

seek enforcement of this Consent Agreement in the event that Davis Demolition fails to comply with its terms and conditions.

V. FORCE MAJEURE

9. For purposes of this Consent Agreement, “force majeure” as applied to Davis Demolition or to any entity or person controlled by Davis Demolition, is defined as any event arising from circumstances or causes beyond the control of Davis Demolition or of any entity or person controlled by Davis Demolition, including but not limited to, its officers, directors, employees, agents, representatives, contractors, subcontractors, and consultants, that could not have been prevented by reasonable due diligence and that delays or may delay or prevent the performance of any condition under this Consent Agreement despite Davis Demolition’s diligent efforts to fulfill the condition. The requirement to exercise “diligent efforts to fulfill the condition” includes using diligent efforts to anticipate any potential force majeure event and diligent efforts to address the effects of any potential force majeure event (i) as it is occurring, and (ii) following the potential force majeure event, such that the delay or nonperformance is minimized to the greatest extent possible.

10. If any event occurs or has occurred that may delay or prevent the performance of any condition under this Consent Agreement, and if Davis Demolition are to have the right to claim such event constitutes force majeure, Davis Demolition shall:

- (a) Telephonically notify and inform ACHD of the occurrence of the event within forty-eight (48) hours after Davis Demolition first knew, or with the exercise of reasonable care should have known, of the event;
- (b) Provide in writing to ACHD, within five (5) days after Davis Demolition first knew, or with the exercise of reasonable care should have known, of the event, a statement which:
 - (1) Describes and explains the reasons for the delay or nonperformance;

- (2) Describes and explains the reasons for the duration or anticipated duration of the delay or nonperformance;
- (3) Identifies all measures taken or to be taken by Davis Demolition to prevent or minimize the delay or nonperformance;
- (4) Includes a timetable and schedule pursuant to which such measures shall be implemented;
- (5) Contains Davis Demolition's rationale for attributing such delay or nonperformance to a force majeure event if it intends to assert such a claim;
- (6) States whether, in the opinion of Davis Demolition , such event may cause or contribute to an endangerment to public health, welfare or the environment; and
- (7) Includes available documentation which, to the best knowledge and belief of Davis Demolition supports Davis Demolition's opinion in subparagraph 6, above.

Failure by Davis Demolition to comply with each of the notice requirements above shall constitute a waiver of Davis Demolition's right to invoke the Force Majeure provision as a basis for delay or nonperformance under this Consent Agreement.

VI. GENERAL PROVISIONS

11. In the event that Davis Demolition fail to comply with any provision of this Consent Agreement, ACHD may pursue any remedy available under Article XXI of ACHD's Rules and Regulations for a violation of an Order of ACHD, including an action to enforce this Consent Agreement.

12. ACHD reserves the right to require additional measures to achieve compliance with this Consent Agreement. Davis Demolition reserves the right to challenge any action that ACHD may take to require those measures.

13. Davis Demolition shall be liable for any violations of this Consent Agreement, including those caused by, contributed to, or allowed by its officers, agents, employees, or contractors.

14. All correspondence with ACHD concerning this Consent Agreement shall be addressed to:

Allason Holt
Program Manager
Compliance and Enforcement Program
Allegheny County Health Department
301 39th Street, Building 7
Pittsburgh, PA 15201-1811

With a copy to:

Jason Willis, Solicitor
Allegheny County Health Department
Legal Section
301 39th Street, Building 7
Pittsburgh, PA 15201-1811

15. All correspondence with Davis Demolition concerning this Consent Agreement shall be addressed to:

Adam Davis
Davis Demolition & Excavating, LLC
113 Heartland Drive,
Butler, PA 16001

16. Davis Demolition shall notify ACHD whenever there is a change in the contact person's name, title or address. Service of any notice or any legal process for any purpose under this Consent Agreement, including its enforcement, may be made by mailing an original or true and correct copy by first class mail to the above addresses.

17. The paragraphs of this Consent Agreement are severable, and should any part hereof be declared invalid or unenforceable, the remainder shall remain in full force and effect between the Parties.

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

19. The Parties shall bear their respective attorneys' fees, expenses, and other costs with regard to the prosecution or defense of this matter or any related matters arising prior to the execution of this Consent Agreement.

20. This Consent Agreement may be modified only by written agreement of the Parties hereto.

IN WITNESS WHEREOF, the Parties hereto have caused this Consent Agreement to be executed by their duly authorized representatives. The undersigned representatives of Davis Demolition and ACHD certify under penalty of law, as provided by 18 Pa.C.S. § 4909, that they are authorized to execute this Consent Agreement on behalf a party; that Davis Demolition consents to the entry of this Agreement as a final ORDER of ACHD; and that, except as otherwise provided herein, Davis Demolition hereby knowingly waive their rights to appeal this

Consent Agreement and to challenge its content or validity, which rights may be available under Article XI of ACHD's Rules and Regulations for Hearings and Appeals, and Pennsylvania Local Agency Law, 2 Pa.C.S. §105, or any other applicable provision of law. Signature by Davis Demolition's attorneys certify only that this Consent Agreement has been signed after consulting with counsel.

FOR Davis Demolition & Excavating, LLC

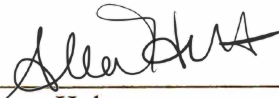
Date: 12 1, 2023



Adam Davis
Owner

FOR THE ALLEGHENY COUNTY HEALTH DEPARTMENT

Date: December 4 , 2023



Allison Holt
Program Manager
Air Quality Compliance and Enforcement



Wesley Speary
ACHD Assistant Solicitor