

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

D-A-S Construction Co.	:	<u>Director's Final Findings</u>
9500 Midwest Avenue	:	<u>and Orders</u>
Cleveland, Ohio 44125	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to D-A-S Construction Co. ("Respondent") pursuant to the authority vested in the Director of Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

Nothing in the Findings shall be considered to be an admission by Respondent of any matter of law, or fact pertaining to any disputed violation. The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a general contracting company with offices located at 9500 Midwest Avenue, Cleveland, Cuyahoga County, Ohio.
2. The Lake County General Health District ("LCGHD") is Ohio EPA's contractual representative in Lake County for the administration of Ohio Administrative Code ("OAC") Chapter 3745-20 ("Asbestos Emission Control Standards").
3. OAC Rule 3745-20-02(A) establishes whether an owner or operator of a demolition operation is required to provide the Director of Ohio EPA with written notice of intention to demolish or if the work practice requirements also apply to the demolition

operation. Specifically, OAC Rule 3745-20-02(A)(1) states that if the amount of friable asbestos materials in a facility, as defined in OAC Rule 3745-20-01(B)(12), to be demolished is at least two hundred sixty linear feet on pipes or at least one hundred sixty square feet on other facility components, all the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to the owner or operator of a demolition operation. Furthermore, OAC Rule 3745-20-02(A)(2) states that if the amount of friable asbestos materials in a facility being demolished is less than two hundred sixty linear feet on pipes or less than one hundred sixty square feet on other facility components, including those facilities which contain no friable asbestos, only the requirements of OAC Rule 3745-20-03 apply to the owner or operator of a demolition operation.

4. OAC Rule 3745-20-03(A)(1) states that each owner or operator of a demolition operation to whom this rule applies shall provide the Director of Ohio EPA with written notice of intention to demolish. OAC Rule 3745-20-03(A)(2)(a) states that, for demolition operations described in OAC Rule 3745-20-02(A)(1), each owner or operator shall provide the written notice at least ten days before any demolition operation begins at a facility. OAC Rule 3745-20-03(A)(2)(b) states that, for demolition operations described in OAC Rule 3745-20-02(A)(2), each owner or operator shall provide the written notice at least twenty days before any demolition operation begins at a facility.

5. ORC 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-20 was adopted by Ohio EPA pursuant to ORC Chapter 3704.

6. The former Bank One building located in the parking lot of 36212 Euclid Avenue, Willoughby, in Lake County, Ohio and owned by GMS Management Co., Inc. ("GMS"), of 4645 Richmond Road, Cleveland, Ohio, was a "facility" as defined in OAC Rule 3745-20-01(B)(12).

7. Respondent was contracted by GMS to demolish the former Bank One building. Respondent subcontracted the demolition work to Pierce Contracting, Inc. ("Pierce"), of 457 Locklie Drive, Highland Heights, Ohio. Respondent and Pierce were "operators" of the demolition operation, as defined in OAC Rule 3745-01(B)(20).

8. On March 1, 2002, an inspector from LCGHD observed Pierce completing demolition of the former Bank One building at Respondent's direction. After discussion with Respondent, the inspector determined that an asbestos survey of the building had not been conducted prior to demolition and that an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form had not been submitted to Ohio EPA or LCGHD ten or twenty days, whichever was applicable, prior to the start of the demolition operation.

9. Respondent immediately halted the demolition operation and contacted Precision Environmental Co. ("Precision"), a licensed asbestos hazard abatement contractor (Ohio Department of Health license number 1154), to evaluate the debris for possible asbestos-containing materials. On March 1, 2002, Precision inspected the debris and collected a total of 11 samples of suspected asbestos-containing materials, including

drywall, press board, mastic, and ceiling material. The samples were sent to EA Group Laboratories ("EAG") of Mentor, Ohio for analysis. Analyses by EAG showed no asbestos was detected in any of the samples; however, due to the demolition of the structure, Ohio EPA believes it was not possible to thoroughly sample all possible asbestos-containing materials. Precision assumed that the built-up roof material was asbestos-containing.

10. On March 5, 2002, LCGHD received an initial completed "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form from Respondent to complete the demolition operations at the Bank One facility. A subsequent revised notification also received by LCGHD on March 5, 2002, stated that 1,250 square feet of Category I nonfriable asbestos-containing debris was left in place during the demolition operation. Pierce was listed as the removal contractor and transporter, and Respondent was listed as operator/general contractor for the project. Debris removal operations were scheduled for completion on March 8, 2002.

11. On March 5, 2002, LCGHD sent a Notice of Violation to Respondent, informing the firm of its violation of OAC Rule 3745-20-03(A) for failing to provide either Ohio EPA or LCGHD with written notice of intention to demolish at least ten or twenty days, whichever was applicable, prior to the start of the demolition operation at the facility.

12. Respondent has cooperated fully with LCGHD and Ohio EPA at all times during the course of the investigation.

13. The Director has given consideration to, and based his determination on, evidence relating to the technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Order:

1. Respondent shall pay the amount of three thousand and five hundred dollars (\$3,500) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within forty-five (45) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two thousand and eight hundred dollars (\$2,800) of the total amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and shall be submitted, with a letter identifying the Respondent and the site of the demolition operation, to:

Ohio EPA, Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

The remaining seven hundred dollars (\$700) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within forty-five (45) days after the effective date of these Orders, Respondent shall deliver an official check in this amount and made

payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban area tree-planting projects in Ohio. This check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

A copy of both checks shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Respondent's obligations under these orders shall terminate upon Ohio EPA's and Ohio Department of Natural Resources' receipt of the official checks required by Section V of these orders.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to Respondent's conduct of the demolition operation specified in these Orders.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken pursuant to these Orders shall be undertaken in accordance with the requirements of all applicable local, state, and federal laws and regulations. These Orders do not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to the Respondent.

IX. MODIFICATIONS

These Orders may be modified by mutual agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, and cause of action, except as specifically waived in Section XI. of these Orders.

XI. WAIVER

In order to resolve disputed claims, without admission of fact, violation, or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for the Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and the Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such an appeal. In such event, Respondent shall continue to comply with these Orders unless said Orders are stayed, vacated, or modified.

XII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIII. SIGNATORY AUTHORITY

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date

IT IS SO AGREED:

D-A-S Construction Co.

By

Date

Printed or Typed Name

Title