

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Team Environmental, Inc.	:	<u>Director's Final Findings</u>
3020 Quigley Road	:	<u>and Orders</u>
Cleveland, Ohio 44113	:	
	:	
OBO Demolition & Construction, Inc.	:	
2824 E. 75th Street	:	
Cleveland, Ohio 44104	:	

PREAMBLE

It is hereby agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Team Environmental, Inc. ("Team") and OBO Demolition & Construction, Inc. ("OBO") [referred to herein as "Respondents" when reference is made to both parties] pursuant to the authority vested in the Director of the 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 Respondents and successors in interest liable under Ohio law. No change in ownership of the Respondents shall in any way alter Respondents' 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 rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings, and Respondents do not admit to any of the allegations, facts, and statements of legal conclusions set forth in these

findings:

1. Team is an asbestos abatement contractor, licensed to do business in the State of Ohio, with principal place of business at 3020 Quigley Road, Cleveland, Ohio. OBO is a demolition contractor with principal place of business at 2824 E. 75th Street, Cleveland, Ohio.

2. In the year 2000, Team was hired by OBO to remove the asbestos-containing materials from the apartment buildings located at the Vanguard Project Apartment Buildings, 1868 and 1870 E. 101st Street, Cleveland, Ohio. The apartment buildings were owned by the U.S. Department of Housing and Urban Development ("HUD"). The buildings were then to be demolished by OBO, under contract with the City.

3. All Ohio Administrative Code ("OAC") rules cited in these Orders refer to the rules that existed in OAC Chapter 3745-20 at the time of the project identified in Finding 2.

4. OAC Chapter 3745-20 contains the asbestos emission control standards, which specify, in part, the notification and work practice requirements for the demolition of buildings and other structures.

5. According to the definition in Ohio Administrative Code ("OAC") Rule 3745-20-01(A)(12) and since each of these apartment buildings contained more than four dwelling units, this project involved the demolition of a "facility."

6. OAC Rule 3745-20-02(A)(1) states that the requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05 apply to each owner or operator of a demolition operation if the amount of friable asbestos materials, as defined in OAC Rule 3745-20-01(B)(14), in a facility being demolished is at least 260 linear feet on pipes or at least 160 square feet on other facility components. The demolition of these apartment buildings involved more than 160 square feet of friable asbestos materials on other facility components; therefore, this demolition was subject to the notification requirements of OAC Rule 3745-20-03 and the work practice requirements of OAC Rules 3745-20-04 and 3745-20-05.

7. OAC Rule 3745-20-04(A)(1) states, in part, that each owner or operator of a subject demolition operation must either (1) remove friable asbestos materials from a facility being demolished before any wrecking or dismantling that would break up the materials or preclude access to the materials for subsequent removal or (2) if the friable asbestos material is encased in concrete or other similar material, adequately wet such material whenever exposed during demolition.

8. OAC Rule 3745-20-05(A) states, in part, that each owner or operator of any

subject demolition operation shall dispose of asbestos-containing waste material at an active waste disposal site, as defined in OAC Rule 3745-20-01(B)(1), operated in accordance with OAC Rule 3745-20-06.

9. OAC Rule 3745-20-05(B) states, in part, that each owner or operator of any subject demolition operation shall discharge no visible emissions during the collection, processing, packaging, transporting, or disposition of any asbestos-containing waste material, as defined in OAC Rule 3745-20-01(B)(4).

10. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director pursuant to ORC Chapter 3704.

11. On July 7, 2000, the Northeast District Office of Ohio EPA ("NEDO") received a completed Ohio EPA Notification of Demolition and Renovation form, dated July 5, 2000, from Team. According to the notification, 9,600 square feet (ft²) of paper under floor boards and 15,000 ft² of plaster were friable asbestos materials to be removed from the buildings during the period of July 19 through September 1, 2000, and demolition was to take place during the period of September 1 through October 1, 2000.

12. On September 5, 2000, Team submitted a 1st revised notification in which the asbestos removal start date was changed from July 19, 2000 to August 14, 2000, and the completion date was changed from September 1, 2000 to September 30, 2000. Also, the demolition start date was changed from September 1, 2000 to September 30, 2000, and the completion date was changed from October 1, 2000 to October 11, 2000. In addition, amount of friable asbestos material was changed from 9,600 ft² of floor paper and 15,000 ft² of plaster to 15,000 ft² of plaster only.

13. On October 5, 2000, Team submitted a 2nd revised notification in which the asbestos removal completion date was changed from September 30, 2000 to October 30, 2000. Also, the demolition completion date was changed from October 11, 2000 to November 11, 2000. In addition, friable asbestos material to be removed was changed from 15,000 ft² of plaster to 10,800 ft² of floor paper only.

14. On October 30, 2000, Team submitted a 3rd revised notification in which the asbestos removal completion date was changed from October 30, 2000 to November 2, 2000. Also, the demolition start date was changed from September 30, 2000 to November 3, 2000, and the demolition completion date was changed from November 11, 2000 to November 17, 2000.

15. On November 15, 2000, NEDO received a copy of the original asbestos survey

report of May 1999 with laboratory results for the buildings provided by Environmental Hazards Services, L.L.C. of Richmond, Virginia, for samples taken by Tommy Dille & Associates of Cleveland Heights, Ohio. According to the report, the buildings were three-story brick structures with garden level apartments, and each had eight dwelling units. The report also indicated that cementitious plaster materials contained from 2 to 10% chrysotile asbestos by bulk sample analyses and from 1.5 to 7.75% chrysotile asbestos by point count analyses and that there was approximately 30,000 ft² of this material. Roofing materials were assumed to be asbestos-containing according to the report.

16. On December 9, 2000, Team submitted a 4th revised notification in which the asbestos removal completion date was changed from November 2, 2000 to December 27, 2000, and the demolition start date was changed from November 3, 2000 to December 27, 2000, and the demolition completion date was changed from November 17, 2000 to January 5, 2001. In addition, amount of friable asbestos material to be removed was changed from 10,800 ft² of floor paper to 8,100 ft² of plaster on wood lath walls.

17. On January 2, 2001, Team submitted a 5th revised notification in which the demolition start date was changed from December 27, 2000 to January 8, 2001, and the demolition completion date was changed from January 5, 2001 to January 12, 2001.

18. On January 11, 2001, Team submitted a 6th revised notification in which the demolition start date was changed from January 8, 2001 to January 16, 2001, and the demolition completion date was changed from January 12, 2001 to January 23, 2001.

19. NEDO found the notifications to be acceptable, except the original notification and all revised notifications were missing the certification number for the Ohio Asbestos Hazard Evaluation Specialist.

20. On January 16, 2001, Mr. Ronald McConnell, Owner of Team informed NEDO that Team had finished removal of all the friable asbestos material.

21. On January 18, 2001, a NEDO inspector observed that the structures had been completely demolished at the above-referenced site and OBO was loading the demolition debris into trucks that were taking the debris to Norton C&D landfill, located at State Route 82, Broadview Heights, Ohio. The NEDO inspector also observed visible fugitive emissions during this loading operation, and advised OBO's foreman, Mr. Earl Cook, to make sure the debris was watered during load out. OBO's foreman immediately connected a hose to a fire hydrant and started watering. The foreman also informed the NEDO inspector that the structure was demolished on January 17, 2001. The NEDO inspector collected seven samples from the debris, and recommended to the foreman that OBO discontinue disposing

of the debris until NEDO received the analytical results from the laboratory.

22. On January 18, 2001, at approximately 4:10 p.m., the NEDO inspector received a call from Mr. Tony Caywood, owner of OBO, stating that his foreman on site couldn't get in contact with him because he was in a meeting. Therefore, the foreman did not discontinue loading out the debris until that afternoon. Respondent stated that six truckloads of debris went to Norton landfill before discontinuing the disposal operations.

23. In a letter dated January 19, 2001, the City of Cleveland informed OBO that it was aware that OBO demolished these facilities without the City's authority and without notification to the City and may have created a potential hazard to the citizens of Cleveland. The letter informed OBO of a phone conversation between it and a City of Cleveland official wherein OBO was told that none of the facilities were to be demolished without first notifying the City and obtaining permission to commence demolition. Furthermore, the letter indicated that the contract for this project required OBO to contact the City of Cleveland, Demolition Bureau each day that it intended to work on a City-administered demolition project and that OBO failed to do so. Finally, the letter confirmed OBO's agreement to contain and remediate all of the contaminants on site per all applicable law.

24. On January 24, 2001, NEDO received laboratory analyses from EssTek of Middleburg Heights, Ohio showing that five of the seven samples collected on January 18, 2001 of plaster taken from the debris were at or above the threshold of 1% asbestos in the definition of "friable asbestos material" in OAC Rule 3745-20-01(B)(14) and was a regulated form of asbestos (i.e., chrysotile). Therefore, all friable asbestos materials were not either (1) removed from the buildings being demolished before the demolition began or (2) encased in concrete or other similar material and adequately wetted whenever exposed during demolition, in violation of OAC Rule 3745-20-04(A)(1) and ORC § 3704.05(G). Also, the visible fugitive emissions observed during truck loading of debris on January 18, 2001 were in violation of OAC Rule 3745-20-05(B) and ORC § 3704.05(G). Furthermore, the failure to take asbestos-containing waste material to an active waste disposal site operated in accordance with OAC Rule 3745-20-06 was a violation of OAC Rule 3745-20-05(A) and ORC § 3704.05(G).

25. On January 27, 2001, a NEDO inspector visited the site and met with Team. The debris was being wetted and no visible fugitive emissions dust were seen. Team informed the inspector that all debris was being disposed as asbestos-containing waste material.

26. On February 6, 2001, NEDO sent a notice of violation ("NOV") to the following

parties: OBO; Division of Building & Housing, Demolition Bureau, City of Cleveland; and Team, by certified mail, providing notification of the violations of OAC Rules 3745-20-04(A)(1), 3745-20-05(A), and 3745-20-05(B), and requesting the submission, in writing and within 10 days of receipt of the letter, of any information on their behalf regarding the violations.

27. On February 21, 2001, NEDO received a response to the NOV from the City of Cleveland, Assistant Director of Law, with a copy of a letter dated January 19, 2001 to OBO. The letter stated that HUD owns this property, and the role of the City was to contract for the demolition of the buildings at this site. The City did not authorize the demolition of this building and that OBO was specifically instructed to notify the City prior to commencement of demolition. In addition, the City's demolition contract specification required a contractor to notify the City each day that demolition work was planned for a site. OBO did not notify the City in this case.

28. On February 28, 2001, NEDO received from the US Post Office the unclaimed NOV sent to OBO by certified mail. NEDO again sent the NOV to OBO on March 26, 2001, by certified mail.

29. On April 20, 2001, OBO sent a reply to NEDO's NOV dated March 26, 2001. In the response to the NOV, OBO stated that it did everything possible to assure that there would be no violations. The letter further stated that before demolishing the buildings, Mr. Ronald McConnell from Team and Mr. Tony Caywood of OBO performed a walk through of the buildings on January 11, 2001 to conduct a visual inspection prior to demolition. OBO asked Team about the ceilings that were not abated. The letter mentioned that Team stated that it was discussing the ceilings with NEDO, and NEDO told them that if the ceilings are negative for asbestos content, then the ceilings didn't have to be abated. Based on the prior survey, Team believed enough samples were not collected and analyzed. OBO's letter indicated that Team then stated that it had collected more samples and that it would inform NEDO of the findings. OBO did not see any other friable asbestos material left in the building. The only material left in the building was the ceiling plaster.

The letter further indicated that Team called OBO on January 15, 2001 and stated that Team had talked with NEDO and informed it of the results of the additional samples Team collected. OBO said that Team stated that it informed NEDO that all of the samples tested were found to contain no asbestos or less than 1% asbestos, that NEDO was satisfied and demolition could start. After talking with Team, OBO checked the start date for demolition, which was January 16, 2001, then OBO scheduled demolition for January 17, 2001.

In addition, OBO stated in the letter that before it could raze the buildings, it had called

the City of Cleveland, Division of Building & Housing, to inform it of where OBO would be working. OBO included a copy of its telephone bill to prove that it called the City. OBO further said in the letter that later in the day an inspector from the City called OBO and confirmed that the facilities were being demolished.

OBO also pointed out in its letter that Team finished abatement on December 27, 2000, and delayed the start of demolition by two weeks to allow time for a final inspection by the NEDO inspector, besides being in contact with NEDO during this time frame.

Finally, OBO pointed out in the letter that when an employee informed OBO that the NEDO inspector had suggested that OBO stop working because the inspector found suspected friable asbestos material, OBO immediately told the worker to stop working and informed the inspector of how many loads were taken out.

The letter also mentioned that OBO's contract was to demolish the buildings once the asbestos was removed. OBO said that Team assured it that all of the proper steps were being taken to verify the ceilings did not contain friable asbestos material and that NEDO knew of everything taking place.

OBO claims that it fully cooperated with NEDO to rectify the problem when it was determined that samples were asbestos-containing. OBO called NEDO to confirm that the method Team planned to use to handle the cleanup was approved by NEDO. OBO believes that it did everything it could do to prevent these violations.

30. 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 benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Order:

Respondents shall pay Ohio EPA the amount of four thousand eight hundred dollars (\$4,800) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. The penalty shall be paid in four equal installments of one thousand two hundred dollars (\$1,200), with the first payment of \$1,200 due within thirty (30) days after the effective date of these Orders, the second payment of \$1,200 due by May 1, 2004, the third payment of \$1,200 due by August 1, 2004, and the final payment of \$1,200 due by November 1, 2004. Payments shall be made by official checks made payable to

"Treasurer, State of Ohio." Each official check shall be submitted to Brenda Case, Fiscal Specialist, or her successor, at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondents and the site. A copy of each check shall be sent to James A. Orlemann, Assistant Chief, Enforcement and Compliance Section, or his successor, at Ohio EPA, Division of Air Pollution Control, P.O. Box 1049, Columbus, Ohio 43216-1049.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate upon Ohio EPA's 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, the demolition of these facilities.

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 Respondents' operations.

IX. MODIFICATIONS

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

X. NOTICE

Except as otherwise specified in these Orders, all documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Northeast District Office

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Division of Air Pollution Control
2110 East Aurora Road
Twinsburg, Ohio 44087
Attention: Jim Veres

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

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

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

XIII. EFFECTIVE DATE

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

XIV. 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 this document.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date

IT IS SO AGREED:

Team Environmental, Inc.

Signature

Date

Printed or Typed Name

Title

OBO Demolition & Construction, Inc.

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Signature

Date

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