

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

John D. Dubuk	:	<u>Director's Final Findings</u>
9000 Crow Canyon Road	:	<u>and Orders</u>
#S303	:	
Danville, CA 94506	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to John D. Dubuk ("Respondent") 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 Respondent and heirs and successors in interest liable under Ohio law. No change in ownership of the Respondent's facility 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 rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of the 12-unit apartment building located at 1862 E. 97th Street, Cleveland, Cuyahoga County, Ohio.
2. Respondent hired Rob Construction Company ("Rob"), with principal place of business located at 5275 Brainard Road, Cleveland, Ohio, to conduct a renovation of the 12-unit apartment building located at 1862 E. 97th Street, Cleveland, Cuyahoga County, Ohio, which is owned by the Respondent. The facility is a three-story building, containing

twelve units and approximately 17,000 square feet in area. The building is a "facility," as defined in OAC Rule 3745-20-01(B)(12). All rule citations are from OAC Chapter 3745-20 as it existed at the time of the demolition.

3. On June 13, 2002, an inspector from the Cleveland Division of Air Quality ("CDAQ"), Ohio EPA's contractual representative in Cuyahoga County, received a call from a citizen about an asbestos abatement being done improperly at the facility. On June 13, 2002, a CDAQ representative investigated the complaint and observed evidence of asbestos abatement being performed without containment. The plaster had been removed from the walls and ceilings, and the CDAQ inspector observed approximately 1 cubic meter of **dry** asbestos-containing thermal system insulation ("TSI") and plaster on the ground and inside the building. During the investigation, the CDAQ representative collected samples of the debris remaining on the ground and inside the building. The CDAQ representative observed piles of asbestos-containing material ("ACM") debris located 6 feet outside the front door and 10 feet away from the foundation.

4. CDAQ had not received any notification about Rob's intent to renovate the 12-unit apartment building prior to starting removal of suspect asbestos-containing materials. According to the definition in OAC Rule 3745-20-01(B)(24), this project involved a "renovation." Also, Respondent was an "owner," as defined in OAC Rule 3745-20-01(B)(20), of this renovation operation.

5. OAC Rule 3745-20-02(A)(4) states that the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to each owner or operator of a renovation operation if the amount of friable asbestos materials in a facility being demolished is at least 260 linear feet on pipes or at least 160 square feet on other facility components. The reported total amount of regulated asbestos-containing material ("RACM") involved in this project was approximately 2,000 square feet on non-pipe components, thereby making the above-referenced project subject to all OAC Chapter 3745-20 requirements listed above.

6. OAC Rule 3745-20-03(A) states, in part, that each owner or operator to whom this rule applies shall provide the Director of Ohio EPA with a written notice of intention to renovate. Pursuant to paragraph(A)(2)(d) of OAC Rule 3745-20-03, this notice shall be either postmarked or delivered, to the Ohio EPA field office having jurisdiction in the county where the renovation operation is to occur, at least five days before any planned renovation begins at a facility as described in OAC Rule 3745-20-02(A)(4).

7. OAC Rule 3745-20-04(B) states, in part, that the owner or operator of any demolition or renovation operation to whom this rule applies, shall ensure all friable asbestos materials that have been damaged or made friable by demolition, renovation or adjacent stripping operations are repaired, encapsulated, or removed for disposal in accordance with OAC Rule 3745-20-05.

8. OAC Rule 3745-20-05(A) states that the owner or operator of any demolition or renovation operation to whom this rule applies, shall dispose of asbestos-containing waste material at an active waste disposal site operated in accordance with OAC Rule 3745-20-06.

9. OAC Rules 3745-20-05(B) and 3745-20-05(B)(1) state that the owner or operator of any renovation or demolition operation to whom this rule applies, shall discharge no visible emissions during the collection, processing, packaging, transporting, or deposition of any asbestos-containing waste material, and shall adequately wet asbestos-containing waste material and seal the material into leak-tight disposal containers or closure system.

10. At the time of the investigation on June 14, 2002, the CDAQ inspector collected six (6) samples of suspected dry friable asbestos materials from the debris pile on the ground and inside the building at the site. The samples were submitted to an accredited laboratory for analysis. The sample results indicate that the gray plaster materials and TSI contained chrysotile asbestos and were **above the 1% threshold level and, therefore, met the definition of "friable asbestos material" in OAC Rule 3745-20-01(B)(14). Approximately 3 to 70 percent of chrysotile asbestos was found in the gray plaster and TSI samples collected from the facility.**

11. During the investigation, the CDAQ inspector observed piles of dry asbestos-containing waste material, which contained approximately 6 feet of TSI outside the front door and 10 feet of TSI away from the foundation of the structure, in violation of OAC Rule 3745-20-05(B) and ORC § 3704.05(G). The CDAQ inspector observed only wood lath remaining on the walls and ceilings of all the floors, which indicates the use of plaster in the building. At the time of the inspection, only scraps of friable asbestos-containing plaster remained inside the building, in violation of OAC Rule 3745-20-04(A)(5) and ORC § 3704.05(G). The CDAQ representative estimated the building had about **17,000 square** feet of floor space and 100 linear feet of air cell TSI-wrapped pipe in the basement.

12. During the June 13 and 14 and July 24 inspections, the CDAQ inspector observed regulated asbestos-containing dust and debris on the building's floor and the ground after the contractor had left the work area at the end of the work shift, in violation of OAC Rules 3745-20-04(A)(5) and 3745-20-05(B), and ORC § 3704.05(G).

13. During June 13 and 14 and July 24 inspections, the CDAQ inspector revealed unprotected regulated friable asbestos material on pipes piled next to the building's front door. The TSI was left unwrapped and unsealed. Additionally, no glove bags or other means of encapsulation were left in place to protect the ends made friable at the end of the asbestos abatement work shift. This is in violation of OAC Rules 3745-20-04(B) and 3745-20-05(C)(4), and ORC § 3704.05(G) .

14. During June 14, 2002 inspection, the CDAQ representative observed pipes outside the front door of the building, and the pipes did not have any leak-tight wrapping or proper labels as required by OAC Rule 3745-20-05(C)(1). On July 24, 2002, the CDAQ representative did not see the regulated ACM on site and questioned the contractor and building owner for evidence of proper disposal. To date, no evidence has been provided. This is in violation of OAC Rule 3745-20-05(A) and ORC § 3704.05(G).

15. During June 14, 2002 inspection, the CDAQ representative observed pipes outside the front door of the building, and the pipes' leak-tight disposal containers as required by OAC Rule 3745-20-05(C)(1). On July 24, 2002, the CDAQ representative did not see the regulated asbestos-containing waste material on site and questioned the contractor and building owner for evidence of proper disposal. To date, no evidence has been provided. This is in violation of OAC Rule 3745-20-05(A) and ORC § 3704.05(G).

16. During the June 14, 2002 inspection, CDAQ observed that all asbestos-containing plaster was removed from the building and hauled off the site. By the July 24, 2002 inspection, about 95% of the asbestos-containing TSI on the ground was taken from the site. Rob could not verify proper disposal of the RACM waste. CDAQ verbally requested manifest sheets for the ACM TSI noted at the site during June 13 and 14 inspections.

17. During the inspections, CDAQ received a verbal agreement from Rob to treat any suspect material as regulated friable asbestos material. Rob also made a verbal agreement to provide CDAQ with copies of the waste manifests for friable asbestos material removed, asbestos building survey reports, and Ohio Department of Health (ODH) certifications. To date, no documentation has been provided.

18. During the inspections, CDAQ received a verbal agreement from the Respondent to treat any suspect material as regulated friable asbestos material and abate it accordingly. As of August 8, 2002, CDAQ has not received any written response to the issued NOV. During the July 24, 2002 inspection, Respondent indicated to CDAQ which pipes in the basement still had **regulated friable asbestos material** remaining.

19. On June 17, 2002, CDAQ sent a Notice of Violation ("NOV") to both Rob and the Respondent. The NOV summarized the findings from the CDAQ inspection on June 13 and 14, 2002 and the violations of OAC Chapter 3745-20. Specifically, Rob, as operator of a renovation operation, was cited, in part, for the following violations:

- a. failure to provide either CDAQ or Ohio EPA at least five working days of notice prior to the start of the renovation operation, in violation of OAC Rule 3745-20-03(A);
- b. failure to adequately wet friable asbestos materials that were

stripped from facility components until collected for disposal from the facility, in violation of OAC Rule 3745-20-04(A)(5)(a);

- c. failure to dispose of asbestos-containing waste material at an active waste disposal site, in violation of OAC Rule 3745-20-05(A); and
- d. failure to adequately wet asbestos-containing waste materials during its collection, processing, packaging, transporting, or deposition, in violation of OAC Rule 3745-20-05(B).

20. On September 11, 2002, CDAQ received a completed Ohio EPA Notification of Demolition and Renovation form on behalf of the Respondent for the renovation at 1862 E. 97th Street in Cleveland, Ohio. According to the Notification of Demolition and Renovation form submitted by Coleman Trucking Inc. ("Coleman"), the Respondent hired Coleman to remove approximately 2,000 square feet of TSI from the basement of the facility. There were five updates completed for the Notification of Demolition and Renovation form submitted by Coleman. Each update consisted of a change in the scheduled "start" and "completion" dates for the removal of friable asbestos materials from the facility. The last completed Notification of Demolition and Renovation form was submitted to CDAQ on November 5, 2002. The form listed 2,000 square feet of friable asbestos materials was to be removed from the basement of the facility and was to be disposed at USA Valley Landfill, an Ohio EPA certified disposal facility. The work was completed properly.

21. Based upon the above findings, Ohio EPA finds that Respondent violated OAC Rule 3745-20-03(A), 3745-20-04(A)(5)(a), 3745-20-04(B), 3745-20-05(A), 3745-20-05(B) and 3745-20-05(C), and ORC § 3704.05(G) by as a result of the Respondent's renovation operation at this facility.

22. Respondent submitted financial documentation to Ohio EPA on three occasions in 2004 in order to make a claim for inability to pay a civil penalty for the above-mentioned violations. The civil penalty contained in these Orders reflects Ohio EPA's evaluation of Respondent's inability to pay.

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

V. ORDERS

The Director hereby issues the following Order:

Respondent shall pay Ohio EPA the amount of ten thousand dollars (\$10,000) in eleven monthly payments of eight hundred and thirty-four dollars (\$834) and one payment of eight hundred and twenty-six dollars (\$826) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704.06. The first payment of \$834 shall be due within thirty (30) days after the effective date of these Orders and the subsequent ten payments of \$834 each shall be due within 60, 90, 120, 150, 180, 210, 240, 270, 300, and 330 days after the effective date of these Orders. A final payment of \$826 shall be due within 360 days after the effective date of these Orders. Payments shall be made by official checks made payable to "Treasurer, State of Ohio" in the appropriate amount. The official checks shall be submitted to Brenda Case, or her successor, at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and facility.

A copy of each check shall be sent to James A. Orlemann, Assistant Chief, Compliance and Enforcement, 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 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 Respondent's renovation operation.

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 Respondent.

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

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Cleveland Division of Air Quality
1925 St. Clair Avenue NE
Cleveland, OH 44114-2028
Attn: David Wagner

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Tom Kalman, Supervisor

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent 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, Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's civil liability for the specific violations cited herein.

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

Notwithstanding the preceding, Ohio EPA and 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 notwithstanding such appeal and intervention unless these 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 these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date

IT IS SO AGREED:

John D. Dubuk

Signature

Date