

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Environmental Protection Systems, LLC)	<u>Director's Final Findings</u>
1690 Lincoln Avenue)	<u>and Orders</u>
Girard, Ohio 44420)	
)	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Environmental Protection Systems, LLC ("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 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 rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent, an Ohio limited liability company, is an asbestos abatement contracting company located at 1690 Lincoln Avenue, Girard, Ohio.
2. Excavation Technologies, Inc. ("Extek"), an Ohio company incorporated as a business with the Secretary of State in the State of Ohio, and located at 11624 State Line Road, Petersburg, Ohio, is engaged in the business of demolition of buildings and other structures.

3. Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") is Ohio EPA's contractual representative in Mahoning County for the administration of Ohio Administrative Code ("OAC") Chapter 3745-20 ("Asbestos Emission Control Standards").

4. "Owner or operator" as defined by OAC Rule 3745-20-01(B)(38) means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation or both.

5. "Friable asbestos material" as defined by OAC Rule 3745-20-01(B)(20) means, in part, any material containing more than one percent asbestos by area that hand pressure can crumble, pulverize or reduce to powder when dry.

6. 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.

7. OAC Rule 3745-20-03(A), states, in part, that each owner or operator of a demolition operation shall provide the Director of Ohio EPA with a written notice of intention to demolish by not later than ten days prior to beginning demolition.

8. The vacant ARCO Gas Station (a.k.a. The Boardman Gas & Food Mart) located at the corner of Southern Boulevard and Indianola Road in Boardman Township, Mahoning County, and owned by Boardman Township, is a "facility" as defined by OAC Rule 3745-20-01(B)(12).

9. Boardman Township contracted with Extek to demolish the facility. Extek retained Respondent to perform an asbestos survey of the facility. The scope of the survey included the identification, sampling and analysis of potential asbestos-containing materials ("ACM") at the facility. The sampling of ACM was done on October 30, 2003, and November 10, 2003.

10. Respondent was an "operator," as defined in OAC Rule 3745-20-01()(38), of this demolition operation and was, therefore, subject to the notification requirements of OAC Rule 3745-20-03.

12. On November 3, 2003, Mr. Harry Manganaro, representing Extek, hand-delivered an Ohio EPA notification of demolition and renovation ("Notification") form to M-TAPCA for the demolition of the facility. The Notification indicated that there was no asbestos, and that Mr. Richard Gresley, representing Respondent performed the inspection. The Notification also indicated that the demolition would begin on November 14, 2003, and

end on November 30, 2003.

13. On November 20, 2003, Ohio Department of Health ("ODH") received the original ODH prior notification of asbestos hazard abatement project ("ODH Notification") form for the abatement project at the facility, sent by Respondent on November 17, 2003. The ODH Notification indicated that 850 square feet of drywall in the garage office was regulated asbestos-containing material ("RACM") to be removed, and 150 linear feet of non-friable Category I asbestos-containing material in good condition was also to be removed from December 1 through 4, 2003. Respondent failed to submit similar notification to M-TAPCA.

14. On December 2, 2003, Respondent submitted a summary report of its asbestos inspections of the facility conducted on October 30, and November 10, 2003 to M-TAPCA, in an attempt to revise the November 3, 2003 notification submitted by Extek. The revision was to reflect that RACM was to be removed from the facility and that Respondent was already on site. M-TAPCA advised Respondent verbally that it could not revise a notification submitted by another party, and noted that it was the first time M-TAPCA was aware that there was any RACM in the facility.

15. The December 2, 2003, summary report submitted by Respondent of the asbestos inspections further revealed that:

- a. Bulk samples were obtained from the facility on October 30, 2003, and sent to Environmental Hazards Services, LLC ("EHS") for analysis on October 31, 2003.
- b. EHS testing laboratory received the samples on October 31, 2003 and analyzed the samples BGS-01 through BGS-21 on November 5, 2003, and dated the report for these samples on November 6, 2003. The result revealed that samples BGS-08 and 21 had 12% and 2% chrysotile asbestos, respectively. When BGS-08 was reanalyzed on November 7, 2003, it showed 3% chrysotile asbestos.
- c. EHS received two more samples, BG-S22 and BG-S23, from Respondent on November 12, 2003, and analyzed them on November 13, 2003. The result revealed that the samples (i.e., BG-S22 and BG-S23) contained 2% chrysotile asbestos.
- d. The "Executive Summary" of the report identified 850 square feet of drywall in the garage office as RACM that was to be removed, and 150 linear feet of non-friable Category I ACM in good condition that was to be removed.

16. As evidenced in the December 2, 2003, summary report, the initial

determination by the EHS laboratory, of the presence or absence of asbestos was not made until November 5, 2003. Subsequently, the actual presence of RACM at the facility was not made until samples taken on November 10 were analyzed on November 13, 2003.

17. On December 3, 2003, an ODH asbestos inspector called M-TAPCA to advise that the asbestos removal job at the facility that Respondent was doing for Extek had been shut down voluntarily by Respondent. ODH indicated there was no water at the site, negative pressure in the containment area could not be maintained, and the workers did not have updated paperwork. At this time, M-TAPCA was unaware that Respondent had started the asbestos removal and could not determine if or to what extent Respondent met the work practice requirements of OAC Rule 3745-20-04 and 3745-20-05 during the abatement.

18. On December 4, 2003, Respondent submitted a revised notice to M-TAPCA. The notice indicated that: at least 850 square feet of RACM had been removed from the facility from December 1 through December 3, 2003; and that demolition began on December 3, 2003, and would continue through December 30, 2003. Therefore, a notification should have been submitted to M-TAPCA by no later than ten working days prior to December 1, 2003.

19. Since M-TAPCA was unaware that there was asbestos in the facility until December 2, 2003 after Respondent was already on site, an inspection had not been conducted. The revision, indicating that asbestos removal was actually completed on December 3, 2003, was not submitted until December 4, 2003. Before M-TAPCA could verify that all the RACM had been removed from the facility, demolition occurred over the weekend of December 5, 2003. Respondent's failure to submit a written notice of intention of beginning the asbestos removal phase of the demolition at least 10 days prior to beginning the work constituted a violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G).

20. On December 15, 2003, M-TAPCA sent a Notice of violation ("NOV") to Extek. A copy of the NOV was also sent to Respondent on the same date.

21. On January 8, 2004, ODH sent to M-TAPCA (at M-TAPCA's request) a copy of Respondent's November 17, 2003, notification form submittal to ODH for the facility. The notification confirmed that 850 square feet of drywall in the garage office was RACM to be removed, and 150 linear feet of non-friable Category I asbestos-containing material in good condition was also to be removed from December 1 through 4, 2003.

22. 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 Orders:

1. Pursuant to ORC §3704.06, Respondent is assessed a civil penalty in the amount of nine thousand dollars (\$9,000) in settlement of Ohio EPA's claim for civil penalties. Respondent shall pay to Ohio EPA the amount of seven thousand two hundred dollars (\$7,200) of the penalty. In lieu of paying the remaining one thousand eight hundred dollars (\$1,800) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$1,800 to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall pay the seven thousand two hundred (\$7,200) to Ohio EPA and the one thousand eight hundred dollars (\$1,800) to Ohio EPA's Clean Diesel School Bus Program Fund pursuant to the following schedule:

a. Payment to the Clean Diesel School Program Fund (Fund 5CD):

one thousand eight hundred dollars (\$1,800) within thirty (30) days after the effective date of these Orders.

Payment shall be made by an by an official check made payable to "Treasurer, State of Ohio." The official check shall specify that such monies are to be deposited into Fund 5CD established by Ohio EPA for the Clean Diesel School Bus Program. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent and Fund 5CD, to:

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

A copy of this check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1047.

b. Payments to Ohio EPA:

seven thousand eight hundred (\$7,800) in the following monthly installments: one thousand two hundred dollars (\$1,200) within thirty (30) days of the effective days of these

Orders; three thousand dollars (\$3,000) within sixty (60) days of the effective days of these Orders; and three thousand dollars (\$3,000) within the effective days of these Orders.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." Each official check shall be submitted to Brenda Case, or her successor, at the above-stated address, together with a letter identifying the Respondent. A copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the above-stated address.

2. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

3. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$1,800 of the civil penalty in accordance with the procedures in Order 1.

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 operations of Respondent.

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 hereto. 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:

Mahoning-Trumbull Air Pollution Control Agency
345 Oak Hill Ave., Suit 200
Youngstown, Ohio 44502
Attention: Larry Himes

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Manager, Enforcement Section

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

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, 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 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 Respondent agree that if these Orders

Director's Final Findings and Orders (Case #2306b)
Environmental Protection Systems, LLC
Page 9 of 8

C:\wp61\...\E- Systems\f&o.wpd