

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Shell Construction Company, Inc.	:	<u>Director's Final Findings</u>
1353 East 260 th Street	:	<u>and Orders</u>
Cleveland, Ohio 44132	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Shell Construction Company, Inc. ("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 regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a general contracting company with offices located at 1353 East 260th Street, Cleveland, Cuyahoga County, Ohio.
2. OAC Rule 3745-20-02(B) establishes whether an owner or operator of a demolition operation is required to provide the Director of Ohio EPA with written notice of the intent to demolish pursuant to OAC Rule 3745-20-03 and which work practice requirements of OAC Rules 3745-20-04 and 3745-20-05 apply to the demolition operation based on the amount of friable asbestos materials in a "facility," as defined in OAC Rule 3745-20-01(B)(18).

3. 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 the intent to demolish. OAC Rule 3745-20-03(A)(3)(a) states that each owner or operator of a demolition operation shall provide the written notice at least ten days before any demolition operation begins at the facility.

4. 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.

5. The former dentist's office building located at 39134 Euclid Avenue in Wickliffe, Ohio in Lake County, is a "facility," as defined in OAC Rule 3745-20-01(B)(12). The site is owned by Dr. Cary Goldstein, DDS, of Wickliffe, Ohio.

6. On or about April 25, 2003, Respondent demolished the former dentist's office building without providing either Ohio EPA or the Lake County General Health District ("LCGHD"), Ohio EPA's contractual representative in Lake County, with prior notification. Respondent was an "operator" of the demolition operation, as defined in OAC Rule 3745-20-01(B)(20).

7. On May 6, 2003, LCGHD learned that Respondent had demolished the former dentist's office building. An inspector from LCGHD visited the site and found that the demolition work had been completed and the debris from the structure had been removed. The LCGHD inspector spoke with Respondent's representative at the site and determined that the building had not been inspected prior to demolition and that an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form had not been submitted to LCGHD or Ohio EPA at least ten days prior to the start of the demolition operation. The LCGHD inspector requested that Respondent provide information regarding the dates of the demolition operation and the disposal site of the demolition debris.

8. On May 7, 2003, LCGHD sent a Notice of Violation ("NOV") to Respondent. The NOV informed Respondent of its violation of OAC Chapter 3745-20 for failing to provide Ohio EPA or LCGHD with written notice of intention to demolish at least ten days prior to the start of any demolition operation at the facility.

9. On June 18, 2003, LCGHD sent a letter to Respondent regarding its refusal to accept certified mail delivery of the May 7, 2003, NOV and its failure to provide the information requested on May 6, 2003. LCGHD also noted that telephone messages requesting this information had also been left with Respondent on May 9 and May 15, 2003. LCGHD requested that Respondent complete an enclosed "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form and return it to LCGHD within ten days of receipt of the letter. A copy of the May 7, 2003 NOV was also enclosed.

10. Respondent submitted an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form containing information regarding the disposal site of the debris from the demolition of the building to LCGHD on March 26, 2004.

11. 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:

Within thirty-six (36) months after the effective date of these Orders, Respondent shall pay the amount of three thousand and seven hundred dollars (\$3,700), in payments of one hundred dollars (\$100) per month, to Ohio EPA in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payments shall be made by an official check made payable to "Treasurer, State of Ohio" and shall be submitted to Brenda Case, or her successor, 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

A copy of each check shall be sent to James A. Orlemann, Assistant Chief, SIP Development 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 final official check 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. NOTICE

All documents required by these Orders, unless otherwise specified in writing, shall be addressed to:

Lake County General Health District
Air Pollution Control
33 Mill Street
Painesville, Ohio 44077
Attention: Bert Mechenbier, Air Pollution Control Supervisor

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
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 hereinafter 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 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 appeal. In such an event, Respondent shall continue to comply with these Orders 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 these Orders.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Joseph P. Koncelik
Director

Date

IT IS SO AGREED:

Shell Construction Company, Inc.

By

Date

Printed or Typed Name

Title