OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

A & L Salvage, LLC 11225 State Route 45 P.O. Box 333 Lisbon, Ohio 44432	))))	Director's Final Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to A & L Salvage, 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 is a limited liability company registered with the Ohio Secretary of State, and owns and operates a construction and demolition debris ("C&DD") landfill and an active asbestos waste disposal site, as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(1), and are located at 11225 State Route 45, Lisbon, Columbiana County.

I certify this to be a true and accurate copy of the official document as filed in the records of the Ohio Environmental Protection Agency

By: _____ Date 8-28-06

2. The active asbestos waste disposal site is used to dispose of "asbestos-containing waste material," as defined in OAC Rule 3745-20-01(A)(4).

3. "Asbestos-containing waste materials" ("ACWMs") as defined in OAC Rule 3745-20-01(A)(4) means, in part, mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of this Chapter.

4. "Owner or operator" as defined by OAC Rule 3745-20-01(B)(38)(b) means any person who owns, leases, operates, controls, or supervises an active or inactive asbestos waste disposal site or operation.

5. Ohio EPA's Northeast District Office ("NEDO"), Division of Air Pollution Control ("DAPC") in Twinsburg, Ohio is responsible for administration of OAC Chapter 3745-20 in Columbiana County.

6. ORC § 3704.05(C) states, in part, that no person shall violate any term and condition of a permit issued by Director of Ohio EPA pursuant to ORC Chapter 3704.

7. 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.

8. OAC Rule 3745-20-06(B)(1) prohibits, in part, any owner or operator of an active asbestos waste disposal site that receives waste that contains asbestos-containing material ("ACM"), from causing any visible emissions to the outside air from asbestos-containing waste materials during on-site transportation, transfer, deposition or compacting operations.

9. OAC Rule 3745-20-06(B)(2) requires, in part, any owner or operator of an active asbestos waste disposal site that receives waste that contains ACM, conduct deposition and burial operations in a manner which prevents handling by equipment or persons that causes asbestos-containing waste materials to be broken-up or dispersed before the materials are buried.

10. OAC Rule 3745-31-05(A)(3) states, in part, that the Director of Ohio EPA shall issue a permit to install, on information appearing in the application, or information gathered by or furnished by Ohio EPA or both, if he determines that the installation or modification and operation of the air contaminant source will employ the best available technology ("BAT").

11. On May 13, 2003, NEDO received an application from Respondent requesting a modification to its permit to install ("PTI"), allowing it to accept asbestos-containing waste materials at the facility. PTI #02-18003 allowing this modification was

issued by Ohio EPA on September 13, 2003. The PTI requires, in part, Respondent to employ BAT to minimize or eliminate visible emissions ("VEs") of fugitive dust, and prohibits VEs from asbestos-containing waste materials during on-site transportation, transfer, unloading, deposition or compacting operations at the site. The PTI further requires that deposition or burial operations be conducted in a manner that prevents handling by equipment or persons that cause asbestos-containing waste materials to be broken-up or dispersed before the materials are buried.

12. On February 10, 2004, NEDO received a citizen complaint through a phone call from the Columbiana County Engineer about possible exposure to asbestos due to poor handling operations taking place at Respondent's facility. As a follow-up to the citizen complaint, two representatives from NEDO conducted a site inspection on February 18, 2004, and observed a large pile of debris in an active asbestos waste disposal cell at the western area of the facility. The debris included a large amount of suspect asbestos-containing waste materials which was observed spilling out of many broken, ripped and torn asbestos-containing waste disposal bags and containers. Suspect asbestos-containing waste materials were also observed on a dirt roadway leading to the debris pile, as well as the base of the pile. Respondent informed the inspectors that a disposal truck had recently unloaded the debris from a trailer, and that the damage to the disposal bags and containers was caused by a bulldozer pushing the debris into a pile. No watering truck was present and no actions were being taken to correct the problem at the time. The representatives collected three samples (surface materials): one from the unpaved driveway, one from the ground at an unpaved drive surface adjacent to the debris pile, and the third from the unpaved drive area adjacent to the debris pile. For safety reasons, NEDO inspectors could not collect samples from the debris pile. However, the waste shipment record for the material that was unloaded indicated that its content was 60 cubic yards of regulated ACM. Since the deposition and burial operations were <u>not</u> fully conducted in a manner that prevents handling by equipment or persons that causes asbestos-containing waste materials to be broken-up or dispersed before the materials were buried, Respondent violated PTI #02-18003, OAC Rule 3745-20-06(B)(2), and ORC § 3704.05(C) and (G). During a follow-up inspection on February 19, 2004, a NEDO inspector noticed that the problems observed the previous day had been corrected.

13. On February 25, 2004, the samples collected in Finding 11 were sent to EA Group in Mentor, Ohio for laboratory analysis. The report of the analysis from EA Group was received by NEDO on March 1, 2004. The report did not indicate the presence of any asbestos in the samples. However, the waste shipment record for the material that was unloaded indicated that its content was 60 cubic yards of regulated ACM.

14. On March 1, 2004, four NEDO inspectors conducted a site inspection of the facility. They observed a trailer unloading approximately 60 cubic yards of debris onto a dirt ramp that led to a trench dug into an active asbestos waste disposal cell. The load consisted of numerous asbestos waste disposal bags and containers. While a bulldozer proceeded to push and transfer the debris into the trench, bags popped open and disposal

bags/containers ripped and tore open, suspect asbestos-containing waste materials spilled out of some of the torn bags, and visible emissions were observed emanating from the area where the bulldozer pushed the debris into the trench. Also, the deposition and burial operations were conducted in a manner that caused asbestos-containing waste materials to be broken-up before the materials were buried and caused visible emissions, in violation of PTI #02-18003, OAC Rules 3745-20-06(B)(1) and 3745-20-06(B)(2), and ORC § 3704.05(C) and (G).

15. As a follow-up to the February 10 and March 1, 2004 inspections, NEDO sent a notice of violation ("NOV") letter to Respondent on March 15, 2004. The NOV cited Respondent for the following violations: violating the requirements specified in the PTI by failing to apply BAT when operating an asbestos-containing waste disposal site per PTI #02-18003, on February 18 and March 1, 2004; OAC Rule 3745-20-06(B)(1) for failure to prevent visible emissions during the transfer of asbestos-containing waste materials into a trench at the active asbestos waste disposal site on March 1, 2004; and OAC Rule 3745-20-06(B)(2) for causing asbestos-containing waste materials to be broken-up at an active asbestos waste disposal site before the materials were buried on February 18 and March 1, 2004. The NOV requested Respondent to submit the following information to NEDO within 10 days after receipt of the letter:

a. copy of the waste shipment record for the trailer that was observed unloading during the March 1, 2004 inspection;

b. copy of its asbestos disposal operating procedure and spill contingency plan; and

c. any clarification, responses, explanations or evidence on its behalf pertaining to the above-stated violations.

16. On March 23, 2004, NEDO inspectors conducted another site inspection of the facility and observed significant improvements in Respondent's operating procedures to prevent asbestos-containing waste materials from breaking up or dispersing during the deposition. A water truck arrived and adequately wetted asbestos-containing waste materials to prevent visible emissions until the materials were covered with a minimum of 12 inches of non-asbestos containing material.

17. On March 24, 2004, Respondent provided in writing, all the information requested in Finding 16. It denied ever initiating any disposal if an improperly packaged load was encountered or ever using landfill equipment directly on asbestos-containing waste materials. However, the Waste Shipment Record form indicated that the material originated from the Social Security Administration Operations Building, located at 6401 Security Blvd., Baltimore, Maryland, and the materials being transported were 472 bags and 76 drums of "Friable Asbestos."

18. Another site inspection of the facility was conducted by a NEDO inspector on July 12, 2004. The inspector observed broken open asbestos waste disposal bags on the ground in various areas of the site. Although visible emissions or active asbestos waste disposal at that time were not observed, some of the bags had exposed suspect ACM and were laying in areas that were not active asbestos disposal cells, in violation of PTI # 02-18003 and OAC Rule 3745-20-06(B)(2), and ORC § 3704.05(C) and (G). The inspector took pictures of broken asbestos waste disposal bags found in areas outside of the active disposal cell and also in areas that were already sloped off and completely graded. The pictures also show suspect asbestos-containing waste materials and vehicle tracks showing compaction that had taken place. Similar violations of PTI #02-18003 and OAC Rule 3745-20-06(B)(2), and ORC § 3704.05(C) and (G) were observed during another site inspection conducted by a NEDO inspector on December 30, 2004. Although visible emissions or active asbestos waste disposal at that time was not observed on December 30, 2004, some of the bags had exposed suspect ACM. Pictures substantiating these violations were taken also.

19. 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 Orders:

1. Respondent shall pay the amount of thirteen thousand dollars ($13,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for ten thousand four hundred dollars ($10,400). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

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

2. In lieu of paying the remaining two thousand six hundred dollars ($2,600) of the civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $2,600 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for

$2,600. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD, to the above-stated address.

3. 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

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA $2,600 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:

Ohio Environmental Protection Agency
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: Jim Veres, Environmental Specialist 3

and to:

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

_____ Date
Joseph P. Koncelik
Director

IT IS SO AGREED:

A & L Salvage, LLC

_____ Date
Signature

Jeffery D. Kendall
Printed or Typed Name

Chief Executive Officer
Title