OHIO E.P.A.
MAR 29 2005
JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

George Michael Riley, Sr. 257 Cornell Road Hebron, Ohio 43025	:	Director's Final Findings and Orders
and	:	
R & F Company of Lansing, Inc., d.b.a. Buckeye Demolition of Ohio 54660 National Road Bridgeport, Ohio 43912	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to George Michael Riley, Sr. and R & F Company of Lansing, Inc., d.b.a. Buckeye Demolition of Ohio ("Respondents"), 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 Respondent R & F Company of Lansing, Inc. 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 regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondents own and operate a demolition company with offices located at 54660 National Road, Bridgeport, Belmont County, Ohio.

...ify this to be a true and accurate copy of the ... document as filed in the records of the Ohio Environmental Protection Agency.
By: ... Date: 3-29-05

2. Ohio Administrative Code ("OAC") Chapter 3745-20 was revised effective November 18, 2002. All OAC Chapter 3745-20 citations in these Findings follow the Chapter as it existed at the time of the violations, prior to the revisions. OAC Rule 3745-20-02(A) established 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 if the work practice requirements of OAC Rules 3745-20-04 and 3745-20-05 also apply to the demolition operation. Specifically, OAC Rule 3745-20-02(A)(1) stated that if the amount of friable asbestos materials in a "facility", as defined in OAC Rule 3745-20-01(B)(12), to be demolished is at least 260 linear feet on pipes or at least 160 square feet on other facility components, all the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to the owner or operator of the demolition operation. Furthermore, OAC Rule 3745-20-02(A)(2) stated that if the amount of friable asbestos materials in a facility being demolished is less than 260 linear feet on pipes or less than 160 square feet on other facility components, including those facilities which contain no friable asbestos, only the requirements of OAC Rule 3745-20-03 apply to the owner or operator of the demolition operation.

3. OAC Rule 3745-20-03(A)(1) stated 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)(2)(a) stated that, for demolition operations described in OAC Rule 3745-20-02(A)(1), each owner or operator shall provide the written notice at least ten days before any demolition operation begins at the facility. OAC Rule 3745-20-03(A)(2)(b) stated that, for demolition operations described in OAC Rule 3745-20-02(A)(2), each owner or operator shall provide the written notice at least twenty 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 Sickles Glass plant building located at the intersection of State Routes 40 and 331, St. Clairsville, Ohio, in Belmont County, is a "facility," as defined in OAC Rule 3745-20-01(B)(12). The site is co-owned by Dr. Nassar Kahn and Mr. Amit Patel, both of Wheeling, West Virginia.

6. On or about September 17, 2002, Respondents proceeded to demolish the former Sickles Glass plant building. Respondents were the "operators" of the demolition operation, as defined in OAC Rule 3745-20-01(B)(20).

7. On September 17, 2002, Ohio EPA, Division of Air Pollution Control, Southeast District Office ("SEDO") received a complaint that Respondents were demolishing the former Sickles Glass plant building. The complainant stated that he believed that asbestos was present in the building and knew that Respondents should have notified Ohio EPA prior to starting the demolition operation.

8. On September 17, 2002, an inspector from SEDO visited the former Sickles Glass plant site. At that time, the demolition work had been completed and the debris from the structure had not been removed. Respondents' equipment was observed to be on site. SEDO reviewed its files and determined that an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form had not been submitted to Ohio EPA at least ten or twenty days, whichever was applicable, prior to the start of the demolition operation.

9. On October 3, 2002, SEDO sent a Notice of Violation ("NOV") to the Respondents. The NOV informed the Respondents of their violation of OAC Chapter 3745-20 for failing to provide Ohio EPA with written notice of intention to demolish at least ten or twenty days, whichever was applicable, prior to the start of the demolition operation at the facility. SEDO also requested that Respondents submit further information regarding the demolition operation and a completed notification form within 14 days. SEDO also faxed an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form to Respondents with a request to complete it and return it to Ohio EPA. To date, SEDO has not received the information that was requested in the NOV, or a completed notification form, from the Respondents.

10. On November 7, 2002, an inspector from SEDO returned to the former Sickles Glass plant and collected samples of the building materials from the debris pile, which was still onsite. Subsequent laboratory analyses of the samples by Lyle Laboratories showed that no friable asbestos was present.

11. On January 17, 2003, Ohio Technical Services, Inc. ("OTS"), at Respondents' direction, inspected the former Sickles Glass plant site and collected 30 samples of the building materials from the debris pile, which had still not been removed from the site. Laboratory analyses of the samples showed that no friable asbestos material was present in the samples collected. In its January 22, 2003, report to Respondents, OTS stated that no friable asbestos was detected or visible at the time of inspection. A copy of this report was also sent to SEDO.

12. On February 3, 2003, SEDO sent NOVs to the property co-owners, Dr. Kahn and Mr. Patel, informing them of the violation of OAC Chapter 3745-20 for failing to provide Ohio EPA with written notice of intention to demolish at least ten days prior to the start of the demolition operation at the facility. SEDO requested the co-owners submit further information regarding the demolition operation and that the debris be removed using precautions to avoid breaking up any non-friable asbestos material present.

13. On October 28, 2003, Ohio EPA sent proposed Director's Final Findings and Orders ("F&Os") to the Respondents. The proposed F&Os would have required Respondents to pay seven thousand and seven hundred dollars ($7,700) to Ohio EPA in settlement of Ohio EPA's claims for civil penalties.

14. After discussion with Respondents regarding the proposed F&Os (as identified in Finding 13), Ohio EPA sent revised F&Os to Respondents on November 21,

2003. The revised proposed F&Os would have required Respondents to pay $7,700 in civil penalties to Ohio EPA in eleven equal installments of $700 each, with the first payment due sixty (60) days after the effective date of the F&Os.

15. No response was received by Ohio EPA from Respondents to the revised F&Os sent on November 21, 2003. Repeated attempts to reach Respondents by telephone were also unsuccessful.

16. On February 5, 2004, Ohio EPA referred this case to the Ohio Attorney General's Office ("AGO") because the Respondents failed to negotiate or accept the proposed F&Os which were sent to Respondents to attempt an administrative settlement of the violations. Ohio EPA requested that the AGO resolve the matter by obtaining either a consent order requiring the Respondents to pay a civil penalty of $7,700 or, if Respondents did not agree to resolve the violations via a consent order, a court order requiring Respondents to pay an appropriate civil penalty.

17. On May 23, 2005, the AGO sent a letter to the Respondents informing them that the matter had been referred to the AGO by Ohio EPA and requesting that the Respondents enter into negotiations with the AGO to resolve the matter. Respondents did not respond to this correspondence.

18. On September 26, 2005, the AGO sent a draft complaint and consent order to the Respondents to resolve the matter. Respondents initially replied to the AGO by telephone, but no further attempt was made to resolve the matter.

19. On October 21, 2005, the AGO sent a letter to Respondents informing them that unless settlement negotiations resumed by October 28, 2005, the AGO would file the case in court. Respondents and the AGO subsequently negotiated a tentative settlement, part of which included a request by Respondents to settle the matter administratively with Ohio EPA.

20. 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. Respondents shall pay the amount of six thousand dollars ($6,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (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 four thousand and eight hundred dollars ($4,800) of the total amount.

The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondents, to:

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

2. In lieu of paying the remaining one thousand and two hundred dollars ($1,200) of the civil penalty, Respondents shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $1,200 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD). Respondents shall tender an official check made payable to "Treasurer, State of Ohio" for $1,200. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondents and Fund 5CD, to:

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

3. 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:

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

4. Should Respondents fail to fund the SEP within the required time frame set forth in Order 2, Respondents shall immediately pay to Ohio EPA $1,200 of the civil penalty in accordance with the procedures in Order 1.

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 Respondents' 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 Respondents.

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

Ohio Environmental Protection Agency
Southeast District Office
Division of Air Pollution Control
2195 Front Street
Logan, Ohio 43138
Attention: Bruce Weinberg, Environmental Manager

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: John Paulian, Supervisor, Compliance Monitoring Unit

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

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 the Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, 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 appeal. In such an event, Respondents 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

Joseph P. Koncelik
Director

3-24-06
Date

IT IS SO AGREED:

George Michael Riley, Sr.

Signature

3/1/06
Date

R & F Company of Lansing, Inc.,
d.b.a. Buckeye Demolition of Ohio

By

3/1/06
Date

George Michael Riley
Printed or Typed Name

President
Title