

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 28 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

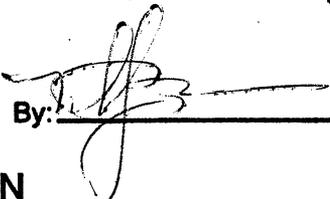
Cardinal Environmental Services, Inc. :
142 S. Van Buren :
Barberton, Ohio 44203 :
:
RESPONDENT :

Director's Final Findings
and Orders

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

PREAMBLE

It is agreed by the parties hereto as follows:

By:  Date: 12/28/07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Cardinal Environmental Services, 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's business 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

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03 and 3745.01 have been made by the Director and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. The Timken Company ("Timken") was the owner of two previously unoccupied residential structures located at 1904 Clark Street SW ("structure 1") and 1817 Seventeenth Street SW ("structure 2"), Canton, Stark County, Ohio. Timken hired

Respondent to remove "regulated asbestos-containing material" ("RACM"), as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(42), from the two structures ("demolition facility") prior to having the structures demolished for a development project. Both buildings were demolished as part of one project; therefore, they are a "facility" as defined in OAC Rule 3745-20-01(B)(18) and are subject to the applicable requirements of OAC Chapter 3745-20 ("Asbestos Emission Control Standards").

2. Flip Properties LLC, initially hired Respondent, as part of a renovation project, to remove floor tile from a commercial property located at 430 and 440 Market Avenue North, Canton, Ohio. During the removal of the floor tile in question, Flip Properties LLC thereafter hired Respondent to remove insulation (i.e., RACM) from said property. This property was a "facility" as defined in OAC Rule 3745-20-01(B)(18), and the renovation was subject to the applicable requirements of OAC Chapter 3745-20.

3. OAC Rule 3745-20-01(B)(5) defines, in part, "asbestos material" as asbestos or any material containing asbestos.

4. OAC Rule 3745-20-01(B)(45) defines, in part, "resilient floor covering" as asbestos-containing floor tile that contains more than one percent asbestos.

5. OAC Rule 3745-20-01(B)(39) defines, in part, the "owner or operator" as any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated. Respondent controlled and supervised the removal of RACM from the two structures prior to demolition. Similarly, Respondent controlled and supervised the renovation project during activities that broke-up, dislodged and/or disturbed asbestos material. Therefore, Respondent retained responsibility for timely submitting notifications, handling, removing and disposing of any asbestos material at both the demolition and renovation projects.

6. OAC Rule 3745-20-02(A) requires, in part, the owner or operator of a demolition or renovation operation to have the facility thoroughly inspected prior to commencement of demolition or renovation for the presence of asbestos.

7. OAC Rule 3745-20-02(B)(1) specifies, in part, that the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to each owner or operator of a demolition operation, if the combined amount of RACM is at least 260 linear feet on pipes or at least 160 square feet on other facility components (i.e., work practice thresholds). Similarly, OAC Rule 3745-20-02(B)(4) specifies, in part, that the 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 combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is at least 260 linear feet on pipes or at least 160 square feet on other facility components (i.e., work practice thresholds).

8. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a renovation operation to provide Ohio EPA with written notice of intention to perform renovation prior to starting any activity that could break up, dislodge or similarly disturb asbestos material if the renovation operation is subject to notification requirement as described in OAC Rule 3745-20-02(B)(4). The notification must be received at least ten (10) days before such an activity begins.

9. OAC Rule 3745-20-04(A)(6) requires, in part, that the owner or operator of a facility being demolished that is subject to the work practice requirements to adequately wet all RACM, including material that has been stripped or removed, and to ensure that it remains adequately wet until such materials are collected and contained or treated in preparation for disposal.

10. ORC § 3704.05(G) prohibits any person from violating any order, rule or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-20 was adopted by the Director pursuant to ORC Chapter 3704.

Demolition of Structures 1 and 2

11. In accordance with OAC Rule 3745-20-03(A), Respondent submitted to Canton City Health Department, Air Pollution Control Division ("Canton"), a contractual representative of Ohio EPA in Stark County, a notice of intention to demolish the two residential structures. The notice was postmarked March 18, 2005 and was revised, via a facsimile, on March 22, 2005. The notice indicated that the amount of RACM (524 square feet on surface components) was over the work practice threshold amount specified in OAC Chapter 3745-20, thus requiring the RACM to be adequately wetted during the removal and to be kept adequately wet until collected for disposal. Additionally, the notice stated that the RACM would be removed from April 4, 2005 to April 5, 2005, between 8:00 a.m. to 4:00 p.m. and that the demolition was scheduled to start on April 6, 2005.

12. On April 5, 2005, at approximately 3:30 p.m., a representative of Canton visited the demolition facility and observed that the containment had been removed. Additionally, although the primary RACM removal activities had been completed, the Canton representative noticed inside the facility (both structures) suspect asbestos-containing material in a disturbed, fragmented condition as well as some still intact. While some of the suspect materials were observed in a wet condition, some of the suspect materials were observed in a completely dry state. Seven samples of the suspect materials were collected from different locations in both structures. Two samples were taken from the dry duct wrap that was found in living room area floor debris and one sample was taken from the living room area wall of "structure 1", one sample was taken from the dry duct wrap in the dining room area wall of "structure 1", one sample was taken

from dry tape in the basement area floor debris of "structure 2", one sample was taken from dry tape within the furnace cold air return located in "structure 2", and one sample was taken from dry tape on the furnace plenum located at "structure 2". All sampled materials were confirmed to contain friable asbestos-containing material with 50 percent asbestos content. On April 28, 2005, Canton sent Respondent a Notice of Violation ("NOV") letter to Respondent for failing to keep all RACM adequately wet until collected for disposal, in violation of OAC Rule 3745-20-04(A)(6)(a) and ORC § 3704.05(G).

13. On June 20, 2005, Respondent replied to the April 28, 2005, NOV, objecting to the citation. Respondent stated that as part of its standard protocol, a licensed manager is required to inspect a facility prior to releasing a facility to the demolition contractor. Respondent claimed that the inspection was scheduled to occur at the end of the day Canton inspected of the facility. Additionally, Respondent alleged that the determination of whether RACM is adequately wet is a subjective matter. Moreover, Respondent said that based on its typical manner of attempting to wet facility components prior to the abatement and the fact some of the debris was wet, it assumed that some of the water may have begun to evaporate. Respondent also stated that it took immediate steps to prevent future premature removal of containment. Specifically, Respondent demoted the supervisory authorities responsible for the premature removal of the containment for 30 days and until they completed Respondent's standard asbestos compliance training for supervisory personnel.

14. In or around June 2005, Respondent properly removed the RACM prior to the demolition.

15. Respondent failed to ensure that the RACM remained adequately wet until collected for disposal, in violation of OAC Rule 3745-20-04(A)(6)(a) and ORC § 3704.05(G). Specifically, on April 5, 2005, RACM was found in a dry, friable state scattered throughout both residential structures (i.e., the facility).

Renovation of the Commercial Facility

16. On June 19, 2007, Canton observed Respondent removing floor tiles from the renovation project located at 430 and 440 Market Avenue North, Canton, Ohio. Some of the tiles were being broken up and dislodged as Respondent pounded the tiles with hammers to forcefully remove them. Pursuant to OAC Rule 3745-20-01(B)(42)(c), this method of removal transformed the floor tiles to RACM. Water was employed during the removal. While Respondent did not have evidence posted at the site demonstrating that at least one on-site representative had been trained in the provisions of OAC Chapter 3745-20, potentially in violation of OAC Rule 3745-20-04(B)(4) and ORC § 3704.05(G), Respondent asserts that such documentation was available at the site. Canton advised Respondent that the floor tiles could not be removed without the appropriate notification. Respondent stopped the removal after being advised to do so.

17. On June 20, 2007, Respondent submitted a notice of intention to perform renovation. The notice stated that 420 linear feet of RACM were to be removed from the pipes beginning on July 5, 2007, as part of the renovation. On July 6, 2007, Respondent submitted a revised notification that added the remaining 140 square feet of floor tile to the notice. The estimated amount of RACM exceeded the 260 linear feet work practice threshold; therefore, the renovation, including the removal of both the pipe insulation and the floor tiles, was subject to the notification and work practice requirements of OAC Chapter 3745-20.

18. On August 14, 2007, a NOV was sent to Respondent regarding the improper removal of the floor tile observed on June 19, 2007.

19. On September 19, 2007, Respondent, through legal counsel, replied to the August 14, 2007 NOV. The reply stated that Respondent was hired to remove approximately 420 linear feet of piping insulation (i.e., RACM) and 3,126 square feet of tile floor from the commercial property located at 430 and 440 Market Avenue North, Canton, Ohio. Additionally, the reply stated that the floor tile Canton observed being removed was not RACM because it was considered to be "resilient floor covering" that qualified as a category 1, non-friable asbestos-containing material. Because the tile was not classified as a RACM, the reply concluded that Respondent was not required to submit a notice prior to its removal. The reply further states that because the amount of RACM on the pipes exceeded the work practice threshold, Respondent was required to submit the notice 10 days prior to its removal.

20. OAC Rule 3745-20-03(A) requires the owner or operator of a renovation operation that exceeds the work practice threshold to provide Ohio EPA with written notice of intention to renovation at least 10 days prior to starting of any activity that could break-up, dislodge or similarly disturb asbestos material. On June 19, 2007, Respondent was observed breaking up and dislodging resilient floor covering. Resilient floor covering is an asbestos material. Therefore, Respondent failed to submit written notification of intention to renovate at least 10 days prior to the start of an activity (i.e., removal) that disturbed, dislodged and broke-up the resilient floor covering (i.e., an asbestos material), in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G). Additionally, Respondent failed to have the facility thoroughly inspected by a certified asbestos hazard evaluation specialist prior to the commencement of renovation, in violation of OAC Rule 3745-20-02(A) and ORC § 3704.05(G).

21. 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 makes the following Orders:

1. Respondent shall pay the amount of seven thousand dollars (\$7,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) 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 five thousand and six hundred dollars (\$5,600) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, 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 four hundred dollars (\$1,400) of civil penalty, Respondent 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 one thousand dollars and four hundred dollars (\$1,400) to Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$1,400. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, 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 \$1,400 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 this demolition 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 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:

Air Pollution Control Division
Canton City Health Department
420 Market Avenue, North
Canton, Ohio 44702-1544
Attention: Dan Aleman

and to:

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

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, defenses 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, law, 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

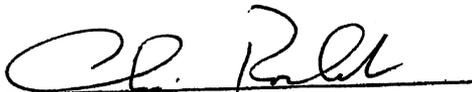
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

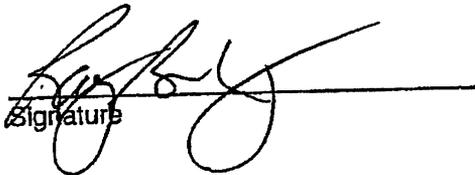


Chris Korleski
Director

12/27/07
Date

IT IS SO AGREED:

Cardinal Environmental Services, Inc.


Signature

Ray Brophy
Printed or Typed Name

President
Title

12-26-07
Date