

OHIO E.P.A.

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**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

K.H. DiRienzo Construction Inc.	:	<u>Director's Final Findings</u>
374 Newton Street	:	<u>and Orders</u>
Unit A, Suite 1	:	
Canfield, Ohio 44406	:	

PREAMBLE

It is agreed by the parties hereto as follows:

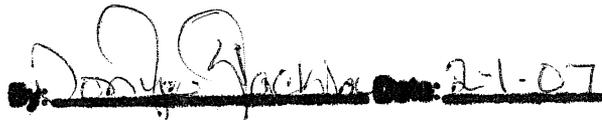
I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the K.H. DiRienzo Construction, 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 heirs and successors in interest liable under Ohio law. No change in ownership of the property identified below shall in any way alter Respondent's obligations under these 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.


by: Jody G. Yachin Date: 2-1-07

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 owns and operates a commercial general contracting business located at 374 Newton Street, Unit A, Suite 1, Canfield, Ohio. Respondent is not an asbestos abatement contractor licensed to do business in the State of Ohio.

2. Respondent was hired by Bob Evans Farms Restaurants, 3776 South High Street, Columbus, Ohio, to conduct a demolition of the Bob Evans Restaurant building located at 34760 Maple Grove Road, Willoughby, Ohio. Dyno Excavators, LLC ("Dyno"), of Boardman, Ohio, was employed by Respondent to first remove asbestos-containing materials from the building. Dyno is not an asbestos abatement contractor licensed to do business in the State of Ohio. The single story building was approximately 5,750 square feet in area. The building was a "facility," as defined in OAC Rule 3745-20-01(B)(18). Respondent was an "operator," as defined in OAC Rule 3745-20-01(B)(38).

3. On August 24, 2005 and pursuant to the notification requirements of OAC Rule 3745-20-03(A), the Lake County General Health District ("LCGHD"), Ohio EPA's contractual representative in Lake County, received a notification of demolition form from Respondent for the demolition of the facility. The notification indicated that asbestos removal from the facility would be conducted on September 7, 2005 and that demolition of the facility would be conducted from September 7 to September 12, 2005. Furthermore, the notification indicated that 912 square feet square feet of Category II non-friable asbestos materials (transite panels) would be removed. The notification was completed, signed and submitted by Respondent.

4. Pursuant to OAC Rule 3745-20-02(B)(1), in part, the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to the owner or operator of a facility being demolished if the amount of regulated friable asbestos materials in such facility is at least 260 linear feet on pipes or at least 160 square feet on other facility components.

5. Pursuant to OAC Rule 3745-20-03(A)(3)(d), the respondent is required to notify the Ohio EPA field office on any changes to the original start date listed in the original notice, for any asbestos stripping or removal work of the facility.

6. "Friable asbestos material" is defined in OAC Rule 3745-20-01(B)(20) as any material containing more than one percent, by area, of the forms of asbestos identified in OAC Rule 3745-20-01(B)(3) that hand pressure can crumble, pulverize, or reduce to powder when dry.

7. "Regulated asbestos-containing materials" is defined in OAC Rule 3745-20-01(B)(41) and includes any Category II non-friable asbestos-containing material ("ACM") that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this chapter.

8. On September 7, 2005, LCGHD representative inspected the facility and found transite panels stored in plastic bags. The plastic bags were observed to be ripped and the broken panels were in a dry state. Additionally, there were dry pieces of broken transite lying on the ground and transite still on the partially demolished building.

9. During the September 7, 2005, inspection, the LCGHD representative was informed that Dyno had begun removal of the ACM on September 5, 2005, which was two days prior to the date for ACM removal identified in the August 24, 2005 notification. Since no written notice of the new start date had been submitted to Ohio EPA by Respondent at least 10 days prior to the start of ACM removal, Respondent was in violation of OAC Rule 3745-20-03(A)(3)(d)(ii). Dyno was a subcontractor to Respondent with respect to the demolition but Dyno commenced demolition on September 5, 2005 (Labor Day) without notice to the Respondent.

10. In a report dated December 9, 2004, and titled "Asbestos Survey of 34760 Maplegrove Road" and prepared by Home and Building Inspection Service ("HBIS") of Sugar Grove, Ohio under contract with Bob Evans Farms Restaurants, HBIS reported the results of a bulk sampling performed on December 6, 2004 for a NESHAP asbestos compliance survey of suspected ACM at the facility. Approximately 924 square feet of transite panels were assumed as ACM. Furthermore, the report indicated that the leveling compound is a non-friable Category II material, as defined in the NESHAP, Subpart M, 40 CFR, Part 61; however, fiber release was anticipated during demolition activities. Additionally, the report also recommended the removal of the transite panels prior to demolition but not by an asbestos abatement contractor if the panels could be removed without damaging them. Since the transite panels, as well as the leveling compounds, were damaged during the removal of the transite panels met the definition of RACM and this demolition project was subject to the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05.

11. On September 9, 2005, a Notice of Violation ("NOV") letter was sent to Respondent by certified mail. The NOV cited Respondent with a violation of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05. LCGHD noted the following violations:

- a. failure to adequately wet and seal the asbestos-containing waste material into durable leak tight disposal containers or enclosure system, in violation of OAC Rule 3745-20-05(B)(1) and ORC § 3704.05(G); and
- b. failure to adequately wet the asbestos-containing waste material that was found dry in debris during the inspection, in violation of OAC Rule 3745-20-04(A)(6) and ORC § 3704.05(G).

12. Ohio EPA also finds the Respondent in violation of OAC Rules 3745-20-03(A)(3)(d), 3745-20-05(B)(1), and 3745-20-04(A)(6) and ORC § 3704.05(G), based on the above findings.

13. In response to the NOV, Respondent stopped all work on September 7, 2005, and contacted a licensed asbestos abatement contractor, MBE Contracting, to clean up the site and finish the abatement at the facility. This cleanup and abatement were completed on September 12, 2005.

14. On September 10, 2003, the Respondent was issued Findings and Orders by Ohio EPA for a notification violation of OAC Rule 3745-20-03 for a demolition of a structure formerly located at 125 Applegrove Street NW, in North Canton (Stark County), Ohio. As a result of those Orders, the Respondent was assessed civil penalty of \$2,800 for this violation.

15. 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. Respondent shall pay the amount of fifteen thousand dollars (\$15,000) 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 twelve thousand dollars (\$12,000) 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 three thousand dollars (\$3,000) of civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$3,000 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD). Respondent shall make payment on or within thirty

(30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$3,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, 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 \$3,000 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, operations by 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:

Lake County General Health District
33 Mill Street
Painesville, Ohio 44077
Attn: Bert Mechenbier

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, 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

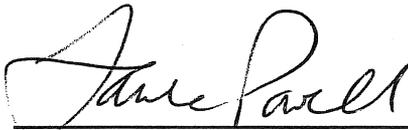
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Laura Powell
Director

1-26-07

Date

IT IS SO AGREED:

K.H. DiRienzo Construction, Inc.


Signature

Date

1/17/2007

KEN DIRIENZO
Printed or Typed Name


Title