

OHIO E.P.A.

AUG 22 2007

BEFORE THE

ENTERED DIRECTOR'S JOURNAL OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

|                                |   |                                  |
|--------------------------------|---|----------------------------------|
| Warren Fabricating Corporation | : | <u>Director's Final Findings</u> |
| 7845 Chestnut Ridge Rd. S.E.   | : | <u>and Orders</u>                |
| Hubbard, Ohio 44425            | : |                                  |

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Warren Fabricating Corporation ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.04 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 or of the property identified hereinafter 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, of 7845 Chestnut Ridge Road, S.E., in Hubbard, Ohio, is a manufacturer specializing in large steel fabrications and heavy machining for surface mining equipment, steel mills, power generation and large press manufacturers. Respondent is the owner of the property located at 7838 Iron Street, Hubbard Township, Trumbull County, Ohio. The property previously housed a business, Berenfield Containers Company.

**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: [Signature] Date: 8-22-07

2. On April 20, 2005, an engineer for Mahoning-Trumbull Air Pollution Control Agency ("MTAPCA"), Ohio EPA's contractual representative in Trumbull County, investigating a dust complaint on Hubbard-Shannon Road, Hubbard, Ohio, observed a demolition operation had occurred at the former Berenfield Containers Company.

3. On April 20, 2005, an inspector from MTAPCA visited the location to observe the demolition operation. At that time, the inspector observed several large piles of debris containing steel beams, piping, corrugated steel sheeting, brick, concrete and miscellaneous building materials. At that time, heavy equipment was still at the location. The MTAPCA inspector spoke with Mr. Mike Link, Executive Vice-President of Respondent, who stated that the demolition had been done 'in-house' and not through a contractor. The exact date and time of commencement of the demolition was not known by Mr. Link.

4. On April 20, 2005, the MTAPCA inspector spoke with Mr. Paul Theisler, an employee of Respondent, and informed him of the information that MTAPCA needed, namely the date and time that the demolition had commenced, and copies of any permits that had been obtained for the demolition.

5. On April 21, 2005, inspectors from MTAPCA again visited the location and took additional photographs of the debris piles, and took additional samples of debris for analysis. By letter dated April 21, 2005, MTAPCA issued a Notice of Violation ("NOV") to Respondent for the violations observed at the location on April 20, 2005. The NOV informed Respondent that the demolition of the former Berenfield Containers Company was subject to the National Emission Standards for Hazardous Air Pollutants, 40 CFR, Part 61, Subpart M, Asbestos, and Ohio Administrative Code ("OAC") Chapter 3745-20.

6. The violations cited in the April 21, 2005, NOV included;

- ▶ OAC Rule 3745-20-03(A), which requires, in part, that each owner or operator of a demolition operation submit to Ohio EPA a written notice of intention to demolish at least 10 days before any demolition operation begins at a facility as described in OAC Rule 3745-20-02(B)(1) or (B)(2); and
- ▶ OAC Rule 3745-20-02(A) which states, in part, that "each owner or operator of any demolition or renovation operation shall have the affected facility.... thoroughly inspected prior to commencement of the demolition."

7. The NOV requested that within five (5) working days of receipt of the NOV, Respondent submit, to MTAPCA for review, the dates when the demolition commenced and ended, any documentation available that indicates if the facility was inspected by a certified asbestos hazard evaluation specialist prior to demolition, and a completed Ohio EPA notification form for the demolished structure.

8. On April 27, 2005, Respondent informed MTAPCA that the demolition of the structures had started in April 2004. They were unable to provide an exact date for the commencement.

9. By letter dated May 3, 2005, Respondent was informed of the results of the analyses performed on the debris samples taken from the demolished structures by MTAPCA inspectors on April 21, 2005. The results of the analyses showed that the four samples of debris contained between twenty-five percent (25%) and thirty-five percent (35%) amosite and chrysotile asbestos, respectively. Because the samples contained greater than one percent (1%) asbestos, the sources of the samples were considered to be asbestos-containing materials ("ACM").

10. Based on the above facts, Respondent was in violation of OAC Rule 3745-20-02(A) by failing to have the building thoroughly inspected for the presence of asbestos prior to the commencement of demolition sometime between April 2004 and April 20, 2005, and OAC Rule 3745-20-03(A) by failing to submit a notification of demolition to MTAPCA at least 10 days prior to the commencement of demolition sometime between April 2004 and April 20, 2005.

11. Respondent was informed that the debris at the location contained regulated asbestos-containing materials ("RACM"). Respondent was informed that all the debris was to be kept wet until it was disposed of.

12. On June 16, 2005, Respondent informed MTAPCA that the total area of the demolished building was 150,000 square feet.

13. As of January 23, 2007, some debris was still on site. A notification has been submitted to MTAPCA for the cleanup, but the project has been on hold since June 2006.

14. The violation of any OAC rule is also a violation of ORC § 3704.05(G).

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. By not later than one hundred eighty (180) days after the effective date of these Orders, Respondent shall remove all remaining debris from the site and dispose of all of the debris at a landfill approved by Ohio EPA for asbestos-containing waste disposal pursuant to OAC Rule 3745-20-06(A).

2. Respondent shall pay the amount of twenty-five thousand five hundred dollars (\$25,500) 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 twenty thousand four hundred dollars (\$20,400) 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

3. In lieu of paying the remaining five thousand one hundred dollars (\$5,100) of civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$5,100 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 \$5,100. 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.

4. 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

5. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 3, Respondent shall immediately pay to Ohio EPA \$5,100 of the civil penalty in accordance with the procedures in Order 2.

#### **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:

Mahoning-Trumbull Air Pollution Control Agency  
Oakhill Renaissance Place  
345 Oak Hill Avenue  
Youngstown, Ohio 44502-1454  
Attn: Larry Himes

and to:

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

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**

  
\_\_\_\_\_

Chris Korleski, Director

8/20/07  
Date

**IT IS SO AGREED:**

**Warren Fabricating Corporation**

  
\_\_\_\_\_

Signature

7-27-07  
Date

JOHN KEENAN

Printed or Typed Name

C.E.O.  
\_\_\_\_\_

Title