OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Village of North Kingsville	)	Director's Final Findings
P.O. Box 253	)	and Orders
North Kingsville, Ohio 44068	)	

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: _____ Date: 11-28-07

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Village of North Kingsville ("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 facility (as hereinafter defined) 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 regulations promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA has determined the following findings:

1. Respondent is an incorporated municipality in the State of Ohio. Respondent was the owner of the former Police Department building located at 3541 East Center Street, North Kingsville, Ashtabula County, Ohio, which is a facility as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12).

2. "Regulated asbestos-containing material" as defined by OAC Rule 3745-20-01(B)(41) means, in part, any friable asbestos material and any Category I or Category II asbestos-containing material ("ACM") that has or will become friable.

3. "Owner or operator" as defined by OAC Rule 3745-20-01(B)(38)(a) means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation or both.

4. "Demolition" as defined by OAC Rule 3745-20-01(B)(13) means, in part, the wrecking, or taking out, of any load-supporting structural member of a facility together with any related handling operations.

5. OAC Rule 3745-20-02(A) states, in part, that each owner or operator of any demolition operation shall have the affected facility where a demolition operation will occur thoroughly inspected prior to commencement of the demolition for the presence of asbestos, including Category I and Category II nonfriable ACM.

6. OAC Rule 3745-20-03(A) states, in part, that each owner or operator of a demolition operation subject to this rule shall provide the Director of Ohio EPA with written notice of intention to demolish.

7. OAC Rule 3745-20-02(B)(2) states, 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 as follows: if the combined amount of regulated asbestos-containing material ("RACM") is less than 260 linear feet on pipes and less than 160 square feet on other components or if there is no ACM in the facility being demolished, only the notification requirements of OAC Rule 3745-20-03(A) apply.

8. 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 the Director of Ohio EPA pursuant to ORC Chapter 3704.

9. 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 its jurisdiction.

10. During an inspection on February 14, 2006, NEDO staff observed that the facility had been demolished. Respondent did not provide Ohio EPA with a written notice of intention to demolish prior to demolition. The demolition occurred before February 14, 2006.

11. Since this project constituted a "demolition," as defined in OAC Rule 3745-20-01(B)(13), pursuant to OAC Rule 3745-20-02(B)(2), this project was at least subject to the inspection and notification requirements of OAC Rules 3745-20-02(A) and 3745-20-

03(A), respectively. Respondent was the "owner" or "operator" of the demolition operation as defined in OAC Rule 3745-20-01(B)(20).

12. Respondent's failure to notify Ohio EPA, prior to the demolition of the facility, constitutes a violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G).

13. On February 15, 2006, the NEDO inspector met with Respondent to discuss the violations. Respondent admitted it was a mistake on its part that a notification was not submitted to Ohio EPA and stated, in addition, that the facility inspection was conducted on July 20, 2005, and no friable asbestos was found. Respondent gave the inspector a copy of the report of the facility inspection conducted by Earthline Technologies, Inc. ("Earthline") of Ashtabula, Ohio. The report revealed further, the following information:

a. Earthline was contracted by Respondent to perform the inspection of the facility for asbestos-containing materials ("ACM").

b. During the July 20, 2005 inspection, 10 square feet of red vinyl floor tile in the entrance way was found to be the only location which had suspect ACM.

c. Earthline subcontracted the analysis of sample, which was from the red vinyl floor tile in the entrance way, to Microbac Laboratories ("Microbac") of Ashtabula, Ohio.

d. Microbac's analysis report dated August 3, 2005, indicated that the sample contained 4% chrysotile asbestos.

Also included in the report was a list of asbestos contractors in Ohio, Pennsylvania and New York, and an incomplete Ohio EPA notification of demolition and renovation form which Respondent discovered in the report packet, which had not been sent to NEDO. The notification indicated that only 10 square feet of Category I ACM was in the facility.

14. Ohio EPA believes that Respondent should have had a prior knowledge of the asbestos rule requirements based on the report from Earthline and the incomplete notification form that it did not submit to NEDO.

15. On February 28, 2006, NEDO sent a Notice of Violation ("NOV") letter to Respondent for the demolition of the facility along with a copy of OAC Chapter 3745-20 that explained the Asbestos Emission Control Standards. The NOV cited Respondent, in part, for the violation of OAC Rule 3745-20-03(A)(1) for failure to provide NEDO with a written notice of intent to demolish prior to the demolition. Therefore, NEDO requested that Respondent submit the following information within fourteen days after the receipt of the letter:

a. The name, address and phone number and contact persons of all contractors involved in the demolition project and an explanation of each person's involvement.

b. The name, address and phone number and contact persons of all contractors involved in the disposal of waste from the site of the demolition project and an explanation of each person's involvement.

c. The location of the site where the waste from the demolition was disposed including a copy of any manifest or receipts.

d. A completed notification of demolition form.

e. The beginning and ending dates of the demolition project.

16. NEDO has not received a response to the NOV from Respondent.

17. 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. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of one thousand dollars ($1,000) in settlement of Ohio EPA's claims for civil penalties for the violation of air pollution control regulations associated with the Village of Kingsville Police Department facility, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $1,000. The official check shall be sent 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. A copy of the above 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

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check 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 operation 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: Richard Kolosionek, Environmental Specialist:

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

Chris Korleski
Director

11/26/07
Date

IT IS SO AGREED:

Village of North Kingsville

Signature

11-05-07
Date

Terrance J. McConnell
Printed or Typed Name

Mayor
Title