

OHIO E.P.A.

SEP -3 2008

REVISED DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

City of East Liverpool)
City Hall)
126 West Sixth Street)
East Liverpool, Ohio 43920)

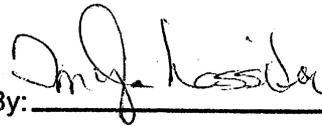
Director's Final Findings
and Orders

Respondent

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: 9-3-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to City of East Liverpool ("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 identified) 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 has offices located at 126 West Sixth Street, East Liverpool, Ohio and operates the East Liverpool Street Department Garage located at 1253 Pennsylvania Avenue, East Liverpool, Columbiana County, Ohio. The garage is used to store city vehicles, plows and other miscellaneous equipment.

Director's Final Findings and Orders
City of East Liverpool
Page 2 of 9

2. The garage contained approximately 600 linear feet of insulation on unused water pipe around its inside perimeter.

3. "Facility" as defined by OAC Rule 3745-20-01(B)(18) means, in part, any institutional, commercial, public, industrial or residential structure, installation, or building, excluding residential structures having four or fewer dwelling units.

4. "Owner or operator" as defined by OAC Rule 3745-20-01(B)(39)(a) means any person who owns, leases, operates, controls, or supervises the facility being renovated or any person who owns, leases, operates, controls or supervises the renovation, or both.

5. 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 Ohio EPA pursuant to ORC Chapter 3704.

6. OAC Rule 3745-20-02(A) states, in part, that each owner or operator of any renovation operation shall have the affected facility or part of the facility where a renovation operation will occur thoroughly inspected by a certified asbestos hazard evaluation specialist, prior to commencement of the renovation for the presence of asbestos, including Category I and Category II nonfriable asbestos-containing material ("ACM").

7. OAC Rule 3745-20-02(B)(1) states, in part, that, the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to the owner or operator of a renovation operation if at least 260 linear feet of friable asbestos material on pipes is to be stripped or removed at a facility being renovated.

8. OAC Rule 3745-20-03(A) states, in part, that each owner or operator of a subject renovation operation shall provide the Director of Ohio EPA with a written notice of intention to renovate within ten days prior to beginning renovation.

9. OAC Rule 3745-20-04(A)(3) states, in part, that each owner or operator of any subject renovation operation shall adequately wet all regulated asbestos-containing material ("RACM"), as defined in OAC Rule 3745-20-01(B)(42), when it is being removed or stripped from facility components.

10. OAC Rule 3745-20-04(A)(6)(a) states, in part, that each owner or operator of any subject renovation operation shall for all RACM, including materials that have been removed or stripped, adequately wet the materials to ensure that the materials remain adequately wet until collected and contained or treated in preparation for disposal.

11. OAC Rule 3745-20-04(C) states, in part, that each owner or operator of any subject renovation operation shall ensure all RACM which has been damaged or made friable by renovation or adjacent stripping operations is repaired, encapsulated, or removed

Director's Final Findings and Orders
City of East Liverpool
Page 3 of 9

for disposal in accordance with OAC Rule 3745-20-05, prior to the removal of emission controls.

12. OAC Rule 3745-20-05(A), states, in part, that each owner or operator of any renovation operation shall dispose of asbestos-containing waste material ("ACWM") at an active waste disposal site operated in accordance with OAC Rule 3745-20-06.

13. OAC Rule 3745-20-05(B)(1)(c) states, in part, that each owner or operator of any renovation operation shall adequately wet ACWM and seal all ACWM while wet in durable leak-tight containers or wrapping that complies with OAC Rule 3745-20-05(C).

14. OAC Rule 3745-20-05(C)(1) states, in part, that each generator of ACWM shall ensure that all containers of the ACWM and wrapped material shall be labeled, using permanent markings with letters of sufficient size and contrast so as to be readily visible and legible.

15. OAC Rule 3745-20-05(D) states, in part, that each generator of ACWM shall mark vehicles used to transport the ACWM during loading and unloading of the ACWM so that the signs are visible.

16. OAC Rule 3745-20-05(E) states, in part, that for all ACWM transported off the facility site, each waste generator and owner or operator of a waste disposal site shall maintain waste shipment records. The waste shipment records shall be legible, complete, signed and dated by the waste generator and waste disposal site operator.

17. The garage constituted a "facility," as defined in OAC Rule 3745-20-01(B)(18), and the project was a "renovation," as defined in OAC Rule 3745-20-01(B)(44). Respondent was an "owner or operator," as defined in OAC Rule 3745-20-01(B)(39)(a), of the facility.

18. On May 31, 2006, Mr. William Cowan, Respondent's Service Safety Director made a telephone call to Ohio EPA's Northeast District Office ("NEDO") and notified NEDO that its facility's superintendent, Mr. Earl Taylor, hired an individual to remove the asbestos insulation on the pipe at the facility over the Memorial Day weekend (i.e., May 26 through 29, 2006). Mr. Cowen requested that NEDO schedule a meeting with Respondent to discuss the matter.

19. On June 6, 2006, NEDO representatives met with Respondent as requested. It was confirmed at the meeting that Respondent executed the renovation project from May 26 through 29, 2006 ("the May renovation"), and, as part of the renovation, had removed approximately 85 percent, or 500 of the total 600 linear feet, of the insulation from the pipe.

20. Respondent failed to have a certified asbestos hazard evaluation specialist thoroughly inspect the facility where the renovation operation occurred prior to commencement of the renovation for the presence of asbestos, including Category I and

Director's Final Findings and Orders
City of East Liverpool
Page 4 of 9

Category II nonfriable ACM, in violation of OAC Rule 3745-20-02(A) and ORC § 3704.05(G).

21. The pipe removed from the facility contained approximately 60 percent of chrysotile "asbestos," as defined in OAC Rule 3745-20-01(B)(3) and constituted "friable asbestos material," as defined in OAC Rule 3745-20-01(B)(20). Furthermore, this material constituted RACM.

22. Pursuant to OAC Rule 3745-20-02(B)(1), since the amount of RACM removed from the facility exceeded 260 linear feet on pipe, the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 applied to the Respondent.

23. Respondent failed to submit to Ohio EPA a written notice of intention to renovate, within ten days prior to beginning the May renovation, in violation of OAC Rule 3745-20-03(A)(3) and ORC § 3704.05(G). On June 26, 2006, NEDO received an Ohio EPA notification of renovation form from Respondent. The notification stated that RACM was stripped off of approximately 500 linear feet of pipe at the facility and moved to the City's landfill on May 29, 2006.

24. During the May renovation, Respondent removed or stripped the RACM from 500 linear feet of the facility components without adequately wetting the RACM when it was being removed or stripped from facility components (i.e., the pipe), in violation of OAC Rule 3745-20-04(A)(3) and ORC § 3704.05(G).

25. During the May renovation, Respondent failed to adequately wet all RACM that had been removed or stripped to ensure that the materials remain adequately wet until collected for disposal, in violation of OAC Rule 3745-20-04(A)(6)(a) and ORC § 3704.05(G).

26. During the May renovation, Respondent failed to ensure that all RACM which had been damaged or made friable by renovation or adjacent stripping operations was repaired, encapsulated, or removed for disposal in accordance with OAC Rule 3745-20-05, prior to the removal of emission controls, in violation of OAC Rule 3745-20-04(C).

27. During the May renovation, Respondent failed to dispose of the ACWM at an active waste disposal site operated in accordance with OAC Rule 3745-20-06, in violation of OAC Rule 3745-20-05(A) and ORC § 3704.05(G). The ACWM was taken to its landfill located off of Cadmus Street in East Liverpool and buried.

28. During the May renovation, Respondent failed to adequately wet and seal the ACWM while wet in durable leak-tight containers or wrapping that complies with OAC Rule 3745-20-05(C), in violation of OAC Rule 3745-20-05(B)(1)(c) and ORC § 3704.05(G). Respondent had the ACWM removed in a dry, uncontainerized state, and by dump truck.

Director's Final Findings and Orders
City of East Liverpool
Page 5 of 9

29. During the May renovation, Respondent failed to label the ACWM containers, and failed to label the ACWM that was transported off the facility site with the name of the waste generator and the location at which the waste was generated, in violation of OAC Rule 3745-20-05(C)(1) and ORC § 3704.05(G).

30. During the May renovation, Respondent failed to mark vehicles used to transport the ACWM during loading and unloading of the ACWM, in violation of OAC Rule 3745-20-05(D) and ORC § 3704.05(G).

31. During the May renovation, Respondent failed to maintain waste shipment records of the ACWM, in violation of OAC Rule 3745-20-05(E) and ORC § 3704.05(G).

32. On July 7, 2006, NEDO sent a notice of violation ("NOV") letter to Respondent. The NOV, in part, cited Respondent for the violations of the aforementioned OAC rules.

33. After discovery of the violations by Ohio EPA, Respondent had a licensed asbestos abatement contractor properly remove and clean up the ACM in the garage and remove the ACWM from the City's landfill and take it to an authorized active asbestos waste landfill.

34. On April 21, 2008, Ohio EPA sent Respondent proposed Director's Final Findings and Orders to attempt an administrative settlement of the violations. The proposed Director's Final Findings and Orders contained a civil penalty demand of \$30,000 for the violations, which was calculated using the USEPA's civil penalty policy for demolitions and renovations of buildings containing asbestos. Based on financial documents submitted during a previous enforcement matter with Respondent and information provided by Respondent to Ohio EPA, Ohio EPA determined that Respondent had an inability to pay the civil penalty but could pay a nominal penalty. Ohio EPA and Respondent agreed to a nominal penalty of \$5,000 to settle the matter.

35. 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. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of five thousand dollars (\$5,000) in settlement of Ohio EPA's claims for civil penalties. Within thirty (30) days after the effective date of these Orders, payment to Ohio

Director's Final Findings and Orders
City of East Liverpool
Page 6 of 9

EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for four thousand dollars (\$4,000). The official check shall be submitted 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. In lieu of paying the remaining one thousand dollars (\$1,000) of the 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 \$1,000 to the 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 \$1,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying 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 \$1,000 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, the operations of Respondent.

Director's Final Findings and Orders
City of East Liverpool
Page 7 of 9

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: Jim Veres, Environmental Specialist 3

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.

Director's Final Findings and Orders
City of East Liverpool
Page 8 of 9

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.

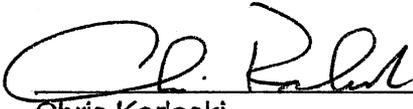
XIV. SIGNATORY AUTHORITY

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.

Director's Final Findings and Orders
City of East Liverpool
Page 9 of 9

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency


Chris Korleski
Director

8/28/08
Date

IT IS SO AGREED:

City of East Liverpool


Signature

AUGUST 14, 2008
Date

JAMES P. SWOGER
Printed or Typed Name

MAYOR
Title