OHIO E.P.A.

SEP 23 2010

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BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Complete Clearing, Inc.	:	**Director=s Final Findings**
510 Industrial Way	:	**and Orders**
Marengo, Ohio 43334	:	

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: 9-23-10

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director=s Final Findings and Orders (AOrders@) are issued to Complete Clearing, Inc. (ARespondent@) pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (AOhio EPA@) under Ohio Revised Code (AORC@) ' ' 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 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 makes the following findings:

1. Respondent is a demolition company with an office located at 510 Industrial Way in Marengo, Morrow County, Ohio. Respondent was contracted by the Galion City School District Board to demolish North Elementary School and Dawsett Elementary School, both of which are located in Galion, Ohio. Prior to demolition activities, asbestos surveys were performed and asbestos-containing materials were identified in both schools. The surveys identified regulated asbestos-containing material ("RACM"), as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(42), that had to be removed from the schools prior to demolition and Category I nonfriable asbestos-containing material, as defined in OAC Rule 3745-20-01(B)(9), that could

remain during demolition as long as steps were taken to ensure that the asbestos-containing material did not become friable. Category I non-friable asbestos-containing material at North Elementary School that was not required to be removed prior to demolition included 14,679 square feet of flooring tiles and associated mastic. Category I nonfriable asbestos-containing material at Dawsett Elementary School that was not required to be removed prior to demolition included 26,654 square feet of flooring tiles and associated mastic.

2. On April 18, 2008 and May 5, 2008, LVI Environmental Services, Inc. ("LVI"), an asbestos remediation company, sent a Notification of Demolition ("Notification") to Ohio EPA for the RACM removal at North Elementary School and Dawsett Elementary School, respectively. The Notification identified 670 linear feet of RACM on pipes and 9,658 square feet of RACM on other facility components that were to be removed from North Elementary School from May 1, 2008 to May 22, 2008 and 460 linear feet of RACM on pipes and 220 square feet of RACM on other facility components that were to be removed from Dawsett Elementary School from May 19, 2008 to May 30, 2008. Similarly, on May 19, 2008, Respondent sent Notifications for the demolitions of North Elementary and Dawsett Elementary schools, which were to be performed from May 26, 2008 to July 20, 2008 and June 9, 2008 to August 4, 2008, respectively. None of the Notifications identified Category I non-friable asbestos-containing material to be left in the facilities.

3. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition operation to provide Ohio EPA with written notice of intention to perform demolition prior to starting any activity that could break up, dislodge or similarly disturb asbestos material (i.e., asbestos or any material containing asbestos). The notification must be received at least ten (10) days before such an activity begins and must contain, in part, an estimate of the amount RACM to be removed from the facility and an estimate of the approximate amount of any Category I and Category II non-friable asbestos-containing material that will not be removed before demolition. Respondent failed to identify in the Notification for the demolitions the amount of Category I non-friable asbestos-containing material to be left in the facilities during the demolitions, in violation of OAC Rule 3745-20-03(A)(4)(g) and ORC ' 3704.05(G).

4. Between May 1, 2008 and May 19, 2008, LVI removed all of the asbestos-containing material from Dawsett Elementary School and North Elementary School that was identified in the April 18, 2008 notification. However, approximately 26,654 square feet of non-friable asbestos-containing material remained at Dawsett Elementary School in the form of flooring tiles and associated mastic and 14,679 square feet of asbestos-containing material in the form of flooring tiles and associated mastic remained at North Elementary School.

5. Upon completion of asbestos removal activities at North Elementary School and Dawsett Elementary School by LVI, Respondent began to perform demolition operations at both sites. At North Elementary School, as part of the

demolition operation, Respondent removed 98 to 99 percent of the Category I floor tiles and mastic. Respondent then used a portable grinder to pulverize the concrete demolition debris so it could be used as backfill material to bring the demolition site up to grade. Some of the concrete demolition debris contained the remaining (i.e., between one to two percent) asbestos-containing floor tiles and mastic. The grinding operations classified the non-friable asbestos-containing floor tiles and mastic as RACM and subject to regulation.

6. OAC Rule 3745-20-01(B)(42)(c) states that RACM means Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading.

7. OAC Rule 3745-20-04(A)(1) requires that each owner or operator of a subject demolition operation to whom this rule applies to remove all RACM from a facility being demolished before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal. Additionally, OAC Rule 3745-20-04(B) prohibits the handling or disturbance of RACM without at least one adequately trained authorized representative present at the site location.

8. Respondent failed to remove between one to two percent of the floor tiles and mastic from the concrete substrate previously contained in the North Elementary School. Respondent later subjected the remaining floor tiles, mastic and concrete to grinding and used the pulverized asbestos-containing waste material as site grade fill. Ohio EPA observed pieces of dry floor tiles and mastic in the fill material that Respondent generated from grinding the concrete demolition debris at the site. Sampling performed by Ohio EPA on July 1, 2008, confirmed that the floor tiles and mastic retrieved from the demolished North Elementary School contained more than one percent asbestos (i.e., friable asbestos material). In accordance with OAC Rule 3745-20-01(B)(42)(c), any category I non-friable that will be subject to grinding is classified as RACM and is required to be removed before the commencing of demolition operations. On or before July 1, 2008, Respondent failed to remove all RACM from the structure before commencing demolition operations, in violation of OAC Rule 3745-20-04(A)(1). Additionally, Respondent failed to have a representative adequately trained in the provisions of OAC Chapter 3745-20 at the site location during the disturbance and handling of the RACM, in violation of OAC Rule 3745-20-04(B).

9. OAC Rule 3745-20-05(B)(2) requires the owner or operator, who demolished a facility where asbestos was not removed prior to demolition, to keep the asbestos-containing waste material adequately wet at all times during and after demolition, and during handling, loading, transport and disposal at an active waste disposal site.

10. During the July 1, 2008, inspection at North Elementary School, Ohio EPA observed dry asbestos-containing waste material that was used as back fill material.

Respondent failed to adequately wet the asbestos-containing waste material at the North Elementary School demolition operation. Specifically, Respondent failed to adequately wet the fill material that was generated from grinding concrete material that contained floor tile and mastic, in violation OAC Rule 3745-20-05(B)(2). On July 2, 2008, Respondent started to maintain the backfill material adequately wet.

11. OAC Rule 3745-20-05(A) requires the waste generator to deposit all asbestos-containing waste material as soon as practical at either a waste disposal site in Ohio operated in accordance with the provisions of OAC Rule 3745-20-06 of the Administrative Code, or a waste disposal site not in Ohio operated in accordance with the provisions of 40 CFR 61.154, or a site that converts regulated asbestos-containing material and asbestos-containing waste material into non-asbestos (asbestos-free) material in accordance with the provisions of OAC Rule 3745-20-13. Respondent is the waste generator, as defined in OAC Rule 3745-20-01(B)(52). Therefore, Respondent was required to deposit the asbestos-containing waste material in accordance with the options specified in OAC Rule 3745-20-05(A). Respondent failed to deposit the asbestos-containing waste material in one of these options. Therefore, Respondent violated the requirements of OAC Rule 3745-20-05(A). The violation occurred from at least July 2, 2008, date of the first inspection, and continued until August 29, 2008, when the removal of contaminated waste debris was completed.

12. OAC Rule 3745-20-04(C) requires each owner or operator of a demolition operation to ensure all RACM which has been damaged or made friable by demolition is repaired, encapsulated, or removed for disposal in accordance with OAC Rule 3745-20-05, prior to the removal of emission controls.

13. On July 3, 2008, Respondent contacted Ohio EPA and indicated that the Dawsett Elementary School project also involved floor tiles and mastic similar to those found at North Elementary School. Upon inspection, Ohio EPA confirmed that floor tiles and mastic containing asbestos were at Dawsett Elementary School; however, they had not been subject to grinding. But demolition operations (i.e., equipment running over the material during the removal of demolition debris) by Respondent at the school had made at least 160 square feet of the floor tiles and mastic friable and subject to OAC Rule 3745-20-04(C). Respondent failed to ensure that the RACM that was damaged and made friable by demolition was repaired, encapsulated or removed for proper disposal prior to the removal of emission controls, in violation of OAC Rule 3745-20-04(C). Respondent also failed to have a representative adequately trained in the provisions of OAC Chapter 3745-20 at the site location during the disturbance and handling of the RACM, in violation of OAC Rule 3745-20-04(B).

14. The OAC violations cited in the above findings also constituted violations of ORC ' 3704.05(G), which prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA. OAC Chapter 3745-20 was adopted by the Director pursuant to ORC Chapter 3704.

15. On July 9, 2008, Ohio EPA sent notice of violation ("NOV") letters to Respondent for the above-mentioned violations. On July 16, 2008, Respondent replied to the NOVs stating that it would maintain the RACM-laced debris at North Elementary School site adequately wet and amend the May 19, 2008, notifications to include the Category I nonfriable asbestos-containing material. Respondent also stated that it planned to have the contaminated material excavated, properly bagged and hauled to an appropriate landfill under the supervision of Bureau Veritas North America, Inc., an Environmental Service Company. Respondent worked closely with Ohio EPA to develop a plan to assure that both sites were cleaned back to their original grade and that any contaminated soil was removed. On August 5, 2008, Ohio EPA approved both sites' cleanup plans. From the approval date until approximately August 28, 2008 Respondent removed the asbestos-containing waste debris. On August 28, 2008, Ohio EPA visited the North Elementary School site and observed that the site was completely excavated and all contaminated material had been removed. Similarly, Respondent maintained the damaged RACM at the Dawsett Elementary School adequately wet until it was properly removed and disposed of in accordance with OAC Chapter 3745-20. Ohio EPA conducted a final visual check on August 18, 2008, of the Dawsett Elementary School and confirmed all contamination had been removed.

16. 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 issues the following Orders:

1. Respondent shall pay the amount of twenty-four thousand dollars ($24,000) in settlement of Ohio EPA=s claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Respondent shall pay Ohio EPA the amount of nineteen thousand two hundred dollars ($19,200) of the total amount of the civil penalty in thirteen monthly payments of one thousand four hundred dollars ($1,400) and one month payment of one thousand dollars ($1,000). The first payment of $1,400 shall be due within 150 days after the effective date of these Orders. Subsequent payments of $1,400 shall be due by the 30th of the following consecutive twelve months. The payment of $1,000 shall be due within 540 days of the effective date of these Orders. Payments shall be made by official checks made payable to ATreasurer, State of Ohio.@ 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 four thousand eight hundred dollars ($4,800) of the civil penalty, Respondent shall fund a Supplemental Environmental Project (ASEP@) by making a contribution in the amount of $4,800 to the Ohio EPA=s Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall make four consecutive monthly payments of $1,200 payable to ATreasurer, State of Ohio.@ The first payment shall be due within thirty (30) days after the effective date of these Orders and subsequent payments shall be due within 60, 90, and 120 days after the effective date of these Orders. Payments shall be made by official checks made payable to ATreasurer, State of Ohio.@ 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 official check shall be submitted to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at Division of Air Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA $4,800 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:

Ohio Environmental Protection Agency
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402-9398
Attn: Tom Sattler

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 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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

9/22/10
Date

AGREED:

Complete Clearing, Inc.

Signature

9-1-10
Date

Kevin Farson
Printed or Typed Name