OHIO E.P.A.

JUN -2 2010

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY RECORD DIRECTOR'S JOURNAL

In the Matter of:

J.S. Paris Excavating, Inc.
11550 Mahoning Avenue
P.O. Box 219
North Jackson, Ohio 44451

Director's Final Findings
and 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: _____ Date: _____

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to J.S. Paris Excavating, 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 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, of 11550 Mahoning Avenue, North Jackson, Ohio, is a demolition contractor and not a licensed asbestos removal contractor in the State of Ohio. In December of 2007, Respondent was hired by Signature Development Group, LLC, of 23230 Chagrin Boulevard, Suite 700, Beachwood, Ohio, to demolish two commercial structures, which were located at 14941 and 14973 South Avenue, Beaver Township, Mahoning County, Ohio. Each of the above-referenced structures constituted a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18). Respondent was an "operator" as defined by OAC Rule 3745-20-01(B)(39). The project involved a "demolition," as defined in OAC Rule 3745-20-01(B)(13).

2. The Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA"), a contractual representative of Ohio EPA in Mahoning County, first learned about the demolition project on January 30, 2008. On February 1, 2008, M-TAPCA personnel conducted a site inspection and discovered that the two former commercial structures had already been demolished sometime in November 2007 and that construction of a new facility was in progress. An asbestos survey, as required pursuant to OAC Rule 3745-20-02(A), was not provided by Respondent at the time of the inspection.

Failure to comply with the notification requirements

3. Pursuant to OAC Rule 3745-20-02(B)(1), the owner or operator of a demolition project must comply with the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05 if the combined amount of regulated asbestos-containing material in a facility being demolished is at least 260 linear feet on pipes or at least 160 square feet on other facility components, or at least 35 cubic feet off facility components where the length or area could not be measured previously. Regulated asbestos-containing material ("RACM") is as defined in OAC Rule 3745-20-01(B)(42).

4. Pursuant to OAC Rule 3745-20-02(B)(2), the owner or operator of a demolition project must comply with the notification requirements of OAC Rule 3745-20-03 if the combined amount of regulated asbestos-containing material in a facility being demolished is less than 260 linear feet on pipes or less than 160 square feet on other facility components, or less than 35 cubic feet off facility components where the length or area could not be measured previously, or if there is no asbestos-containing material in a facility being demolished.

5. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition project to submit a written notice of intention to demolish ("Notification") to Ohio EPA at least ten days prior to the start of the demolition if the project is as described in OAC Rule 3745-20-02(B)(1) or (B)(2).

6. Respondent failed to submit a Notification to Ohio EPA at least ten days prior to the start of the above-mentioned demolition project, in violation of OAC Rule 3745-20-03(A).

Violation of ORC § 3704.05(G)

7. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. OAC Chapter 3745-20 was adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704.

8. The OAC rule violation identified in Finding 6 also constitutes a violation of ORC § 3704.05(G).

9. On March 11, 2008, Respondent was issued a notice of violation ("NOV") letter by M-TAPCA addressing the notification violation described in the above findings. In addition to the violation of the notification requirements, the NOV also cited Respondent

for a violation of OAC Rule 3745-20-02(A) for failing to conduct an asbestos survey because Ohio EPA and M-TAPCA had no knowledge of any asbestos survey being done for the above-referenced structures.

10. On March 21, 2008, a Notification and an asbestos survey report dated June 14, 2007 were submitted by Respondent as requested in M-TAPCA's March 11, 2008 NOV letter. The attached asbestos survey report indicated that the above-referenced structures contained no asbestos.

11. 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 seven thousand dollars ($7,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.06. Within thirty (30) 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 five thousand and six hundred dollars ($5,600) 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
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining one thousand and four hundred dollars ($1,400) of civil penalty to Ohio EPA, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $1,400 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). 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 $1,400. 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 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
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe in Order 2, Respondent shall immediately pay to Ohio EPA $1,400 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.

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
2nd Floor - Room 25
345 Oak Hill Avenue
Youngstown, Ohio 44502-1454
Attention: William Slanina

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: 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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

5/27/10
Date

AGREED:

J.S. Paris Excavating, Inc.

Signature

5-18-10
Date

James Sheets
Printed or Typed Name

President
Title