

BEFORE THE

OHIO E.P.A.

OHIO ENVIRONMENTAL PROTECTION AGENCY

DEC 29 2005

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

AAA American Abatement &
Asbestos Removal Corp.
8811 Maywood Avenue
Cleveland, Ohio 44102

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Director's Final Findings
and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to American Abatement & Asbestos Removal Corp. ("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 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 has determined the following findings:

1. Respondent is a licensed asbestos removal contractor with office located at 8811 Maywood Avenue, Cleveland, Ohio. Respondent was contracted by the City of Cleveland, Department of Public Service, 601 Lakeside Avenue, Cleveland, to remove asbestos before demolition of the former League Park Ticket Building located at 6601 Lexington Avenue, Cleveland, Ohio, which was owned by the City of Cleveland.
2. On May 14, 2003, Respondent submitted an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form to Ohio EPA for asbestos removal

at the vacant League Park Ticket Building. The form stated that, in part, 580 square feet of regulated asbestos-containing material ("RACM"), as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(41), was to be removed from the structure between the dates of May 28, 2003, and June 11, 2003. Therefore, this project was subject to the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05.

3. On June 10, 2003, a representative from Ohio EPA, Northeast District Office ("NEDO") inspected the site to determine compliance with all applicable state and federal asbestos regulations. Also present during the inspection were Mr. Charles Sullivan and Mr. Terrence Donelon, representatives from Respondent, and Mr. Allan Richards, Ohio Department of Health Inspector. During the inspection, samples of floor tile and mastic were collected from the second floor of the building and a roll-off container located outside the building, and taken for analysis.

4. During the June 10, 2003 inspection, the approximately 580 square feet of RACM that included plaster and insulated pipe fittings had been removed, and it was noted that Respondent had already completed removal of suspected asbestos-containing floor tile from the first floor of the structure. In addition, it was noted that approximately 50 percent of the suspected asbestos-containing floor tiles had been removed from the second floor, and were in small pieces. The fragmented and crushed portions of floor tile had become friable, and therefore RACM. This material was dry, and some was still on the second floor. Other portions of the floor tile were in the open roll-off container located outside the building. Ohio EPA had not received a complete, original notification, identifying the floor tile material as RACM.

5. The representatives of Respondent stated that the tile material on the second floor was more difficult to remove and had become chipped and fragmented during removal. At least 50 percent of the floor tile on the second floor had been removed at the time of the inspection. Floor tile material is regulated and subject to OAC Chapter 3745-20 if it contains asbestos and becomes fragmented, crushed or abraded during removal pursuant to OAC Rule 3745-20-01(B)(41)(c). Respondent had removed the floor tile as if it were a non-friable material. Respondent was instructed to wet, bag and dispose of the material in the roll-off, and the tiles still on the second floor. Respondent was informed that the original "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form was incomplete and inaccurate, and needed to be revised or amended to reflect the additional information, and resubmitted to Ohio EPA.

6. On June 11, 2003, a representative from Ohio EPA conducted a follow-up inspection of the site. At the time of the inspection, it was noted that the roll-off was cleaned and that the remaining floor tile on the second floor of the building was being removed in accordance with all applicable asbestos removal requirements. Respondent informed Ohio EPA that between 50 and 60 asbestos disposal bags had been used to clean the site.

7. During the June 11, 2003, inspection, Ohio EPA reviewed a copy of the scope of work document provided by Respondent. The document stated that, in part, 2,240 square feet of asbestos-containing floor tile was to be removed from the first floor of the building, and an additional 1,400 square feet was to be removed from the second floor. Ohio EPA was informed that the removal of the floor tile had started on June 9, 2003, and that by June 10, 2003, approximately 50 percent of the second floor tile had been removed.

8. Results of the analysis of the samples that were collected during the inspection on June 10, 2003, were received by NEDO on June 17, 2003 and indicated that the green floor tiles contained fifteen percent (15%) chrysotile asbestos, and the brown floor tiles contained twenty percent (20%) chrysotile asbestos. The mastic that had been collected and sampled, did not show the presence of any asbestos. Therefore, the floor tiles met the definition of RACM.

9. OAC Rule 3745-20-03(A)(4) states, in part, that each owner or operator shall include an estimate of the amount of regulated asbestos-containing material to be removed from the facility in terms of length of pipe in linear feet, surface area in square feet on other facility components, or volume in cubic feet where the length or area cannot be measured. Also, the approximate amount of category I and category II nonfriable asbestos-containing material in the affected part of the facility that will not be removed before demolition is to be included in the notification to be submitted to Ohio EPA. Respondent's failure to include the amount of floor tile on the first and second floors, in the original notification of demolition and renovation, was in violation of this rule.

10. OAC Rule 3745-20-04(A)(6) states, in part, that each owner or operator of a demolition operation shall adequately wet all RACM that has been removed or stripped and ensure that the RACM remains adequately wet until collected in preparation for disposal in accordance with OAC Rule 3745-20-05. The chipped and fragmented pieces of floor tile on the second floor were observed to be dry during the June 10, 2003 inspection, in violation of OAC Rule 3745-20-04(A)(6).

11. OAC Rule 3745-20-05(B)(1)(c) states, in part, that the each owner or operator of any demolition operation shall seal all asbestos-containing waste material while wet in durable leak-tight containers or wrapping. The dry RACM that was in the roll-off was in violation of this rule. Respondent was instructed to wet, bag and dispose of the material in the roll-off.

12. By letter dated June 25, 2003, Ohio EPA issued a Notice of Violation ("NOV") to Respondent for the violations of OAC Rules 3745-20-03 and 3745-20-04(A)(6) discovered during the June 10, 2003 inspection. Additionally, Ohio EPA issued NOVs to F. Buddie Contracting, Inc., the general contractor for the demolition, and to the City of Cleveland, the owner of the building.

13. The NOV's outlined in detail the requirements of Ohio's "Asbestos Emission Control Rules" in OAC Chapter 3745-20, and the National Emission Standards for Asbestos at 40 CFR 61.140. Respondent was requested, within fifteen days of the receipt of the NOV, to submit to Ohio EPA:

- ▶ An amended or revised "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form, stating the total amount of RACM to be removed from the structure and the start and completion dates for the work.
- ▶ A copy of the "Submittal Package, AAARC # 0503/023" which included the scope of work that was to be provided by the general contractor and property owner.
- ▶ Copies of all the waste shipment records for the disposal of the floor tile debris from the structure.
- ▶ Any additional information, explanations or evidence pertaining to the violations listed in the June 25, 2003 NOV.

14. By letter dated July 5, 2003, Ohio EPA received a response to the June 25, 2003, NOV from Respondent. The letter explained briefly that Respondent was not aware at the time of removal, that the floor tile was considered RACM. Respondent advised all its employees of Ohio EPA's criteria for RACM floor tile to avoid future violations. Respondent submitted an amended "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form; copies of an "Asbestos Abatement Project Agreement" and "Scope of Work" for the project; and a copy of a "Waste Shipment Record" for removal of the RACM that was observed during the June 10, 2003 inspection by Ohio EPA. The amended notification included the additional asbestos-containing floor tile that had become friable during removal.

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

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 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 and four hundred dollars (\$7,400) 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 five thousand nine hundred and twenty dollars (\$5,920) 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

2. In lieu of paying the remaining one thousand four hundred and eighty dollars (\$1,480) of civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$1,480 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 \$1,480. 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.

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 \$1,480 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. 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 EPA
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: Dennis Bush

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

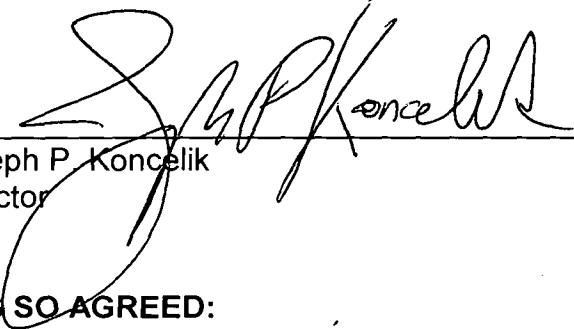
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

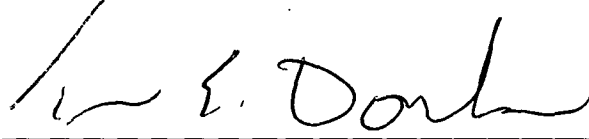


Joseph P. Koncelik
Director

12/29/05
Date

IT IS SO AGREED:

AAA American Abatement & Asbestos Removal Corp.



Signature

12/13/05
Date

Terrence E. Donahoe
Printed or Typed Name

Project Manager
Title