

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Neshkin Construction Co., Inc.	:	<u>Director's Final Findings</u>
3214 St. Clair Avenue	:	<u>and Orders</u>
Cleveland, Ohio 44114	:	

OHIO E.P.A.
APR 25 2005
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Neshkin Construction Co., 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 or of the 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 of 3214 St. Clair Avenue, Cleveland, Ohio, was hired by EMMCO CORP. as the general contractor for a demolition project at the former Giant Eagle store located at 9700 Mentor Avenue in Painesville Township of Lake County, Ohio. The former Giant Eagle store was owned by EMMCO CORP. of 3681 South Green Road, Beachwood, Ohio. Respondent hired South Euclid Concrete and Asphalt of 4320 Mayfield Road, South Euclid, Ohio to perform the partial demolition (i.e., approximately 7,200 square feet of a total of 30,000 square feet) of the above-referenced building in or about March 2003. The above-referenced building was 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)(38).

2. Pursuant to OAC Rule 3745-20-02(A), the owner or operator of any demolition or renovation operation shall have the affected facility or part of the facility where a demolition or renovation operation will occur thoroughly inspected prior to the commencement of the demolition or renovation for the presence of asbestos, including category I and category II nonfriable asbestos-containing material.

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)(41).

4. 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).

5. OAC Rule 3745-20-04(A)(1) requires, in part, the owner or operator of a demolition or renovation project as described in OAC Rule 3745-20-02(B)(1) to remove all RACM from a facility being demolished or renovated before any wrecking or dismantling that would breakup the materials, unless as otherwise provided in that rule.

6. OAC Rule 3745-20-05(B) requires, in part, the owner or operator of a demolition or renovation project to adequately wet asbestos-containing waste material at all times during and after demolition, and during handling, loading, transport and disposal at an active waste disposal site.

7. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA.

8. On December 31, 2002, EMMCO CORP. hired EA Group to perform a Phase I environmental site assessment of the above-referenced building. This assessment revealed that there were suspect asbestos-containing materials in the form of drywall, ceiling tiles, floor tiles and roofing materials in the building. However, since no sampling was conducted to identify the actual amount, type, and location of asbestos-containing materials for the above-referenced project prior to commencement of demolition, Respondent was in violation of OAC Rule 3745-20-02(A) and ORC § 3704.05(G).

9. On March 14, 2003, a representative of the Lake County General Health District ("LCGHD"), a contractual representative of Ohio EPA in Lake County, discovered

the partial demolition of the above-referenced building. On the same day, LCGHD conducted an on-site investigation. Upon arrival, the LCGHD representative determined that there had been no Notification submitted by Respondent for this demolition project. LCGHD was informed by Respondent that the demolition had been completed. Respondent also informed LCGHD that approximately 30,000 square feet of ceiling tile had been removed from the building and was disposed in late December 2002 or January 2003. Information from the Phase I environmental site assessment of the above-referenced building indicates that the 30,000 square feet of ceiling tiles were suspected asbestos-containing materials. However, since these ceiling tiles had been disposed prior to LCGHD's initial inspection of the site, LCHGD could not confirm if these were indeed RACM. At this inspection, LCGHD noticed that South Euclid Concrete and Asphalt was in the process of disposing the remaining demolition debris at the site. Respondent ordered South Euclid Concrete and Asphalt to stop the work upon request by LCGHD; however, no water was added to the debris since it was not available on site on that date.

10. Between March 14 and 17, 2003, F.S.W. Lab., Inc. ("FSW") was hired by Respondent to collect samples of black floor tile mastic and pieces of roofing felt materials from the four piles of remaining debris for laboratory analysis. The laboratory results came back on March 17, 2003 and indicated that the non-friable black floor tile mastic, which became friable due to demolition, contained from 1.25 to 2.0% chrysotile asbestos. FSW estimated that there remained a total of 1,600 square feet of RACM in the debris to be disposed properly by an asbestos abatement specialist. Therefore, this project exceeded the threshold limits as specified in OAC Rule 3745-20-02(B)(1).

11. Since there was no Notification submitted to Ohio EPA or LCGHD prior to the start of the demolition project, Respondent was in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G). Also, since the remaining 1,600 square feet of asbestos-containing material had not been removed from the facility before becoming friable, Respondent was in violation of OAC Rule 3745-20-04(A)(1) and ORC § 3704.05(G). In addition, since the remaining debris was not adequately wet at the time of initial inspection on March 14, 2003, Respondent was in violation of OAC Rule 3745-20-05(B) and ORC § 3704.05(G).

12. On March 22, 2003, Respondent submitted a Notification to LCGHD for the above-referenced project. The Notification revealed that Team Environmental, Inc. would perform the disposal of the remaining debris at the site on March 21 and 22, 2003.

13. On March 22, 2003, LCGHD visited the site and observed that Team Environmental, Inc. was disposing the remaining debris in compliance with the work practice requirements of OAC Chapter 3745-20. All of the debris was disposed completely on that date.

14. On April 10, 2003, LCGHD issued notice of violation ("NOV") letters to South Euclid Concrete and Asphalt, EMMCO CORP., and Respondent. In these NOV letters, LCGHD cited the parties for their failure to submit a Notification for the above-referenced demolition operation. The LCGHD informed the three parties that compliance with the

notification and work practice requirements of OAC Chapter 3745-20 would be required if they are involved in future demolition or renovation projects in the State of Ohio.

15. 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:

Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of fifteen thousand and five hundred dollars (\$15,500) in settlement of Ohio EPA's claim for civil penalties. Respondent shall pay to Ohio EPA the amount of fifteen thousand and five hundred dollars (\$15,500) of the penalty pursuant to the following schedule:

- three thousand eight hundred and seventy-five dollars (\$3,875) due within fourteen (14) days after the effective date of these Orders;
- three thousand eight hundred and seventy-five dollars (\$3,875) due within sixty (60) days after the effective date of these Orders;
- three thousand eight hundred and seventy-five dollars (\$3,875) due within one hundred twenty (120) days after the effective date of these Orders; and
- three thousand eight hundred and seventy-five dollars (\$3,875) due within one hundred and eighty (180) days after the effective date of these Orders.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." Each official check shall be submitted to Brenda Case, or her successor, Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and the site.

A copy of the official checks shall be submitted to James A. Orlemann, Assistant Chief, Compliance and Enforcement, or his successor, Division of Air Pollution Control, Ohio EPA, 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's facility.

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:

Lake County General Health District
33 Mill Street
Painesville, Ohio 44077
Attention: Bert Mechenbier

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
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 specially 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

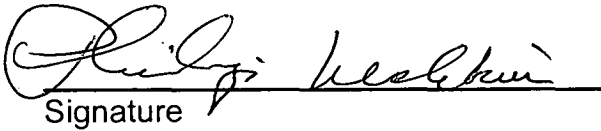


Joseph P. Koncinski
Director

4/19/05
Date

IT IS SO AGREED:

Neshkin Construction Co., Inc.



Signature

4-8-05
Date

PHILIP NESHKIN
Printed or Typed Name

PRESIDENT
Title