

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Precision Environmental Company : Director's Final Findings
5722 Schaaf Road : and Orders
Independence, Ohio 44131 :

ENTERED DIRECTOR'S JOURNAL

FEB 24 2005

OHIO E.P.A.

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Precision Environmental Company ("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

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facility (as hereinafter defined) 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 meanings as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA has determined the following findings:

1. On November 24, 2003, Respondent submitted a Notification of Demolition and Renovation form for asbestos removal at Memorial School located at 510 East 152nd Street in Cleveland, Ohio ("Facility"), pursuant to Ohio Administrative Code ("OAC") Rule 3745-20-03. Memorial School is owned and operated by the Cleveland Board of Education. The Notification indicated 73,650 square feet of regulated asbestos-containing material ("RACM") would be removed prior to demolition of the Facility. Removal work did not begin until December 8, 2003.

2. This asbestos removal project was subject to the work practice requirements of OAC Rule 3745-20-04 pursuant to OAC Rule 3745-20-02(B)(1). Respondent was the "operator," as defined in OAC Rule 3745-20-01(B)(38), of the asbestos removal project.

3. OAC Rule 3745-20-04(A)(6) requires, in part, an operator to adequately wet any regulated asbestos-containing materials that have been removed to ensure that the materials remain adequately wet until collected and contained in preparation for disposal.

4. On February 3, 2004, a representative of Ohio EPA inspected Respondent's removal activity at the Facility to assess compliance with the requirements of OAC Chapter 3745-20. During the inspection, the inspector observed an employee spraying the surface of a debris/soil pile, with water from a hose, that possibly contained "regulated asbestos-containing material," as that term is defined in OAC Rule 3745-20-01(B)(41). The pile contained less than ten cubic yards of material. The inspector observed that the material was wet on the surface of the pile but the material below the surface of the pile was dry. The inspector took three samples of the material in the pile for determination of asbestos content.

5. One of the samples from the pile of material taken during the February 3, 2004 inspection was found to contain asbestos. Because some of the material in the pile contained regulated asbestos-containing material, not properly wetting the material was a violation of OAC Rule 3745-20-04(A)(6)(a) and ORC § 3704.05(G).

6. On March 5, 2004, Ohio EPA sent a Notice of Violation ("NOV") to Respondent for failing to adequately wet asbestos-containing material that had been removed but had not been collected, contained or treated prior to disposal.

7. In correspondence dated March 30, 2004, Respondent replied to the NOV and indicated Respondent had adequately wet the material in question, given the freezing or near-freezing temperature in the working environment. Respondent contended that further wetting of the material in question would have created a safety hazard for Respondent's employees working at the Facility.

8. OAC Rule 3745-20-04(A)(7) requires compliance with OAC Rule 3745-20-04(A)(6) even when the temperature at the point of wetting is below thirty-two degrees Fahrenheit.

9. 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 Order:

Within twenty-one (21) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of seven thousand dollars (\$7,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for seven thousand dollars (\$7,000). The official check and a letter identifying the Respondent and the Facility shall be submitted to Brenda Case, Fiscal Specialist, at the following address:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to James A. Orlemann, Manager, Enforcement Coordinator, or his successor, at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
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 Respondent's activities at the 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. 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
Division of Air Pollution Control
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: Dennis Bush

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

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 violation 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 violation 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. Konecny
Director

2/18/05
Date

IT IS SO AGREED:

Precision Environmental Company



Signature

2/11/05
Date

Marc Garland
Printed or Typed Name

Safety Director
Title