

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

DEC 29 2015

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

Lee Environmental Cleaning, Inc.	:	<u>Director's Final Findings</u>
11212 Avon Avenue	:	<u>and Orders</u>
Cleveland, Ohio 44105	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Lee Environmental Cleaning, 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 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 makes the following findings:

1. "Facility", as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18), means any institutional, commercial, public, industrial or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, or any operation involving the renovation/demolition of multiple residential structures identified by an owner or operator within a scheduled period of time; any ship; and any active or inactive waste disposal site. For purposes of this definition, any structure, installation or building that contains a loft used as a dwelling is not considered a residential structure, installation or building. Any structure, installation or building that was previously subject to this rule due to its prior use or function is not excluded, regardless of its current use or function.

2. "Installation," as defined by OAC Rule 3745-20-01(B)(28), means any building or structure or any group of buildings or structures at a single demolition or renovation site that are under the control of the same owner or operator, or owner or operator under common control.

3. "Regulated asbestos-containing material" ("RACM") is defined in OAC Rule 3745-20-01(B)(42) and includes any Category II non-friable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this chapter.

4. "Owner or operator" as defined by OAC Rule 3745-20-01(B)(39) means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation or both.

5. Pursuant to OAC Rule 3745-20-02(B)(1), the requirements of 3745-20-03, 3745-20-04, and 3745-20-05 apply to the owner and operator of a facility being demolished if the amount of regulated asbestos-containing material in such facility is at least 260 linear feet on pipes, 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.

6. Pursuant to OAC Rule 3745-20-03(A)(3)(d), the owner or operator is required to notify the Ohio EPA field office on any changes to the original start date listed in the original notice, for any asbestos stripping or removal work of the facility.

7. OAC Rule 3745-20-03(D) requires that each owner or operator of a subject demolition operation to inform the appropriate Ohio EPA field office by telephone or facsimile when changes to the information provided by the notice occur.

8. OAC Rule 3745-20-04(A)(2)(a), states, in part, that each owner or operator of a subject demolition operation shall adequately wet all RACM exposed during cutting operations of a facility component being taken out of the facility as units or in sections.

9. OAC Rule 3745-04(A)(2)(b), states, in part, that each owner or operator of a subject demolition operation shall carefully lower the units or sections of the facility components covered with, coated with or containing RACM to the floor and to ground level, not dropping, throwing, sliding or otherwise damaging or disturbing the RACM.

10. OAC Rule 3745-20-04(A)(4)(b), states, in part, that each owner or operator of a subject demolition operation shall use a local exhaust ventilation and collection system to capture the particulate asbestos material produced during the removal of RACM from a facility component being taken out of the facility as units or in sections.

11. OAC Rule 3745-20-04(A)(6)(a) requires the owner or operator of a subject demolition operation to maintain all RACM, including material that has been removed or stripped, adequately wet until collected and contained or treated in preparation for disposal in accordance for OAC Rule 3745-20-05.

12. OAC Rule 3745-20-05(B) states, in part, that each owner or operator of any demolition operation shall discharge no visible emissions to the outside air during the collection, processing, packaging, transporting, or deposition of any of asbestos-containing waste material.

13. OAC Rule 3745-20-05(B)(1)(c) requires, in part, the owner or operator of the demolition operation to seal the asbestos-containing waste material after wetting in durable leak-tight containers or wrapping.

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

15. Cleveland Division of Air Quality ("CDAQ") is the contractual representative for Ohio EPA in air quality matters within Cuyahoga County.

16. Respondent caused violations of OAC Chapter 3745-20 at three residential facilities located at 13708 Darley Avenue, Cleveland, Ohio, 44110 ("Facility #1"), 3146 East 102nd Street, Cleveland, Ohio 44104 ("Facility #2"), and 785 East 100th Street, Cleveland, Ohio 44108 ("Facility #3") in 2013 and 2014.

17. On March 4, 2013, CDAQ received the demolition notification form for Facility #1. Respondent was listed as the asbestos removal contractor and it was stated that no demolition contractor was hired yet. The amount of Category I ACM not to be removed was listed as 1,100 square feet of roofing and floor tile, and the amount of RACM to be removed was listed as 2,200 square feet of transite siding and 10 square feet of tape paper insulation. The scheduled dates of asbestos removal were listed as March 15, 2013 to March 18, 2013. The scheduled dates of demolition were not listed.

18. On March 15, 2013, CDAQ inspected the facility and found the site unoccupied although the start date of asbestos removal was listed as March 15, 2013, according to the notification. The inspector revisited the site on March 18, 2013 and once again found the site unoccupied. On March 19, the inspector contacted Respondent and requested a new notification because the completion date in the original notification expired.

19. On March 27, 2013, CDAQ sent a NOV letter to Respondent. The NOV cited Respondent in violation of OAC Rule 3745-20-03(A)(3)(d) and ORC § 3704.05(G) for failing to update CDAQ with the new asbestos removal schedule by phone and failing to submit a revised demolition notification as soon as possible but not later than one working day following discovery of the change. A follow-up letter was sent to

Respondent on April 25, 2013.

20. On April 1, 2013, Respondent submitted a new demolition notification form for Facility #1. It listed Otis Maintenance as the demolition contractor and the scheduled dates of demolition were listed as April 11, 2013 to May 1, 2013. The scheduled dates of asbestos removal were listed as April 17, 2013 to April 22, 2013.

21. On April 23, 2013, CDAQ received the demolition notification form for Facility #2. Respondent was listed as the asbestos removal contractor and Obon Inc. was listed as the demolition contractor. The amount of Category I ACM not to be removed was listed as 1,575 square feet of roofing and floor tile, and the amount of RACM to be removed was listed as 2,300 square feet of transite shingles, 25 square feet of duct insulation, and 13 square feet of window glazing. The scheduled dates of asbestos removal were listed as May 24, 2013 to May 28, 2013. The scheduled dates of demolition were listed as May 29, 2013 to June 29, 2013.

22. On May 24, 2013, CDAQ inspected the facility and found the site unoccupied although the start date of asbestos removal was listed as May 24, 2013, according to the notification.

23. On June 27, 2013, CDAQ sent a NOV letter to Respondent. The NOV cited Respondent in violation of OAC Rule 3745-20-03(A)(3)(d) and ORC § 3704.05(G) for failing to update CDAQ with the new asbestos removal schedule by phone and failing to submit a revised demolition notification as soon as possible but not later than one working day following discovery of the change.

24. Respondent's response to the NOV was received on August 29, 2013. It was stated that the reason that Respondent was not able to start the asbestos removal on the date listed on the notification because another project took longer time to complete.

25. On October 15, 2014, CDAQ received the demolition notification form for Facility #3. Respondent was listed as the asbestos removal contractor and C&D Contractor was listed as the demolition contractor. The amount of Category I ACM not to be removed was listed as 1,798 square feet of roofing and floor tile, and the amount of RACM to be removed was listed as 3,100 square feet of transite shingles and 65 square feet of duct wrap. The scheduled dates of asbestos removal were listed as October 30, 2014 to November 3, 2014. The scheduled dates of demolition were listed as November 5, 2014 to November 25, 2014.

26. On October 31, 2014, CDAQ inspected the facility and found the site unoccupied although the start date of asbestos removal was listed as October 30, 2014, according to the notification.

27. On November 17, 2014, CDAQ sent a NOV letter to Respondent. The NOV cited Respondent in violation of OAC Rule 3745-20-03(A)(3)(d) and ORC §

3704.05(G) for failing to update CDAQ with the new asbestos removal schedule by phone and failing to submit a revised demolition notification as soon as possible but not later than one working day following discovery of the change.

28. 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 five thousand dollars (\$5,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704 (Ohio EPA will distribute the received penalty among Funds 6960 and 6A10). Payment to Ohio EPA shall be made by official checks made payable to "Treasurer, State of Ohio" in twenty-four (24) monthly installments. The first monthly payment is one hundred and seventy dollars (\$170) and the remaining equal twenty three (23) monthly payments are two hundred and ten dollars (\$210) each. The installments are due on the fifth (5th) day of the month for twenty four (24) months beginning with the month of January 2016 and ending on December 5, 2017. The official check shall be submitted to Carol Butler, 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

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 Respondents.

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:

City of Cleveland
Department of Public Health
Division of Air Quality
75 Erieview Plaza, Second Floor
Cleveland, Ohio 44114
Attn: Valencia White

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Jim Kavalec, Manager,
Compliance and 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

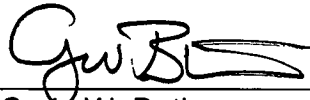
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Craig W. Butler
Director

12/28/15

Date

AGREED:

Lee Environmental Cleaning, Inc.



Signature

12-11-15

Date

Printed or Typed Name

Title