

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Brewer-Garrett Company	:	<u>Director's Final Findings</u>
6800 Eastland Road	:	<u>and Orders</u>
Middleburg Heights, Ohio 44130	:	

OHIO E.P.A.
AUG 28 2002
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Brewer-Garrett Company ("Respondent") pursuant to the authority vested in the Director of Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("O.R.C.") 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 O.R.C. Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates an engineering and contracting company with offices located at 6800 Eastland Road, Middleburg Heights, Cuyahoga County, Ohio.
2. Ohio Administrative Code ("OAC") Rule 3745-20-02(A)(4) states, in part, that, if at least two hundred sixty linear feet of friable asbestos materials on pipes or at least one hundred sixty square feet of friable asbestos materials on other facility components are to be stripped or removed at a facility being renovated, all the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to the owner or operator of a renovation operation.
3. OAC Rule 3745-20-03(A) states, in part, that each owner or operator to whom this rule applies shall provide the Director of Ohio EPA with written notice of

intention to renovate. Pursuant to paragraph (A)(2)(d) of OAC Rule 3745-20-03, this notice shall be either postmarked or delivered to the Ohio EPA field office having jurisdiction in the county where the renovation operation is to occur at least five days before any planned renovation operation begins at a facility.

4. OAC Rule 3745-20-04(A)(1) states, in part, that each owner or operator of a renovation operation to whom this rule applies shall remove friable asbestos materials from a facility being renovated before any wrecking or dismantling that would break up the materials.

5. O.R.C. 3704.05(G) states in part that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under O.R.C. Chapter 3704. OAC Chapter 3745-20 was adopted by Ohio EPA pursuant to O.R.C. Chapter 3704.

6. The Elyria Memorial Hospital ("EMH"), located at 630 East River Road, Elyria, in Lorain County, Ohio is a "facility" as defined in OAC Rule 3745-20-01(B)(12).

7. Respondent was contracted by EMH Regional Medical Center to replace and upgrade the hospital's existing heating and cooling systems. This project included the dismantling and removal of the existing boilers. Respondent subcontracted the dismantling of the boilers to Standard Contracting ("Standard").

8. As part of an asbestos survey of EMH conducted by Esstek Ohio, Inc. ("Estek"), samples of the insulation materials on the upper and lower breeching of EMH's Boiler #3 were collected on May 29, 2001. Subsequent analyses by Esstek of the two samples (identified as Samples 1 and 2, laboratory identification numbers BO51376 and BO51377) showed no detectable asbestos present in the insulation materials. The survey did not identify any asbestos-containing materials present in the EMH boiler rooms.

9. On January 4, 2002, Standard requested confirmation that the boiler contained no asbestos-containing materials. Respondent requested that Inland Waters of Ohio ("IWO") evaluate the boiler for possible asbestos. On January 7, 2002, IWO collected three samples (sample numbers #1, #2, and #3) of suspected asbestos-containing material from Boiler #3 at EMH, as no holes or other prior sampling points could be identified on the boiler. The samples were sent to Affiliated Environmental Services, Inc. ("AES") of Sandusky, Ohio for expedited analysis, as the boiler was scheduled for dismantling and removal by Standard that week. Analyses by AES showed the three samples contained between 25% and 40% chrysotile asbestos. The sample analyses results were forwarded to IWO on January 8, 2002.

10. On January 8, 2002, within two hours of receiving the analysis report from AES, IWO informed Respondent of the sample analysis results. However, Respondent's subcontractor Standard had already begun dismantling Boiler #3 at EMH, disturbing approximately 200 square feet of friable asbestos-containing insulation and contaminating both the old and new boiler rooms. The dismantling operation was immediately halted, and the workers removed from the area. IWO, which is also licensed by the Ohio Department of Health ("ODH") as an asbestos hazard abatement contractor (license number 1690),

took immediate action to contain the asbestos contamination by wetting the debris and establishing a containment system around the area. The ODH was notified of the situation. ODH informed Ohio EPA, Northeast District Office ("NEDO").

11. On January 9, 2002, NEDO conducted an inspection of the work site at EMH and observed the disturbed material at Boiler #3. At the time of the inspection, the abatement operation appeared to be in substantial compliance with the applicable rules. No compliance issues were observed during a follow-up inspection conducted by NEDO on January 16, 2002.

12. On January 11, 2002, NEDO received a completed "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form from IWO to conduct emergency cleanup operations of 200 square feet of asbestos-containing debris and to remove an additional 270 cubic feet of asbestos-containing material from facility components at the EMH site. IWO was listed as the removal contractor, and Respondent was listed as operator/general contractor for the project. Asbestos removal operations were shown as scheduled from January 8, 2002 through January 22, 2002.

13. Based on the information provided in the notification form and the laboratory analysis by AES, a total of approximately 200 square feet of material containing greater than 1% asbestos was disturbed by Respondent's subcontractor during the boiler dismantling operation at EMH. Pursuant to OAC Rule 3745-20-02, Respondent is therefore an operator of a renovation operation and is subject to the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05, as the amount of friable asbestos materials disturbed exceeded the threshold level of 160 square feet specified in OAC Rule 3745-20-02.

14. On March 18, 2002, NEDO sent a Notice of Violation to Respondent, informing the firm of its violation of OAC Chapter 3745-20. Specifically, the Respondent, as operator of a renovation operation, was cited for failing to remove all regulated asbestos-containing material from a facility being renovated prior to beginning any activity that would break up the materials, in violation of OAC Rule 3745-20-04(A)(1). NEDO requested that the Respondent submit a response to NEDO within ten working days.

15. In a written response received by NEDO on March 29, 2002, Respondent submitted the documentation requested by NEDO, including copies of sample analysis reports and a report regarding the violation that occurred on January 8, 2002.

16. After reviewing the facts of the case, Ohio EPA has determined that Respondent violated OAC Rule 3745-20-03(A), by failing to provide Ohio EPA with at least five days notice prior to starting the renovation project, and OAC Rule 3745-20-04(A)(1), by failing to remove all regulated asbestos-containing material from a facility being renovated prior to beginning any activity that would break up the materials as a result of the Respondent's renovation operation.

17. 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 perform all renovation operations that it conducts in Ohio in compliance with OAC Chapter 3745-20.
2. Respondent shall pay the amount of fifteen thousand dollars (\$15,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to O.R.C. 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 twelve thousand dollars (\$12,000) of the total amount. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the site of the renovation operation.

The remaining three thousand dollars (\$3,000) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver an official check in this amount and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban area tree-planting projects in Ohio. This check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

A copy of both checks shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the following address:

Division of Air Pollution Control
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. 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 Respondent's conduct of the renovation operation specified in these Orders.

VII. 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 the Respondent.

VIII. MODIFICATIONS

These Orders may be modified by mutual 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.

IX. NOTICE

All documents required by these Orders, unless otherwise specified in writing, shall be addressed to :

Ohio Environmental Protection Agency
Northeast District Office
Division of Air Pollution Control
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attention: Jim Veres

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

X. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, and cause of action, except as specifically waived in Section XI. of these Orders.

XI. 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 the Respondent's liability for the violations specifically cited herein.

The 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 the Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, the Respondent retains the right to intervene and participate in such an appeal. In such event, the Respondent shall continue to comply with these Orders unless said Orders are stayed, vacated, or modified.

XII. EFFECTIVE DATE

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

XIII. 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

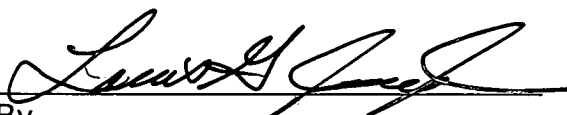


Christopher Jones
Director

8-23-02
Date

IT IS AGREED:

The Brewer-Garrett Company



By

8/18/02
Date



Title