

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Milligan Construction Company
1120 Milligan Court
Sidney, Ohio 45365

:
:
:

Director's Final Findings
and Order

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Order ("Order") are issued to Milligan Construction Company ("MCC"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under R.C. 3704.03 and 3745.01.

II. PARTIES BOUND

These Orders shall apply to and be binding upon MCC and [heirs and] successors in interest liable under Ohio law. No change in ownership relating to the Facility shall in any way alter MCC's obligations under these Orders.

III. DEFINITIONS

Unless otherwise stated, all terms used in this Order shall have the same meaning as used in R.C. Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS OF FACT

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

1. MCC, with an office located at 1120 Milligan Court, Suite 102, Sidney, Ohio, is a demolition contractor.
2. Pursuant to Ohio Administrative Code ("OAC") rule 3745-20-02(A)(2), each owner or operator of a demolition or renovation operation must submit a notification of demolition/renovation.
3. On June 14, 2000, Ohio EPA, Southwest District Office ("SWDO"), as part of the Ohio EPA's outreach efforts, sent a letter to Shelby County Commissioners ("SCC"),

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informing SCC of existing State and federal notification requirements specified in Finding #3 that apply to demolition and renovation activities.

4. SCC contracted MCC to demolish three structures located at 120-122 and 132-134 South Street and 224-226 West Avenue, in Sidney, Ohio.
5. On January 4, 2001, SWDO representatives received a complaint and conducted a site inspection of the demolition project for the purpose of determining compliance with the Ohio Asbestos Emission Control Rules specified in OAC Chapter 3745-20. At the time of the inspection, MCC had commenced the planned demolition without submitting a complete Ohio EPA Notification of Demolition and Renovation form to SWDO. MCC's failure to notify SWDO prior to the commencement of the demolition process constitutes a violation of OAC rule 3745-20-03(A).
6. On February 20, 2001, SWDO sent a notice of violation ("NOV") to MCC. The NOV cited MCC for the violations of the aforementioned air pollution control regulation and the requested MCC to submit a completed Ohio EPA Notification of Demolition and Renovation form to SWDO.
7. Upon receiving the NOV, MCC ceased the demolition operations and contracted Rainbow Home Environmental, a licensed asbestos abatement contractor, to survey the remaining structures.
8. After receiving the sample analysis, MCC submitted a complete Notification of Demolition and Renovation form to SWDO. The notification indicated that the remaining structures contained 130 linear feet and 120 square feet of friable asbestos containing material.
9. Rainbow Home Environmental completed asbestos removal operations in accordance with OAC Chapter 3745-20 prior to the demolition of the remaining structures.
10. On June 11, 2001, a SWDO representative while performing another asbestos inspection, noticed the demolition of structures at Sidney High School located at 1215 Campbell Road, in Sidney. Upon further questioning a representative from Ferguson Construction, it was determined that Milligan had commenced demolition of the lean-to on June 7, 2001 without submitting a complete Ohio EPA Notification of Demolition and Renovation form to SWDO. SWDO collected several samples and had them tested. The test indicated there was no asbestos-containing material present in the demolition debris. MCC's failure to notify SWDO before the demolition process constitutes a violation of OAC rule 3745-20-03(A).
11. On June 14, 2001, SWDO sent another NOV to MCC. The NOV cited MCC for the

violations of the aforementioned air pollution control regulation and requested MCC to submit a completed Ohio EPA Notification of Demolition and Renovation form to SWDO.

12. 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 compliance.

V. ORDER

The Director hereby issues the following Order:

Pursuant to R.C. 3704.06, MCC is assessed a civil penalty in the amount of six thousand three hundred dollars (\$6,300) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of this Order, MCC shall pay to Ohio EPA the amount of five thousand forty dollars (\$5,040) of the total penalty amount. Payment shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, Fiscal Specialist, or her successor, at the following address:

Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

The remaining one thousand two hundred sixty dollars (\$1,260) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of this Order, MCC shall deliver a certified 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 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 APPLICABLE LAWS

All actions required to be taken pursuant to this Order shall be undertaken in accordance with the requirements of all applicable local, state and federal laws and regulations. This Order does not waive or compromise the applicability and enforcement of any other statutes or regulations applicable to MCC's facility.

VII. NOTICE

All documents required by this Order, unless otherwise specified in writing, shall be submitted to:

Ohio EPA - DAPC
Southwest District Office
401 E. 5th. Street
Dayton, Ohio 45402-2911
Attention: Phil Hinrichs

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, OH 43216-1049
Attention: Tammy VanWalsen

VIII. RESERVATION OF RIGHTS

These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of the Ohio EPA.

Nothing contained herein prevents the Ohio EPA from seeking legal or equitable relief to enforce the terms of this Order or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against MCC for noncompliance with this Order. Nothing contained herein prevents the Ohio EPA from exercising its lawful authority to require MCC to perform additional activities at the facility pursuant to R.C. Chapter 3704 or any other applicable law in the future. Nothing

herein restricts the right of MCC to raise any administrative, legal or equitable claim or defense with respect to such further actions that the Ohio EPA may seek to require of MCC.

IX. MODIFICATIONS

These Orders may be modified by mutual agreement of the Parties. Modifications shall be in writing and shall be effective on the date entered in the Journal of the Director of the Ohio EPA.

X. SIGNATORIES

Each undersigned representative of a party to this Order certifies that he or she is fully authorized to enter into this Order and to legally bind such party to this document.


XI. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, MCC agrees to comply with this Order. Compliance with this Order shall be a full accord and satisfaction for MCC's civil liability for the specific violations cited herein. MCC hereby waives the right to appeal the issuance, terms, and service of this Order and it hereby waives any and all rights it might have to seek administrative or judicial review of this Order either in law or equity.

Notwithstanding the preceding, the Ohio EPA and MCC agree that if this Order are appealed by any other party to the Environmental Review Appeals Commission, or any court, MCC retains the right to intervene and participate in such an appeal. In such event, MCC shall continue to comply with this Order unless this Order are stayed, vacated, or modified.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

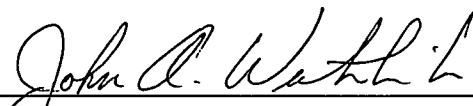


Christopher Jones
Director

8-1-02
Date

IT IS AGREED:

The MCC Company



By

7/26/02
Date

PRESIDENT

Title