

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Commercial Design & Construction :  
674 Stevenson Avenue :  
Akron, Ohio 44308 :

Director's Final Findings  
and Orders

RESPONDENT :

ENTERED DIRECTOR'S JOURNAL

DEC 31 2002

OHIO E.P.A.

**PREAMBLE**

It is hereby agreed that:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Commercial Design & Construction ("Respondent"), 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 Respondent and successors in interest liable under Ohio law. No change in ownership relating to 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 used in R.C. Chapter 3704 and the regulations promulgated thereunder.

**IV. FINDINGS OF FACT**

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

1. Respondent owns and operates a building design and construction business located at 674 Stevenson Avenue, Akron, Ohio.

2. On or about October 4, 2000, Respondent began to renovate the 19<sup>th</sup> floor of a 23-story commercial building located at One Cascade Plaza, Akron, Ohio. The facility is owned by Cascade Plaza Associates, LLC, which has its principal place of business located in the same building. Respondent was contracted by Cascade Plaza Associates,

LLC to remodel the 19<sup>th</sup> floor according to the requirements of the new renter. According to the definition in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12), this project involved the renovation of a "facility." Respondent is an "operator," as defined in OAC Rule 3745-20-01(B)(20).

3. OAC Rule 3745-20-02(A)(4) states that the requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05 apply to each owner or operator of a renovation operation if the amount of friable asbestos materials in a facility being renovated is at least 260 linear feet on pipes or at least 160 square feet on other facility components. The above-referenced, planned renovation was subject to the notification requirements of OAC Rule 3745-20-03(A), the renovation procedures for asbestos emission control in OAC Rule 3745-20-04, and the standard for asbestos waste handling in OAC Rule 3745-20-05.

4. On or about October 4, 2000, the Akron Regional Air Quality Management District ("ARAQMD"), Ohio EPA's contractual representative for Medina, Summit, and Portage Counties, received a complaint that Respondent was not following the same standards that other area renovation contractors were following within the same building, but on different floors.

5. On October 4, 2000, an inspector from ARAQMD inspected the 19<sup>th</sup> floor of the facility and discovered that the contractor had removed about half of the ceiling pads, which were contaminated with fire proofing material that had fallen from the ceiling above the pads and that was suspected to be regulated asbestos-containing material ("RACM") (approximately 1,200 square feet of suspected RACM). The removed material was lying on the floor in a dry condition during the inspection. The suspected RACM was not kept adequately wet until the material was collected for disposal. The inspector collected one sample for laboratory analysis, and took various pictures of the dry suspected RACM in the working area. The sample was sent for analysis to Esstek Ohio, Inc. on October 6, 2000. In addition, the Respondent did not submit an Ohio EPA Notification of Demolition and Renovation form at least five days before the planned renovation operations began.

6. Upon inspection by the ARAQMD inspector, Cascade Plaza Associates stopped the renovation work immediately and hired Cardinal Environmental Services, Inc. (a licensed asbestos abatement contractor) to remediate the area that the Respondent had contaminated. In addition, Cardinal was to abate all of the suspected RACM on the 19<sup>th</sup> floor prior to remodeling of the area.

7. On October 6, 2000, ARAQMD received an Ohio EPA Notification of Demolition and Renovation form ("Notification") for an emergency renovation operation from Cardinal Environmental Services, Inc. ("Cardinal"), which stated that the amount of RACM to be removed from the facility was approximately 2,400 square feet ("SF") with a start date of October 5, 2000 and a completion date of October 6, 2000.

8. On October 6, 2000, ARAQMD received an Ohio EPA Notification for a emergency operation, from Cardinal, which stated that the amount of RACM to be removed from the 19<sup>th</sup> floor of the facility was approximately 2,400 SF, with an asbestos removal date of October 5 through October 6, 2000, with no scheduled dates for renovation. On same day ARAQMD received another Ohio EPA Notification for a renovation operation, from Cardinal, which stated that the amount of RACM to be removed from the 19<sup>th</sup> floor of the facility was approximately 1,200 SF, with an asbestos removal date of October 23 through October 27, 2000, and scheduled dates of October 2 through October 30, 2000 for demolition or renovation.

9. On October 12, 2000, ARAQMD received the sample results, which stated that the material sampled contained 5 to 15% chrysotile asbestos, which is above the 1% threshold level for applicability of the notification and work practice requirements of OAC Chapter 3745-20. Therefore, Respondent violated OAC Rule 3745-20-03(A)(2)(d) and R.C. 3704.05(G) by not submitting a Notification for the renovation operation at least 5 days prior to beginning the operation. Also, Respondent violated OAC Rule 3745-20-04(A)(5)(a) and R.C. 3704.05(G) by failing to keep RACM adequately wet until the RACM was collected for disposal.

10. On October 19, 2000, ARAQMD sent a notice of violation (NOV) to the Respondent, Cascade Plaza Associates, LLC, and to Rasmussen Design Group by certified mail, providing notification of the violations. This letter also informed all three parties that ARAQMD will make a decision to pursue additional enforcement at a later date.

11. On October 17, 2000, ARAQMD received a revised Ohio EPA Notification, which revised the following information: floors to be abated are the 19<sup>th</sup> and 14<sup>th</sup>, and the amount of friable asbestos material to be removed from the facility was approximately 3,200 SF, with a asbestos removal start date of October 23, 2000, and completion date of November 1, 2000.

12. On October 25, 2000, ARAQMD received the second revised Ohio EPA Notification, which stated that the project at the facility was on hold until a project design had been written for the 14<sup>th</sup> floor.

13. On October 25, 2000, ARAQMD received the third revised Ohio EPA Notification, which revised the asbestos removal dates for the facility from October 23 through November 1, 2000 to October 23 through November 20, 2000.

14. On November 2, 2000, ARAQMD received a response to its NOV from Rasmussen Design Group. The letter stated that its firm is the intended tenant for this suite, and that the Rasmussen Design Group was concerned about any contamination on the 19<sup>th</sup> and 14<sup>th</sup> floors. As a part of the lease agreement, the building owner, Cascade Plaza Associates, agreed to improve the subject space per its program requirements using

its own pre-selected contractors. Part of this agreement included having its asbestos abatement contractor remove any asbestos-containing material interfering with new construction.

15. To date, neither the Respondent nor Cascade Plaza Associates have responded to the NOV issued by ARAQMD dated October 19, 2000.

16. 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 Orders:

1. Respondent shall maintain compliance with OAC Chapter 3745-20 in any demolition or renovation projects performed by Respondent in the State of Ohio.

2. Pursuant to R. C. 3704.06, Respondent is assessed a civil penalty in the amount of six thousand seven hundred dollars (\$6,700) in settlement of Ohio EPA's claim for civil penalties. Of this amount, Respondent shall pay to Ohio EPA the amount of five thousand three hundred and sixty dollars (\$5,360) in accordance with the payment schedule in Order 3. Payments shall be made by official checks 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 three hundred and forty dollars (\$1,340) shall be paid to fund a supplemental environmentally beneficial project. Specifically, Respondent shall deliver official checks totaling this amount in accordance with the payment schedule in Order 3. The official checks shall be 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. Each check shall specify that such monies are to be deposited into Fund No. 509. The checks 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 each check 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

3. Respondent shall comply with the following payment schedule for the civil penalties identified in Order 2:

<u>Payment Deadline</u>	<u>Amount Due</u>
within 30 days of the effective date of these Orders	\$279 (to ODNR)
within 60 days of the effective date of these Orders	\$279 (to ODNR)
within 90 days of the effective date of these Orders	\$279 (to ODNR)
within 120 days of the effective date of these Orders	\$279 (to ODNR)
within 150 days of the effective date of these Orders	\$224 (to ODNR) \$59 (to OEPA)
within 180 days of the effective date of these Orders	\$279 (to OEPA)
within 210 days of the effective date of these Orders	\$279 (to OEPA)
within 240 days of the effective date of these Orders	\$279 (to OEPA)
within 270 days of the effective date of these Orders	\$279 (to OEPA)
within 300 days of the effective date of these Orders	\$279 (to OEPA)
within 330 days of the effective date of these Orders	\$279 (to OEPA)
within 360 days of the effective date of these Orders	\$279 (to OEPA)
within 390 days of the effective date of these Orders	\$279 (to OEPA)
within 420 days of the effective date of these Orders	\$279 (to OEPA)
within 450 days of the effective date of these Orders	\$279 (to OEPA)
within 480 days of the effective date of these Orders	\$279 (to OEPA)
within 510 days of the effective date of these Orders	\$279 (to OEPA)
within 540 days of the effective date of these Orders	\$279 (to OEPA)
within 570 days of the effective date of these Orders	\$279 (to OEPA)
within 600 days of the effective date of these Orders	\$279 (to OEPA)
within 630 days of the effective date of these Orders	\$279 (to OEPA)
within 660 days of the effective date of these Orders	\$279 (to OEPA)
within 690 days of the effective date of these Orders	\$279 (to OEPA)
within 720 days of the effective date of these Orders	\$279 (to OEPA)

## **VI. 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's business.

## **VII. NOTICE**

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

Akron Regional Air Quality Management District  
146 South High St., Room 904  
Akron, Ohio 44308  
Attention: Lynn Malcolm or successor

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Thomas Kalman or successor

## **VIII. 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 Ohio EPA.

## **IX. RESERVATION OF RIGHTS**

Nothing contained herein prevents Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders. Nothing contained herein prevents Ohio EPA from exercising its lawful authority to require Respondent 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 Respondent to raise any administrative, legal

or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of Respondent.

## **X. SIGNATORIES**

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 this document.

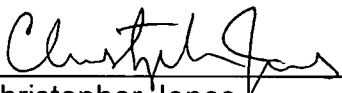
## **XI. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's civil liability for the specific violations cited herein. Respondent hereby waives the right to appeal the issuance, terms, and service of these Orders and hereby waives any and all rights it might 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 an appeal. In such event, Respondent shall continue to comply with these Orders unless these Orders are stayed, vacated, or modified.

**IT IS SO ORDERED AND AGREED:**


Ohio Environmental Protection Agency

  
\_\_\_\_\_  
Christopher Jones  
Director

12-30-02  
Date

**IT IS SO AGREED:**

Commercial Design & Construction

  
\_\_\_\_\_  
Signature

12/17/02  
Date

John Wadsworth  
Printed or Typed Name

Partner  
Title