

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Dick Corporation
P.O. Box 10896
Pittsburgh, Pennsylvania 15236

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Director's Final Findings
and Orders

RESPONDENT

OHIO E.P.A.
MAR 11 2002
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Dick Corporation ("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 construction business from the principal address of P.O. Box 10896, Pittsburgh, Pennsylvania 10896.
2. On or about July 18, 2001, Respondent had partially demolished the former Bank One Drive Thru facility located at 150 East Commerce Street, Youngstown, Ohio. The facility was owned by U.S. General Services Administration ("GSA")/Great Lakes Region. Respondent was contracted by GSA to demolish the Bank One Drive Thru facility.

According to the definition in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12), this project involved the demolition of a "facility." Also, Respondent is an "operator," as defined in OAC Rule 3745-20-01(B)(20).

3. OAC Rule 3745-20-02(A)(2) states that the notification requirements of OAC Rule 3745-20-03 apply to each owner or operator of a demolition operation if the amount of friable asbestos materials in a facility being demolished is less than 260 linear feet on pipes or less than 160 square feet on other facility components, including those facilities that contain no friable asbestos. OAC Rule 3745-20-03(A) states that each owner or operator of a demolition operation shall provide the Director of Ohio EPA with written notice of intention to demolish at least 20 days before beginning any demolition operation as described in OAC Rule 3745-20-02(A)(2). Furthermore, OAC Rule 3745-20-02(A)(1) states that the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to each owner or operator of a demolition operation if the amount of friable asbestos materials in a facility being demolished is at least 260 linear feet on pipes or at least 160 square feet on other facility components. OAC Rule 3745-20-03(A) states that each owner or operator of a demolition operation shall provide the Director of Ohio EPA with written notice of intention to demolish at least 10 days before beginning any demolition operation as described in OAC Rule 3745-20-02(A)(1). The above-referenced, planned demolition was subject to the notification requirements of OAC Rule 3745-20-03(A), although the amount of friable asbestos materials in the facility was stated by GSA's consultant (Clean World Engineering, Ltd.) to be non-existent.

4. On July 18, 2001, an inspector from the Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA"), Ohio EPA's contractual representative for Mahoning County, observed the partially demolished building located at 150 East Commerce Street in Youngstown. The structure consisted of a 376 square foot building for the tellers and a 598 square foot canopy over the drive-thru lanes. The inspector collected three samples of debris for laboratory analysis for asbestos, and took various pictures of dry, suspected asbestos-containing material ("ACM") in the working area. As the inspector was conducting the investigation, he was approached by Mr. James Strickler, Dick Corporation representative, who advised the inspector that this was federal property. The samples were sent for analysis to Esstek Ohio, Inc. on July 18, 2001. In addition, the Respondent did not submit an Ohio EPA Notification of Demolition and Renovation form at least 10 or 20 days, whichever was applicable, before the planned demolition operations began.

5. Mr. Strickler contacted Mr. Ed Gardner, the Superintendent, and advised him of the inspector's presence and advised him to meet with the inspector at the office trailer by the site. The inspector explained the inspection, notification, work practice and waste disposal provisions of the National Emission Standards for Hazardous Air Pollutants and the OAC to Mr. Gardner, Mr. Cortes, Project Manager for the Respondent, and Ms. Pam Wilczynski, Project Manager of GSA. The inspector explained that the suspect material at the site appeared to be an asbestos-containing material known as transite and

confirmation samples had been collected. The inspector informed Mr. Cortes that a warning letter would be prepared and sent to Dick Corporation. The letter would request Dick Corporation to submit a completed Ohio EPA Notification of Demolition and Renovation form for this operation and would summarize the violations and steps necessary to address the asbestos issues caused by the demolition. The inspector requested that access to the site be restricted and that the debris be wetted down to prevent any visible emissions.

6. On July 18, 2001, Dick Corporation indicated that Clean World Engineering, Ltd. conducted "a visual inspection of the interior of the site" on December 9, 2000. The inspection report concluded that "No suspect ACM was observed in the Bank One facility. No thermal system insulation was evident on any of the boiler pipes. Because the facility was constructed in the early 1990's, it was anticipated that ACM was not used in the building materials." Mr. Cortes indicated he did not think a notification was needed since the structure that was demolished was small and because of the report's finding that the building was not asbestos containing.

7. On July 18, 2001, the inspector determined the debris had been hauled to a "recycler," at the City Concrete facility located at 150 Division Street in Youngstown, Ohio.

8. On July 18, 2001, upon the inspector's request, the site was wetted down and tarped.

9. On July 19, 2001, M-TAPCA received the sample results, which stated that the material sampled contained 10 to 25 percent chrysotile asbestos, which is above the 1 percent threshold level in the definition of "friable asbestos material" in OAC Rule 3745-20-01(B)(14).

10. On July 19, 2001, the inspector met with Mr. John Roberts, Safety coordinator for the Respondent, in reference to the demolition project. Mr. Roberts indicated that GSA had given Dick Corporation authorization to proceed with the demolition based on the understanding that asbestos was not present at the site.

11. On July 19, 2001, M-TAPCA received a completed Ohio EPA Notification of Demolition and Renovation form from Dick Corporation. On July 20, 2001, M-TAPCA received an Ohio EPA Notification of Demolition and Renovation form from Spiker Environmental Services for the removal of 540 cubic feet of debris from the facility at 130 East Commerce Street. On July 24, 2001, M-TAPCA received an Ohio EPA Notification of Demolition and Renovation form from Spiker Environmental Services for the removal of 1,620 cubic feet of debris from the City Concrete facility. The debris at City Concrete was originally collected from the 130 East Commerce Street facility. The amount of ACMs was not quantified since the ACMs were mixed in with the demolition debris.

12. On July 20, 2001, the Spiker Environmental Services collected the wet demolition debris and transite remaining at the site into lined dumpsters. On July 20, 2001, M-TAPCA inspector was informed that the cleanup at the site was completed.

13. On July 24, 2001, the abatement contractor collected the demolition debris and transite that had been hauled to City Concrete. On July 25, 2001, M-TAPCA inspector verified that the work at City Concrete had been completed. All of the contaminated debris was disposed of the BF Imperial Landfill, Imperial, Pennsylvania, a certified asbestos landfill.

14. M-TAPCA believes that the transite was installed on the underside of the 598 square foot canopy that covered the drive-thru lanes. M-TAPCA attempted to verify this quantity, but specifications, plans, or drawings that detailed the building were not available.

15. M-TAPCA stated it cannot be determined if the actual amount of transite in the facility prior to the demolition exceeded 160 square feet. This situation makes it impossible to establish if work practice and disposal violations of OAC Chapter 3745-20 occurred.

16. Based upon the above findings, Ohio EPA finds that Respondent violated OAC Rule 3745-20-03(A) and R.C. 3704.05(G) by failing to submit a notification at least 10 or 20 days, whichever was applicable, prior to beginning of the demolition operation at this facility.

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 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 operations performed by, or in behalf of, Respondent in the State of Ohio.

2. Pursuant to R.C. 3704.06, Respondent is assessed a civil penalty in the amount of fifteen thousand dollars (\$15,000) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of twelve thousand dollars (\$12,000). Payment shall be

made by certified check made payable to "Treasurer, State of Ohio" and sent to Vicki Galilei, 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 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 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 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 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 :

Mahoning-Trumbull Air Pollution Control Agency
Oakhill Renaissance Place
2nd Floor - Room 25
345 Oak Hill Avenue
Youngstown, Ohio 44502-1454
Attention: Larry Himes

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 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

3-7-02
Date

IT IS AGREED:

Dick Corporation



By
Pres, DCR

Title

2-22-02
Date