

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Goldline Wrecking Co.
2007 Basswood Avenue
Akron, Ohio 44301

:
:
:

Director's Final Findings
and Orders

ENTERED DIRECTOR'S JOURNAL

OHIO E.P.A.
DEC 23 2002

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Goldline Wrecking Co. ("Respondent") pursuant to the authority vested in the Director of 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 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 ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a demolition contracting company with offices located at 2007 Basswood Avenue, Akron (Summit County), Ohio. Respondent is licensed in Ohio as an asbestos abatement contractor (Ohio Department of Health license number 1545).

2. The City of Cleveland is the owner of the vacant East Madison School building, which is a "facility" as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12) and is located at 1130 Addison Road, Cleveland (Cuyahoga County), Ohio.

3. OAC Rule 3745-20-02(A)(1) states, in part, that if the amount of friable asbestos materials in a facility being demolished is at least two hundred sixty linear feet on pipes or at least one hundred sixty square feet on other facility components, all the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to the operator of a demolition operation.

4. OAC Rule 3745-20-03(D)(1) states, in part, that an owner or operator of a demolition or renovation operation shall immediately inform the appropriate Ohio EPA field office concerning any changes to the information provided in the written notification to renovate or demolish previously supplied to Ohio EPA. This rule also states that an amended written notification is to be submitted within two days following the change. Changes requiring amended written notification pursuant to this rule include any time the amount of friable asbestos materials to be removed exceeds the amount identified in the original notification.

5. OAC Rule 3745-20-04(A)(5)(a) states, in part, that each operator of a demolition operation to whom this rule applies shall, for friable asbestos materials that have been removed or stripped from facility components, adequately wet the materials and ensure that the materials remain adequately wet until collected for disposal in accordance with OAC Rule 3745-20-05.

6. OAC Rule 3745-20-05(B) states, in part, that each operator of a demolition operation to whom this rule applies shall discharge no visible emissions during the collection, processing, packaging, transporting, or disposition of any asbestos-containing waste material and shall use one of the methods specified in this rule, including adequately wetting asbestos-containing materials and sealing the materials in a durable leak-tight container.

7. OAC Rule 3745-20-05(C) states, in part, that each operator of a demolition operation to whom this rule applies shall seal all friable asbestos material into durable leak-tight disposal containers or use an approved alternative disposal system, in accordance with the provisions in this rule.

8. ORC § 3704.05(G) states in part that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704.

9. On April 4, 2001, Ohio EPA, Northeast District Office ("NEDO") received an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form from the Respondent to conduct asbestos removal operations at the East Madison School prior to demolition of the structure. Subsequently, on May 11, July 27, September 4, September 12, October 1, and October 26, 2001, NEDO received revised notification forms from the Respondent, revising the amount of asbestos-containing material to be removed during the project; the hours of operation; the start and completion dates for the project; procedures and work practices; the waste transporter; and the disposal facility to be used for the asbestos-containing waste generated by the project. Respondent was named as the contractor for demolition and asbestos removal operations on each notification form.

Therefore, Respondent was an "operator" as defined in OAC Rule 3745-20-01(B)(20).

10. On July 17, 2001, NEDO conducted an inspection of the East Madison School work site to determine compliance with the work practice standards of OAC Chapter 3745-20. Approximately one half of the project had been completed at the time of the inspection. The NEDO inspector observed approximately 80 to 100 labeled asbestos waste disposal bags in a plastic-lined roll-off container on the property. Respondent informed the inspector that the bags contained the asbestos-containing material that was removed from the main building boiler room on July 5 and 6, 2001. Three disposal bags were inspected at random. The material examined was dry, friable, and white in color, with no signs of surface discoloration (a greyish surface color on this type of material indicates that wetting has previously occurred). The NEDO inspector collected three samples (sample numbers 146809 through 146811), one from each opened bag. The NEDO inspector also observed a large amount of block insulation debris laying loosely on pipes, components, and the floor throughout the main building boiler room inside the containment area. Two additional samples (sample numbers 148612 and 148613) were collected. This material was also dry, friable, and white in color.

11. Laboratory analysis by EssTek Ohio, Inc. showed all five of the above-mentioned samples contained between 10% to 20% chrysotile asbestos, and between 5% and 20% amosite asbestos, confirming that the debris contained "friable asbestos material," as defined by OAC Rule 3745-20-01(B)(14). A July 6, 2001 report from Lawhon & Associates, Inc. to the City of Cleveland quantified the amount of asbestos-containing material located in the main building boiler room as 770 square feet of boiler insulation and 480 square feet of boiler breaching insulation. Therefore, pursuant to OAC Rule 3745-20-02(A)(4), Respondent's operation was subject to the requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05.

12. On July 25, 2001, NEDO conducted a follow-up inspection of the East Madison School work site. At that time the inspector observed that all of the asbestos disposal bags had been removed from the roll-off container, placed in the basement containment area, and water added to the contents. Respondent informed the inspector that this work had been started on July 18, 2001. The inspector also confirmed that the main building boiler room was being maintained in a wet condition and, per Respondent, would continue to be until completion of final cleanup.

13. On August 15, 2001, NEDO sent a Notice of Violation ("NOV") to Respondent, informing it of the violations of OAC Chapter 3745-20 at the East Madison School work site. The Respondent, as operator of a demolition operation, was cited for failing to adequately wet friable asbestos materials that had been removed or stripped from facility components and to ensure that the materials remained adequately wet until collected for disposal in accordance with OAC Rule 3745-20-05, in violation of OAC Rule 3745-20-04(A)(5)(a). NEDO also required in the NOV that the Respondent submit specific information regarding the abatement activities at the work site within five days of receipt of the NOV. NEDO received no written response to the August 15, 2001 NOV.

14. On August 16, 2001, NEDO conducted an inspection of the East Madison School work site. At that time the inspector observed no violations.

15. On September 10, 2001, NEDO, with a representative from the Ohio Department of Health ("ODH"), conducted an inspection of the East Madison School work site to determine the extent of additional abatement and/or cleanup necessary prior to demolition. At that time the NEDO inspector observed three open asbestos waste disposal bags in a room below the annex gymnasium. The bags contained dry, friable air cell pipe insulation. This material showed no evidence of prior wetting. Two samples (sample numbers 146408 and 146409) were collected. Laboratory analysis by EssTek Ohio, Inc. showed both samples contained between 30% to 40% chrysotile asbestos, confirming that the debris contained "friable asbestos material," as defined by OAC Rule 3745-20-01(B)(14). Respondent was verbally instructed to wet the material and seal the bags. The inspector also observed additional areas requiring abatement and cleanup.

16. On September 28, 2001, NEDO, with personnel from ODH conducted a follow-up inspection of the East Madison School work site. The NEDO inspector observed approximately 20 asbestos waste disposal bags in the main building in a north side basement room. Two bags were opened and found to contain block insulation. The contents were dry and friable, no moisture was found on the inside lining of the bags, and there was no discoloration of the material from previous wetting. Two samples (sample numbers 146411 and 146412) were collected. Laboratory analysis by EssTek Ohio, Inc. showed both samples contained between 5% to 15% chrysotile asbestos, and between 10% and 20% amosite asbestos, confirming that the debris contained "friable asbestos material," as defined by OAC Rule 3745-20-01(B)(14). Respondent was verbally instructed to wet the material and re-seal the bags. The inspector also observed approximately 200 asbestos waste disposal bags on the first floor northeast classroom of the main building. Examination of one bag indicated that the contents were dry. Respondent identified the contents of the bags as asbestos-containing floor paper. Respondent was verbally instructed to reopen the bags, wet the material, and re-seal the bags. A sample (sample number 146418) was collected. Laboratory analysis by EssTek Ohio, Inc. showed the sample contained no detectable asbestos; however, three of four samples of this type of material collected during an earlier survey of the building showed that the thermal floor paper contained between 5% to 10% chrysotile asbestos. The inspector also observed additional material suspected to be asbestos-containing that needed to be removed prior to demolition. Specifically, this material consisted of friable thermal paper behind sheet metal on doors, and friable paper covering wood slats between sheet metal and ceilings throughout the main and annex buildings. This material had not been identified in the original surveys. Two samples (sample numbers 146414 and 146417) were collected. Laboratory analysis by EssTek Ohio, Inc. showed both samples contained between 30% to 40% chrysotile asbestos.

17. On October 19, 2001, after receiving information from ODH personnel concerning possible violations of OAC Chapter 3745-20, NEDO again inspected the East Madison School work site. The NEDO inspector observed approximately 30 asbestos waste disposal bags of friable asbestos-containing paper-covered wood slats that had broken through the bags located in a dumpster. The material was dry and friable, with no

evidence of wetting. Respondent was verbally instructed to wet this material (as well as the remainder of the wood slats in the structure) and seal the slats in a minimum of 12 mil thickness, leak-tight plastic.

18. On October 23, 2001, NEDO conducted a follow-up inspection of the East Madison School work site. At that time the inspector observed no new violations and the previously observed violations had been corrected.

19. On October 24, 2001, NEDO sent a second NOV to Respondent, informing it of the violations of OAC Chapter 3745-20 at the East Madison School work site. Specifically, the Respondent, as operator of a demolition operation, was again cited for failing to adequately wet friable asbestos materials that had been removed or stripped from facility components and to ensure that the materials remained adequately wet until collected for disposal in accordance with OAC Rule 3745-20-05, in violation of OAC Rule 3745-20-04(A)(5)(a), and failing to seal all friable asbestos waste material into durable leak-tight disposal containers, in accordance with OAC Rule 3745-20-05(C). NEDO also required in the NOV that the Respondent submit the information previously requested in the August 15, 2001 NOV (listed in Finding #13) within five days of receipt of the NOV.

20. On November 19, 2001, NEDO received a letter from the Respondent in reply to the October 24, 2001 NOV, which submitted part of the requested information, and committed to provide the remaining information at project completion. Although a statement was made in the letter that 100% more asbestos-containing material had been removed from the site during the project than had been initially identified in the original survey, Respondent did not quantify the total amount, as had been requested in the previous NOVs. To date, this information, as well as the remaining information requested, has not been submitted to NEDO. The project was completed, and the building demolished by mid-December, 2001.

21. Based on the above findings, the Director of Ohio EPA finds that Respondent violated the following OAC Rules:

- a. OAC Rule 3745-20-03(D)(1), for failing to submit an amended written notification within two days following the time the Respondent ascertained that the amount of friable asbestos materials to be removed exceeded the amount identified in the original notification.
- b. OAC Rule 3745-20-04(A)(5)(a), for failing to adequately wet friable asbestos materials that have been removed or stripped from facility components and ensure that the materials remain adequately wet until collected for disposal in accordance with OAC Rule 3745-20-05.
- c. OAC Rule 3745-20-05(B), for failing to control asbestos emissions by using one of the methods specified in this rule during the collection, processing, packaging, transporting, or disposition of asbestos-containing waste material. Violations of this rule were observed by a NEDO inspector during four separate inspections of the project.

- d. OAC Rule 3745-20-05(C), for failing to seal all friable asbestos-containing waste material into durable leak-tight disposal containers or use an approved alternative disposal system.

22. 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 Order:

Respondent shall pay the amount of thirty-five thousand dollars (\$35,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) days after the effective date of these Orders, seven thousand dollars (\$7,000) of the above amount 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

The remaining twenty-eight thousand dollars (\$28,000) of the above amount shall be paid to Ohio EPA pursuant to the following schedule:

Eight thousand dollars (\$8,000) due within one hundred and twenty (120) days after the effective date of these Orders; and

Ten thousand dollars (\$10,000) due within three hundred and sixty-five (365) days after the effective date of these Orders; and

Ten thousand dollars (\$10,000) due within five hundred and forty-five (545) days after the effective date of these Orders.

Payments shall be made by an official check made payable to "Treasurer, State of Ohio" for the total amount due. Each official check, together with a letter identifying the Respondent and the demolition operation, shall be submitted to:

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

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

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

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 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.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders, 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

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 the 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 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.

XIII. EFFECTIVE DATE

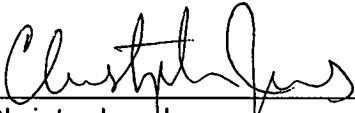
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

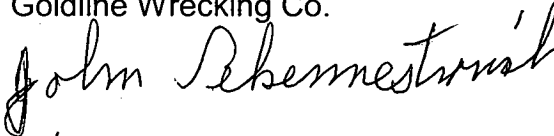


Christopher Jones
Director

12-19-02
Date

IT IS AGREED:

Goldline Wrecking Co.



By

12-12-02
Date

JOHN SEMBERMESTROVICH
Printed or Typed Name

As President for Goldline Wrecking Co.
Title