

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAY 16 2002

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

Bambeck and Vest Associates, Inc. : Director's Final Findings
49 East Fourth Street, Suite 1020 : and Orders
Cincinnati, Ohio 45202 :

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Bambeck and Vest Associates, Inc. ("Respondent") pursuant to the authority vested in the Director of 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 general contracting company with offices located at 49 East Fourth Street, Suite 1020, Cincinnati (Hamilton County), Ohio.
2. One East Fourth, Inc. is the owner of the Provident Tower, located at One East Fourth Street, Cincinnati, Hamilton County, Ohio.
3. The Hamilton County Department of Environmental Services ("HCDES") is Ohio EPA's contractual representative in Hamilton County for the administration of Ohio Administrative Code ("OAC") Chapter 3745-20 ("Asbestos Emission Control Standards").

4. 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.

5. 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.

6. OAC Rule 3745-20-04(A)(2) states that each owner or operator of a renovation operation to whom this rule applies shall, when a facility component covered, coated, or containing friable asbestos is being taken out of the facility as units or in sections, adequately wet friable asbestos materials exposed during cutting or disjoining operations.

7. The Provident Tower, a commercial structure located at One East Fourth Street in Cincinnati, is a "facility" as defined in OAC Rule 3745-20-01(B)(12).

8. On October 9, 2000, HCDES inspected a renovation operation being conducted by Respondent on the first floor of the Provident Tower. The inspection was conducted in response to an anonymous complaint filed with HCDES, alleging possible improper removal of regulated asbestos-containing material ("RACM") at the facility. Pursuant to OAC Rule 3745-20-01(B)(20), Respondent was the "owner or operator" of this renovation operation.

9. Upon arrival at the Provident Tower, HCDES observed Respondent's subcontractor installing a new heating/ventilation/air conditioning system on the first floor bank area of the building. To facilitate this installation, large holes were being made in a plaster ceiling, which was covered with a skim coating material that HCDES suspected of containing asbestos. The HCDES inspector observed large amounts of dry friable suspect RACM throughout the first floor area and scattered throughout a large pile of construction debris. Visible dust from the removal operations in progress was also observed. Five samples (sample numbers 0481-00-01 through 0481-00-05) of the suspected RACM were collected from the first floor work areas by the HCDES inspector. Subsequent laboratory analysis showed one sample (number 0481-00-01, collected from the rear of the first floor work area) contained 1% to 2% chrysotile asbestos, which confirmed that the debris contained "friable asbestos material," as defined by OAC Rule 3745-20-01(B)(14).

10. When informed by HCDES of the potential violations and health concerns caused by the renovation project, Respondent followed HCDES's recommendations and immediately stopped operations. The affected area was isolated and all of Respondent's

workers left the building. Respondent then contacted Proactive Consulting Services to collect samples of the suspected RACM at the site. Four samples were collected on October 9, 2000; laboratory analysis showed no asbestos was present in these samples. At HCDES' suggestion, additional samples specifically targeting the skim coating material were collected by Proactive Consulting Services on October 10, 2000. Laboratory analysis determined that this material contained asbestos at regulated levels. Proactive Consulting Services, acting for the Respondent and One East Fourth, Inc., contacted Central Insulation Systems, Inc. (a certified asbestos removal contractor) on October 10, 2000, to conduct emergency renovation operations to clean up the disturbed RACM at the site. On October 11, 2000, HCDES received a completed "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form from One East Fourth, Inc. for the emergency removal of 425 square feet of disturbed RACM from the Provident Tower building. This operation was completed by November 1, 2000. 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.

11. After review of its records, HCDES determined that an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form had not been submitted by the Respondent five days prior to the start of this project, in violation of OAC Rule 3745-20-03(A).

12. On October 27, 2000, HCDES sent a Notice of Violation to Respondent informing the firm of its violations of OAC Chapter 3745-20. Specifically, the Respondent, as operator of a renovation operation, was cited by HCDES for the following violations:

- a. failing to remove all RACM from a facility being renovated prior to beginning any activity which would break up the materials, in violation of OAC Rule 3745-20-04(A)(1);
- b. failing to adequately wet friable asbestos materials when it was being stripped from facility components before the components are removed from the facility, in violation of OAC Rule 3745-20-04(A)(3);
- c. failing to adequately wet the friable asbestos materials that have 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);
- d. discharging visible emissions during the collection, processing, packaging, transporting, or disposition of asbestos-containing waste material, in violation of OAC Rule 3745-20-05(B);
- e. allowing the emission or escape of dust into the open air in such manner or in such amounts as to endanger the health, safety or welfare of the public, in violation of OAC Rule 3745-15-07; and

f. failing to provide either HCDES or Ohio EPA at least five working days of notice prior to the start of the renovation operation, in violation of OAC Rule 3745-20-03(A).

HCDES required that the Respondent submit by November 10, 2000 a completed notification form for the abatement project, and a compliance plan that would prevent the situation that led to the above violations from occurring again.

13. In a written response dated November 10, 2000, Respondent submitted the documentation requested by HCDES. This documentation included a completed copy of an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form, and a copy of Respondent's "Asbestos Compliance Plan." The notification indicated that the asbestos removal operations had started on October 7, 2000.

14. After reviewing the facts of the case and further discussion with HCDES, Ohio EPA has determined that the following violations of OAC Rules occurred as a result of the Respondent's renovation operation:

- a. failing to provide either HCDES or Ohio EPA at least five working days of notice prior to the start of the renovation operation, in violation of OAC Rule 3745-20-03(A); and
- b. failing to adequately wet facility components covered with friable asbestos materials that were exposed during cutting or disjointing operations while they were being taken out of the facility in sections, in violation of OAC Rule 3745-20-04(A)(2).

15. 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. ORDER

The Director hereby issues the following Order:

Pursuant to R.C. 3704.06, Respondent is assessed a civil penalty in the amount of ten thousand and two hundred dollars (\$10,200) in settlement of Ohio EPA's claim for civil penalties related to the renovation operations conducted at the Provident Tower building located at One East Fourth Street in Cincinnati. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight thousand, one hundred, and sixty dollars (\$8,160) of the total penalty amount. 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 two thousand and forty dollars (\$2,040) 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 the Respondent.

VII. NOTICE

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

Hamilton County Department of Environmental Services
Air Quality Programs
250 William Howard Taft Road
Cincinnati, Ohio 45219
Attention: Kenneth J. Wilkins

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

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, equitable action as deemed appropriate and necessary, including seeking penalties against the Respondent for noncompliance with these Orders. Nothing contained herein prevents Ohio EPA from exercising its lawful authority to require the 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 the 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 the Respondent.

X. TERMINATION CLAUSE

These Orders shall terminate once payment of the civil penalty is received by Ohio EPA and the Ohio Department of Natural Resources, in compliance with the Order, above.

XI. 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.

XII. WAIVER

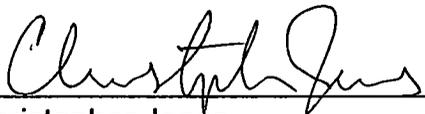
In order to resolve disputed claims, without admission of fact, violation, or liability, and in lieu of further enforcement by Ohio EPA for the specific violations cited herein, Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for the Respondent's civil liability for the specific violations

cited herein. The 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 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.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency



Christopher Jones
Director

5-14-02
Date

IT IS AGREED:

Bambeck and Vest Associates, Inc.



By

4/25/02
Date

PRESIDENT

Title