

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

**FirstEnergy Corp.  
76 South Main St.  
Akron, Ohio 44308**

**and**

**Eslich Wrecking Company  
3525 Broadway Avenue, N.E.,  
Louisville, Ohio 44631**

**Director's Final Findings  
and Orders**

ENTERED DIRECTOR'S JOURNAL

DEC 28 2001

OHIO E.P.A.

**PREAMBLE**

It is hereby agreed that:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to FirstEnergy Corp. and its subsidiaries and affiliates, and to Eslich Wrecking Company ("Respondents"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under sections 3704.03 and 3745.01 of the Ohio Revised Code ("RC").

**II. PARTIES**

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

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meaning as used in Chapter 3704 of the RC and the regulations promulgated thereunder.

#### IV. FINDINGS OF FACT

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

1. B.S.G. Properties and Centerior Energy, Inc. were the owners of the building formerly located at 6100 Oak Tree Blvd., Independence, Ohio (Geon Building).
2. Respondent, FirstEnergy Corp., was organized and became a holding company in connection with the merger of Ohio Edison and Centerior Energy, Inc. during 1997.
3. B.S.G. Properties and Centerior Energy, Inc. contracted with S. W. Emerson Company, Inc. ("Emerson") to act as a general contractor and carry out demolition activities at the Geon Building.
4. The Emerson employed Respondent, Eslich Wrecking Company, as a subcontractor to perform demolition activities. Respondent Eslich Wrecking Company, in turn, subcontracted with Cardinal Environmental Services, Inc. [363 Tacoma Avenue, Tallmadge, Ohio 44278] (Cardinal) to perform the asbestos abatement activities.
5. On August 8, 1997, the Cleveland Department of Public Health & Welfare, Division of the Environment, Bureau of Air Pollution Control (CBAPC) received an Ohio Environmental Protection Agency notification of demolition and renovation form. This notification form identified 201,600 square feet of regulated asbestos-containing material to be removed. It also identified 9,564 square feet of category I nonfriable asbestos material. The start date for asbestos removal on this form was August 21, 1997, and the completion date was October 20, 1997.
6. CBAPC received several additional notification forms as the demolition plans and schedules changed. The additional notification forms included the following:
  - a. An August 20, 1997 revised notification form that revised the start date from August 21, 1997 to August 27, 1997.
  - b. A September 4, 1997 revised notification form that indicated the project was put on hold and that further notification would be provided regarding new dates.
  - c. An October 21, 1997 revised notification form that modified the asbestos removal start date to November 3, 1997 and the completion date to January 16, 1998.
  - d. An October 31, 1997 revised notification form that modified the asbestos

removal start date from November 3 to November 7, 1997. It is the understanding of Ohio EPA that asbestos removal began on November 7, 1997 in accordance with the October 31, 1997 notification.

- e. A December 3, 1997 revised notification form that modified the asbestos removal hours of operation from 7:30 a.m. - 5:30 p.m. to 6:30 a.m. - to 1:30 p.m. It also modified the disposal site from Meadowfill Landfill, Bridgeport, WV to Kelly Run Landfill, Elizabeth, PA.
  - f. A December 16, 1997 revised notification that modified the removal contractor and the waste transporter from Cardinal to Erie Industrial Maintenance, Inc. [492 Geiger Street, Berea, Ohio 44641] (Erie).
  - g. A December 30, 1997 original notification that modified the asbestos removal start date to January 13, 1998 and the complete date to March 27, 1998 reporting information from Erie, the new subcontractor. The waste transporter was modified from Erie to Summit Transport Group [7A Madison Drive, Zelienople, PA] (Summit).
  - h. A January 23, 1998 revised notification that modified the amount of regulated asbestos-containing material from 201,600 square feet to 125,000 square feet. It also modified the asbestos removal hours of operation from 6:30 a.m. - 1:30 p.m. to 7:00 a.m. - 8:00 p.m. Also, the waste disposal site was modified from the Kelly Run Landfill, Elisabeth, PA to Minerva Enterprises, Powell, OH.
  - i. A March 17, 1998 notification form that canceled the notification. According to this final notification form, asbestos removal was completed on February 19, 1998 by Erie Industrial Maintenance. It also reported the regulated asbestos-containing material to be 154,000 square feet.
7. On September 30, 1997, the Westlake, Ohio office of USEPA received a citizen's complaint. The complaint alleged that demolition was underway at a building located at 6100 Oak Tree Blvd., Independence, Ohio (Geon Building). The caller indicated that he believed the building may contain asbestos. This complaint was forwarded to CBAPC on October 20, 1997.
8. On October 22, 1997, CBAPC performed an inspection of the work at the Geon Building. The CBAPC inspector observed that the southwest corner of the building had been hit with a wrecking ball. The CBAPC inspector also observed that the asbestos removal work had not been completed at the building. Conducting demolition operations prior to removal of friable asbestos materials is a violation of rule OAC rule 3745-20-04(A).

9. On January 20, 1998, the Ohio Department of Health (ODH) performed an inspection of the work at the Geon Building. The ODH inspector observed workers moving asbestos disposal bags outside of the containment area that had asbestos debris on the outside of the bags. The bags were not double bagged. Failure to double bag this asbestos-containing material is a violation of OAC rule 3745-20-05(C)(2).
10. On February 4, 1998, the ODH performed an inspection of the work at the Geon Building. The ODH inspector found asbestos-containing fireproofing in cardboard boxes for disposal. Failure to seal the suspected regulated asbestos-containing material into durable leak tight disposal containers or enclosure system is a violation of OAC rules 3745-20-05(B)(1) and (C).
11. On March 27, 1998, the Ohio EPA / Northeast District Office (NEDO) performed an inspection of the asbestos removal work at the Geon building. During this inspection, the following violations were noted.
  - a. Dry spray-on insulation was observed on the ground in the northwest parking lot in the area of the roll-off dumpster, approximately 600 feet west of the building. A sample of this material was collected by NEDO and analyzed by polarized light microscopy (PLM) (Sample Number 146742). Analytical results indicate that this insulation contained 5 - 15% chrysotile asbestos. This material was dry and not properly sealed, resulting in a violation of OAC rule 3745-20-05(B)(1).
  - b. Dry spray-on insulation was observed on the access rubble road at the southwest corner of the Geon building. A sample of this material was collected by NEDO and analyzed by PLM (Sample Number 146741). Analytical results indicate that this insulation contained 5 - 15% chrysotile asbestos. This material was dry and not properly sealed, resulting in a violation of OAC rule 3745-20-05(B)(1).
12. At 10:30 a.m. on March 31, 1998, a meeting was held at the Geon building site. Representatives of the following organizations were represented at the meeting:
  - a. Precision Environmental;
  - b. Electro Analytical Group;
  - c. Emerson;
  - d. Envisage Environmental, Inc.;
  - e. Calfee, Halter, & Griswald;
  - f. CBAPC;
  - g. OEPA/NEDO;

- h. B.S.G. Properties; and
- i. Centerior Energy, Inc.

The attendees visited the locations where asbestos was identified in the samples collected by NEDO on March 27, 1998. A plan was identified addressing areas which needed attention.

- 13. On April 2, 1998 an inspection and meeting was held at the site of the Geon Building. Representatives of the following organizations were represented:
  - a. Precision Environmental;
  - b. Electro Analytical;
  - c. Envisage Environmental, Inc.;
  - d. Cardinal Environmental Services, Inc.;
  - e. Eslich Wrecking Co.;
  - f. Calfee, Halter & Griswald; and
  - g. CBAPC.

At this inspection, CBAPC confirmed that the dry spray-on insulation containing asbestos had been removed from the location identified above in Finding 12a.

- 14. On April 7, 1998 an inspection was performed by CBAPC and NEDO. At this inspection, CBAPC and NEDO confirmed that Emerson removed and disposed 1.5 feet of soil from the access rubble road area (as discussed above in Finding 12b).
- 15. On April 22, 1998, Respondent FirstEnergy Corp. orally reported a release of asbestos containing sludge into the Geon building's sanitary sewer system to Ohio EPA. A follow up written report, dated April 30, 1998, was submitted to Ohio EPA in accordance with RC section 3750.06. This report indicated that asbestos containing sludge was released on or prior to February 19, 1998. The report indicated that approximately 3.4 cubic feet of sludge containing approximately 5% chrysotile asbestos was identified in two manholes. The report indicated that the downstream sanitary sewer line was sealed and a plan was developed to clean out the manholes and dispose the removed sludge with other asbestos-containing wastes from the project.
- 16. On June 10, 1998, Erie and the Occupational Safety and Health Administration (OSHA) entered into an Informal Settlement Agreement regarding OSHA violations (29 CFR 1910 and 1926) cited during performance of asbestos removal work at the Geon Building resulting in a penalty of \$4,970.
- 17. On February 1, 2000, Erie and the Ohio Department of Health (ODH) entered into a Settlement Agreement regarding violations of ODH regulations (OAC rule 3701-

34) during performance of asbestos removal work at the Geon Building (and at an additional, unrelated work site) resulting in a penalty of \$7,500.

18. Respondent FirstEnergy Corp., without admitting to any of violations on its part, avers that any alleged violations and resulting claims against Respondent FirstEnergy Corp. referenced herein relate to Respondent FirstEnergy Corp. solely in its capacity as owner of the Geon building.
19. 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 Order:

Pursuant to RC 3704.06, Respondents are 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, Respondents shall pay to Ohio EPA the amount of twelve thousand (\$12,000) 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 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, Respondents 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 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 Respondents.

## **VII. 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.

## **VIII. 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 Respondents for noncompliance with these Orders. Nothing contained herein prevents Ohio EPA from exercising its lawful authority to require Respondents to perform additional activities at the facility pursuant to RC Chapter 3704 or any other applicable law in the future. Nothing herein restricts the right of Respondents 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 Respondents.

## **IX. 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.


## **X. WAIVER**

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

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

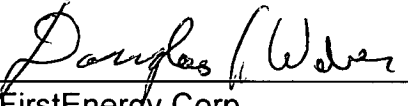
**IT IS SO ORDERED AND AGREED:**

Ohio Environmental Protection Agency

  
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Christopher Jones  
Director

12-21-01  
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Date

**IT IS AGREED:**

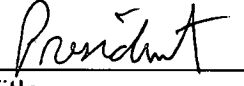
  
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