

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Anco Properties, Inc.  
26 East 6<sup>th</sup> Street  
Cincinnati, Ohio 45202

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:  
:

Director's Final Findings  
and Orders

OHIO E.P.A.  
JUN 19 2001  
REGISTERED DIRECTOR'S JOURNAL

**PREAMBLE**

It is hereby agreed that:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Anco Properties, Inc. 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 Anco Properties, Inc., its assigns and successors in interest.

**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 the Ohio EPA has determined the following findings of fact:

1. Anco Properties, Inc. ("Anco") owns a commercial (office/retail) building, located at 24 and 26 East 6<sup>th</sup> Street, Cincinnati, Hamilton County, Ohio. This building is a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12).

2. Pursuant to OAC Rule 3745-20-02(A)(4), the owner or operator of a renovation project must comply with all of the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 if the amount of friable asbestos-containing material in a facility being renovated is at least 260 linear feet on pipes or at least 160 square feet on other facility components. The total amount of regulated asbestos-containing material ("RACM") involved in this project was approximately 4,000 square feet on other facility components, thereby making the above-referenced project subject to all OAC Chapter 3745-20 requirements listed above.

3. On October 20, 1998, the Hamilton County Department of Environmental Services ("HCDES"), a contractual representative of Ohio EPA in Hamilton County, received an anonymous complaint concerning possible improper removal and storage of RACM in the basement at the above-referenced facility. The complainant was concerned that tenants in the building were being exposed to airborne asbestos as a result of the improper removal of the RACM.

4. On October 21, 1998, the complainant delivered a bag full of suspected RACM to HCDES. A sample of the material was submitted for analysis which tested positive at 15% chrysotile asbestos.

5. On October 28, 1998, as part of its investigation, HCDES held a meeting with the anonymous complainant to obtain information concerning the above renovation. The complainant stated that from February through April of 1997, Mr. Address, the owner of the facility, renovated several sections of the building which involved the removal of insulation from the bottom portion of several I-beams. During this meeting, HCDES gained access to the basement area and discovered approximately 40 bags of dry suspected RACM were stored in an old air exchange unit. HCDES was then taken to an area of the building that formerly was the old Taco Bell kitchen. In this area, HCDES observed dry, exposed suspected RACM (fire proofing) on the beams and dry suspected RACM was covering the floor. HCDES took several pictures of suspected RACM at different locations in the basement for evidence.

6. On November 3, 1998, HCDES revisited the site to do another investigation in the presence of Anco. Anco informed HCDES that it had been renovating the building for several months. Anco explained that most of the RACM was drop ceiling tile and was removed from the old Taco Bell kitchen area approximately three months ago. Anco also stated that some of the RACM had come from insulation scraped from the support beams in the Akash Indian Restaurant, another portion of the building which was located at 24 East 6<sup>th</sup> Street and also leased by Anco. At this restaurant, HCDES discovered debris containing dry suspected RACM on the surface of the ceiling. HCDES took several photographs and collected one sample of the debris. HCDES was then taken to the basement area where the 40 aforementioned green garbage bags full of dry suspected RACM were stored. HCDES entered the old Taco Bell kitchen area and again observed large amounts of dry suspected RACM debris covering the floor. HCDES also observed a large amount of dry suspected RACM on the support beam which was in a very poor delaminated condition. Anco explained that much of the beam insulation had fallen onto the drop ceiling tiles before the tiles were removed. Anco stated that it had removed approximately 1,000 square feet of dry suspected RACM. Samples were not collected because Anco would not give permission to HCDES to take samples. The affected areas were temporary sealed off to prevent any unauthorized access.

7. On November 6, 1998, HCDES returned to the site to meet with Anco and Anco's attorney. At this visit, HCDES took photographs for evidence and obtained six (6) samples of suspected RACM from the bags in the old air exchange unit mentioned in

Finding #5. During this visit, M.E.S., Inc. ("M.E.S."), an asbestos contractor hired by Anco for the purpose of sampling the suspected RACM and performing any necessary clean-up, was also present. On this day, M.E.S. also collected samples of the suspected RACM.

8. On November 10, 1998, HCDES was advised by Anco and its attorney that the samples taken of the suspected RACM by M.E.S. were found to contain from 20 to 27% chrysotile asbestos. Anco and its attorney also advised HCDES that M.E.S. would be conducting the emergency clean-up and submitting a corrective action plan to HCDES as soon as possible.

9. On November 10, 1998, HCDES returned to the site to meet with M.E.S. and to collect samples of suspected RACM from sections of fire proofing which Anco had removed several months ago. HCDES took one sample of suspected RACM from above the drop ceiling in the main restaurant area and two samples from the floor of the old Taco Bell kitchen area.

10. On November 19 and 20, 1998, HCDES performed the analysis on the nine aforementioned collected samples. All the samples tested at 15% chrysotile for asbestos content. Based on test results and HCDES's investigation, Anco failed to maintain RACM in a wetted condition until it was collected for disposal, in violation of OAC Rule 3745-20-04(A)(5)(a). Anco was also in violation of OAC Rule 3745-20-05(B)(1) for its failure to keep the RACM wet in properly labeled, leak tight containers while waiting for disposal. Further, Anco failed to submit to HCDES a notification of renovation at least ten working days prior to the start of the abatement project, in violation of OAC Rule 3745-20-03(A). The aforementioned violations of the OAC also constitute violations of R.C. 3704.05(G), which prohibits the violation of any rule adopted by the Director.

11. On November 20, 1998, HCDES sent Anco a notice of violation ("NOV") citing Anco for all above-mentioned OAC rule violations and requesting Anco to submit to HCDES, by January 6, 1999, a completed notification form for each separate abatement project and a compliance plan to prevent any future violations; however, this NOV was returned unclaimed to HCDES on December 11, 1998.

12. Between November 13 and December 10, 1998, M.E.S. performed the emergency asbestos clean-up at the above-referenced building. Information from a notification of renovation submitted by M.E.S., and dated November 12, 1998, indicated that M.E.S. removed approximately 2,847 square feet of RACM.

13. On December 10, 1998, HCDES conducted a post-abatement inspection and found that the emergency clean-up had been completed and that M.E.S.'s work practices were in compliance with applicable regulations.

14. On December 22, 1998, HCDES sent Anco another copy of the November 20, 1999 NOV.

15. On January 5, 1999, Anco submitted to HCDES the requested items as outlined in HCDES's December 22, 1998 NOV.

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 relation to benefits to the people of the State to be derived from such compliance.

## V. ORDERS

The Director hereby issues the following Orders:

1. Beginning on the effective date of these Orders, Anco shall maintain compliance with OAC Chapter 3745-20 during any demolition or renovation operations at its properties in Ohio.

2. Pursuant to R.C. 3704.06, Anco is assessed a civil penalty in the amount of twenty-three thousand dollars (\$23,000) in settlement of Ohio EPA's claim for civil penalties. Anco shall pay to Ohio EPA the amount of eighteen thousand and four hundred dollars (\$18,400) of the total penalty pursuant to the following schedule:

- four thousand and six hundred dollars (\$4,600) due within ninety (90) days after the effective date of these Orders;
- four thousand and six hundred dollars (\$4,600) due within one hundred and eighty (180) days after the effective date of these Orders;
- four thousand and six hundred dollars (\$4,600) due within two hundred and seventy (270) days after the effective date of these Orders; and
- four thousand and six hundred dollars (\$4,600) due within three hundred and sixty (360) days after the effective date of these Orders.

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 four thousand and six hundred dollars (\$4,600) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Anco 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 the 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. 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 Anco.

#### **VII. NOTICE**

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

Hamilton County Department of Environmental Services  
Attn: Ken Wilkins  
250 William Howard Taft Road  
Cincinnati, Ohio 45219

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
Attn: Thomas Kalman  
P.O. Box 1049  
Columbus, Ohio 43216-1049

#### **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 Anco for noncompliance with these Orders. Nothing contained herein prevents Ohio EPA from exercising its lawful authority to require Anco to perform additional activities pursuant to

R.C. Chapter 3704 or any other applicable law in the future. Nothing herein restricts the right of Anco to raise any administrative, legal, or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of Anco.

### 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, Anco agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Anco's civil liability for the specific violations cited herein. Anco hereby waives the right to appeal the issuance, terms and service of these Orders and it 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 Anco agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Anco retains the right to intervene and participate in such an appeal. In such event, Anco 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                      6-15-01  
Christopher Jones                      Date  
Director

### IT IS AGREED:

Anco Properties, Inc.

By J. J. Andress                      5/31/01  
Date  
President  
Title