

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Holthaus Plumbing Co.
503 W. Benson Street
Cincinnati, Ohio 45215

:
:
:

Director's Final Findings
and Orders

ENTERED DIRECTOR'S JOURNAL

JUN 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 Holthaus Plumbing Co. pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under R.C. 3704.05.

II. PARTIES

These Orders shall apply to and be binding upon Holthaus Plumbing Co., and 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 Ohio EPA has determined the following findings of fact:

1. Holthaus Plumbing Co. is located at 503 W. Benson Street, in Cincinnati, Ohio.
2. Camden Elementary School is located in the Preble Shawnee Local School District, at 124 Bloomfield Street, Camden, Ohio.
3. On May 25, 1999, the Regional Air Pollution Control Agency ("RAPCA") received a Notification of Demolition and Renovation form for the removal of 610 linear feet of regulated asbestos-containing material ("RACM") from within Camden Elementary School. The notification indicated RACM removal would commence on July 5, 1999, and end on

July 9, 1999.

4. A revised Notification of Demolition and Renovation form was received by RAPCA on July 2, 1999, for the Camden Elementary School asbestos removal job. The revision indicated a change in the commencement and end dates of the job. The new commencement and end dates were listed as July 12, 1999, and July 16, 1999, respectively. Subsequent notification forms were received by RAPCA, each extending the end date of the asbestos removal job, with the final dates being listed as July 12, 1999, through July 30, 1999.

5. On July 8, 1999, RAPCA performed an inspection of the Camden Elementary School asbestos removal area, which included both a band room and kitchen. During the inspection, four sections of pipe, totaling 30 linear feet, wrapped with asbestos containing insulation, were found in a damaged condition on the floor of the band room. In addition, dry friable asbestos dust and shavings were found in both the band room and kitchen.

The removal of RACM without the proper revision to the Notification of Demolition and Renovation notification to RAPCA indicating the new job start date was a violation of OAC Rule 3745-20-03(D). The dry removal of the asbestos-insulated pipe was a violation of OAC Rule 3745-20-04(A) and -04(B); and the handling and storage of the asbestos insulated pipe, once removed, was a violation of OAC Rule 3745-20-05(B).

6. Immediately following the discovery of the dry friable asbestos material in the band room and kitchen, the RAPCA inspector notified the school principal of the asbestos-contamination. The principal of the school agreed to limit access to the asbestos-contaminated areas until after the completion of RACM removal.

7. Discussions between the RAPCA inspector and both the school maintenance personnel and the principal revealed that Holthaus Plumbing Co. ("Respondent") had removed the asbestos-insulated pipes in order to install a new pipe line, and in doing so, had created the violations noted by RAPCA.

8. On July 12, 1999, Keen & Cross, Inc., began asbestos abatement within the asbestos abatement project area of Camden Elementary School. Abatement activities continued through July 30, 1999. The asbestos-contamination created by the pipe replacement within the project area was cleaned up by Keen & Cross, Inc., during the abatement project.

9. On July 28, 1999, RAPCA sent a notice of violation ("NOV") to Respondent for violations of OAC Rules 3745-20-04(A), -04(B), and -05(B).

10. 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. Any demolition or renovation activities, including the replacement of pipes, conducted by Respondent shall be conducted in compliance with all applicable provisions of OAC Chapter 3745-20.
2. Beginning on the effective date of these Orders, and ending six months thereafter, except in the case of an emergency demolition or renovation operation as defined by OAC Rule 3745-20-01, Respondent shall submit to Ohio EPA, Division of Air Pollution Control, at least ten (10) working days prior to any asbestos removal operation subject to OAC Chapter 3745-20, a written report describing the location and the quantity of all known asbestos to be removed during the operation, and the methods to be used for the control of emissions during the removal, storage, and subsequent transport of the RACM to the approved disposal site. Respondent may submit a copy of the Notification of Demolition and Renovation required pursuant to OAC Rule 3745-20-03 in lieu of the written report, if such notification contains the above-requested information.
3. Pursuant to R.C. Section 3704.06, Respondent is assessed a civil penalty in the amount of seven-thousand, three-hundred fifty dollars (\$7,350.00) in settlement of Ohio EPA's claim for civil penalties. Within one hundred twenty (120) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of six-thousand, six-hundred fifteen dollars (\$6,615.00) 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

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

In lieu of payment to Ohio EPA of the remaining seven-hundred thirty-five dollars (\$735.00) of the total penalty amount, Respondent shall perform the supplemental environmentally beneficial project identified in Order No. 4.

4. Respondent shall perform the supplemental environmentally beneficial project consisting of funding urban tree-planting projects in Ohio. Specifically, within one hundred twenty (120) days after the effective date of these Orders, Respondent shall deliver a certified check in the amount of seven-hundred thirty-five dollars (\$735.00) made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for this purpose. 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 above-stated address.

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.

VII. NOTICE

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

RAPCA
451 West Third Street
P.O. Box 972
Dayton, Ohio 45422
Attn.: Derek Newcomer

and to:

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

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 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 the Ohio EPA may seek to require of Respondent.

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, 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 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 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 said Orders are stayed, vacated, or modified.

IT IS SO ORDERED AND AGREED:

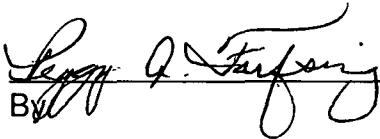
Ohio Environmental Protection Agency



Christopher Jones
Director

IT IS AGREED:

Rich Holthaus Plumbing Co.



BY

6/15/01

Date

Sec/Treasurer

Title