

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Superior Demolition and Excavating	:	<u>Director's Final Findings</u>
Company, Inc.	:	<u>and Orders</u>
4480 Bradley Road	:	
P.O. Box 609087	:	
Cleveland, Ohio 44109	:	
RESPONDENT	:	

OHIO E.P.A.
DEC 28 2001
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Superior Demolition and Excavating Company, Inc. ("Respondent"), 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 Respondent 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. Respondent is a corporation organized under the laws of the State of Ohio and licensed to transact business in the State of Ohio.
2. Respondent has its principal place of business located at 4480 Bradley Road, Cleveland, Ohio.

3. Respondent was hired by the City of Cleveland, Department of Community Development, with principal place of business located at Cleveland City Hall, 601 Lakeside Avenue, Room 320, Cleveland, Ohio, to conduct a demolition of an abandoned, vacant building located at 4801 Chester Avenue, Cleveland, Ohio, which was owned by the City of Cleveland and was formerly occupied by Ward Bakery. Bradley Asbestos Abatement, a division of Respondent, was employed to first remove asbestos-containing materials from the building. The building was one, three and five stories in height and contained approximately 160,000 square feet in area. The building was a "facility," as defined in OAC Rule 3745-20-01(B)(12).

4. On June 23, 2000 and pursuant to the notification requirements of OAC Rule 3745-20-03(A), the City of Cleveland, Division of Environment, Ohio EPA's contractual representative in Cuyahoga County, received a notification of demolition from the Respondent for the demolition of the facility. The notification indicated that asbestos removal from the facility would be conducted from July 10 to July 31, 2000 and that demolition of the facility would be conducted from August 1 to November 20, 2000. Furthermore, the notification indicated that 1,800 linear feet of friable asbestos materials on pipes and 2,800 square feet of friable asbestos materials on other facility components would be removed. "Friable asbestos material" is defined in OAC Rule 3745-20-01(B)(14) as any material containing more than one percent, by area, of the forms of asbestos identified in OAC Rule 3745-20-01(B)(3) that hand pressure can crumble, pulverize, or reduce to powder when dry. Approximately 16,000 square feet of Category I nonfriable asbestos material, as defined in the National Emission Standards for Hazardous Air Pollutants ("NESHAP"), Subpart M, 40 CFR, Part 61, would not be removed. Pursuant to OAC Rule 3745-20-02(A)(1), the requirements of OAC Rule 3745-20-03, 3745-20-04 and 3745-20-05 apply to the owner or operator of a facility being demolished if the amount of friable asbestos materials in such facility is at least 260 linear feet on pipes or at least 160 square feet on other facility components.

5. On September 18, 1997, Electro-Analytical Group ("EAG") of Mentor, Ohio under contract with Oriana House of 49 East Glenwood Avenue, Akron, Ohio, completed a report titled "Phase I Environmental Site Assessment" for the facility. The report indicated that bulk sampling of suspected asbestos-containing materials was conducted at the facility and that a report detailing the sampling results and required actions was to be submitted under separate cover.

6. In a report dated September 19, 1997 and titled "Bulk Sampling of Suspect Containing Materials for NESHAPs Compliance" and prepared by EAG of Mentor, Ohio under contract with Oriana House of 49 East Glenwood Avenue, Akron, Ohio, EAG reported the results of a bulk sampling performed on August 29, 1997 and September 3, 1997 for a NESHAP asbestos compliance survey of suspected asbestos-containing material at the facility. Among the material sampled and identified as asbestos-containing material was floor leveling compound. The leveling compound was found to contain 10

percent of chrysotile asbestos, by weight, based on sampling from the second and third floors of the facility. Furthermore, the report indicated that the leveling compound is a non-friable Category II material; however, fiber release was anticipated during demolition activities and, therefore, the material had to be removed prior to demolition.

7. In an environmental survey report on asbestos dated May 30, 2000, F.S.W. Lab., Inc. of Beachwood, Ohio, under contract with the City of Cleveland, reported the results of a survey of the facility on May 26, 2000 to determine the presence of asbestos-containing materials prior to demolition. The report identified those materials containing friable asbestos that needed to be removed prior to demolition of the facility. Floor leveling material was not identified in the report or sampled.

8. On June 26, 2000, the City of Cleveland, Department of Public Health, Division of Environment received from Respondent a revision to the original notification of demolition. Both abatement and demolition projects were placed on hold. As a result, the City of Cleveland, Department of Public Health, Division of Environment did not issue an approval letter for the original notification.

9. On July 14, 2000, the City of Cleveland, Department of Public Health, Division of Environment, received from Respondent a second revision of the original notification. The notification revised the abatement dates to July 19 through July 31, 2000 and the demolition dates from August 1 through October 23, 2000.

10. On July 24, 2000, the City of Cleveland, Department of Public Health, Division of Environment, issued a letter to Respondent approving the notification of demolition and revisions.

11. On August 1, 2000, a third revision of the notification was received from the Respondent by the City of Cleveland, Department of Public Health, Division of Environment, confirming the abatement and demolition dates.

12. Respondent began demolition of the structure on August 2, 2000.

13. On August 3, 2000, the Ohio Department of Health received an anonymous complaint that friable asbestos materials were present throughout the facility. The complaint was forwarded to the City of Cleveland, Department of Public Health, Division of Environment, and an inspector was sent out and did not observe any friable asbestos materials at the site.

14. On August 7, 2000 and due to continuing complaints, a representative of the City of Cleveland, Department of Public Health, Division of Environment, took samples of the floor leveling material in the debris. On the same day, Respondent stopped the demolition project at the request of the City of Cleveland, Department of Public Health,

Division of Environment.

15. On August 8, 2000, EAG prepared a report to the City of Cleveland, Department of Public Health, Division of Environment, in which the results of the analyses of the samples taken by the City were presented. Five of the six samples of leveling material were found to contain in excess of one percent of regulated forms of asbestos, by weight.

16. In a letter dated August 10, 2000, Ohio EPA notified the City of Cleveland, Department of Public Health, Division of the Environment, that it was taking over the investigation of the demolition of this facility to avoid the appearance of a conflict of interest due to the City of Cleveland's position of property owner and regulator of the asbestos emission control standards.

17. On August 11, 2000, inspectors from the Northeast District Office of Ohio EPA ("NEDO") took samples of suspected friable asbestos materials from the building. The samples were analyzed by EssTek Ohio, Inc. ("EssTek") of Middleburg Heights, Ohio. At that time, approximately 30 percent of the east side of the facility had been demolished. Approximately 130,000 square feet of the structure was demolished or contaminated with asbestos material. Floor leveling material was observed in the structure on the first, second and third floors, with much of it being crushed and pulverized near the edges of the existing building. The floor leveling material, which was located between the wood/tile flooring and the concrete floor, was observed to range from 1/8th inch to 4 inches thick. Some parts of the floor of the structure were in poor condition and may have caused some of the floor leveling material to become exposed and friable. The floor leveling material was observed on concrete slabs in the debris pile and on slabs hanging from rebar. Dust from the demolition was observed on all floors of the existing structure and was at least one inch thick in numerous areas of the building. The demolition operation had disturbed approximately 24,300 square feet of the leveling material, much of which was crushed and pulverized.

18. On August 11, 2000, NEDO sent a letter to the City of Cleveland, Department of Community Development, Division of Building and Housing, stating the following:

- a. the floor leveling compound in the portion of the facility that was demolished was made friable by the demolition and was a regulated friable asbestos material;
- b. all of the debris and dust in the demolished portion of the facility and in the intact portion of the facility would have to be considered as asbestos contaminated and disposed of in accordance with OAC Rule 3745-20-05;

- c. all of the existing Category II asbestos materials and any remaining regulated friable asbestos materials would have to be removed from the facility prior to continuing demolition;
- d. interim measures were requested to be taken to prevent a public health threat due to emissions of friable asbestos material; and
- e. a proposed plan for debris disposal was requested within 5 days after receipt of the letter.

19. In a letter dated August 18, 2000, the City of Cleveland, Department of Community Development, Division of Building and Housing requested an extension of time to the early part of the following week to allow its consultant, Monit-Air, Inc. to design a disposal plan and in the interim were maintaining the debris to prevent any dust emissions.

20. In a letter dated August 18, 2000 to the City of Cleveland, Department of Community Development, Division of Building and Housing, NEDO indicated the following:

- a. it had not received the plan requested by NEDO in its August 11, 2000 letter;
- b. preliminary testing results from the samples taken on August 11, 2000 indicated that the floor leveling material was an asbestos-containing material, chrysotile asbestos fibers were found in the debris and dust inside the facility, and plaster found in an office area in the south side of the facility contained from 1 to 10 percent chrysotile asbestos, which was not found in the original evaluation performed prior to the demolition;
- c. copies of all asbestos evaluations of the facility conducted by an evaluation specialist for the City of Cleveland prior to the demolition were requested;
- d. copies of all asbestos evaluations of the facility that were conducted in 1999 including the Phase I study were requested;
- e. the interim measures the City of Cleveland has taken to ensure that no dust is emitted into the ambient air from the facility were requested; and
- f. the status of plans to be implemented for disposal of the debris and commencement date for such disposal were requested.

21. In a report dated August 25, 2000, an asbestos analysis was provided to NEDO of the samples taken on August 11, 2000. Approximately 5 to 15 percent of chrysotile asbestos was found in a sample taken from flooring on the first floor, west center section. Also, two samples of dust taken from the first floor, east section were found to

contain chrysotile asbestos; however, a quantification of these samples could not be performed because they were not homogeneous.

22. OAC Rule 3745-20-04(A)(1) requires, in part, each owner or operator of a demolition operation to remove friable asbestos materials from the facility being demolished before any wrecking or dismantling that would breakup the materials or preclude access to the materials for subsequent removal, unless the friable asbestos materials are encased in concrete or other similar material and are adequately wetted whenever exposed during demolition.

23. OAC Rule 3745-20-01(B)(20) defines "owner or operator" as any person who owns, leases, operates, controls, or supervises a facility, or any waste disposal, demolition or renovation operation. Respondent was an "owner or operator" of the facility being demolished.

24. The floor leveling material was made friable by the demolition and may have been made friable through deterioration of the floor of the structure. Therefore, the demolition was subject to OAC Rule 3745-20-04(A)(1). Respondent and the City of Cleveland failed to remove the floor leveling material from the facility before any wrecking or dismantling that would breakup the material or preclude access to the material for subsequent removal and the floor leveling material was not encased in concrete or similar material and the material was not wetted whenever exposed during the demolition, in violation of OAC Rule 3745-20-04(A)(1) and R.C. 3704.05(G).

25. The notifications of demolition submitted by Respondent did not indicate that Category II asbestos-containing material that would become friable upon demolition was present in the facility. Therefore, Respondent and the City of Cleveland violated OAC Rule 3745-20-03(A)(3)(e), which requires that notifications contain an estimate of the amount of friable asbestos material to be removed from the facility to be demolished, and R.C. 3704.05(G).

26. On October 17, 2000, Notice of Violation ("NOV") letters were sent to Respondent and the City of Cleveland, Department of Community Development by certified mail by NEDO. The NOV indicated that NEDO was directed by Ohio EPA to take the lead role in investigating the asbestos removal/demolition at the facility. Also, the NOV cited Respondent and the City of Cleveland, in part, with a violation of OAC Rule 3745-20-04 and requested Respondent and the City of Cleveland to submit, within 10 days after receipt of the NOV, certain information concerning the demolition.

27. In a letter dated October 25, 2000, the City of Cleveland, Department of Community Development responded to the October 17, 2000 NOV. The letter provided, in part, the following information:

- a. the Phase I Environmental Site Assessment was not provided to the City of Cleveland prior to its taking possession of the facility;
 - b. the City of Cleveland received a copy of the Phase I Environmental Site Assessment on July 24, 2000, however, it was not forwarded to the City of Cleveland, Department of Community Development's Demolition Bureau until July 31, 2000;
 - c. the EAG's September 19, 1997 report titled "Bulk Sampling of Suspect Containing Materials for NESHAPs Compliance" was attached to and referenced in the Phase I Environmental Site Assessment; and
 - d. the City of Cleveland, Department of Community Development's Demolition Bureau provided a copy of the Phase I Environmental Site Assessment to Bradley Asbestos Abatement on July 31, 2000.
28. On October 31, 2000, Respondent sent a letter to NEDO in response to the October 17, 2000 NOV. Respondent indicated the following:
- a. the initial plans for disposal of the demolition debris called for it to be crushed on site and used for backfill;
 - b. EAG's report titled "Phase I Environmental Site Assessment" dated September 18, 1997 was received by Respondent; and
 - c. Respondent did not receive a copy of the EAG report dated September 19, 1997 and titled "Bulk Sampling of Suspect Containing Materials for NESHAPs Compliance."
29. The City of Cleveland, Department of Community Development had the site cleaned and asbestos abatement completed, in accordance with the requirements of OAC Chapter 3745-20, by November 14, 2000.
30. 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 the benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall maintain compliance with the requirements of OAC

Chapter 3745-20 in any demolition or renovation operation it performs in the State of Ohio.

2. Pursuant to R.C. 3704.06, Respondent is assessed a civil penalty in the amount of fifteen thousand dollars (\$15,000) in settlement of Ohio EPA's claim for civil penalties. Payment of this penalty shall be made by the Respondent in accordance with the following schedule:

- three thousand dollars (\$3,000) due within fourteen (14) days after the effective date of these Orders to the Ohio Department of Natural Resources;
- three thousand dollars (\$3,000) due within forty-four (44) days after the effective date of these Orders to Ohio EPA;
- three thousand dollars (\$3,000) due within seventy-four (74) days after the effective date of these Orders to Ohio EPA;
- three thousand dollars (\$3,000) due within one hundred and four (104) days after the effective date of these Orders to Ohio EPA; and
- three thousand dollars (\$3,000) due within one hundred and thirty-four (134) days after the effective date of these Orders to Ohio EPA.

Payments to Ohio EPA 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 payment to the Ohio Department of Natural Resources shall be made to fund a supplemental environmentally beneficial project consisting of funding urban area tree-planting projects in Ohio and shall be paid by delivering a certified check payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund. 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

Copies of all 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's facility.

VII. NOTICE

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

Ohio EPA, Northeast District Office
2110 E. Aurora Rd.
Twinsburg, OH 44087
Attention: Dennis Bush

and to:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, OH 43216-0149
Attention: Thomas Kalman

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 at its facility 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 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.

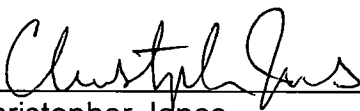
X. WAIVER

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 may 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 Orders are stayed, vacated, or modified.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

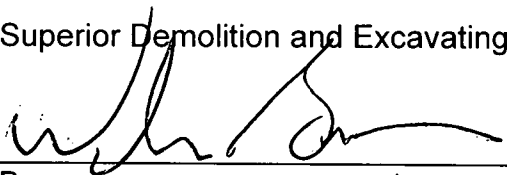


Christopher Jones
Director

12-21-01
Date

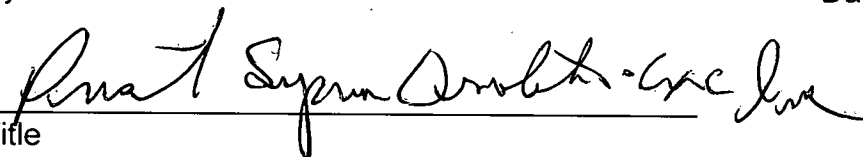
IT IS AGREED:

Superior Demolition and Excavating Company, Inc.



By

12/17/01
Date



Title