

OHIO E.P.A.

AUG 22 2016

ENTERED DIRECTOR'S JOURNAL

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Diversified Services, Ltd.	:	
5198 Township Road 123	:	<u>Director's Final Findings</u>
Millersburg, Ohio 44654	:	<u>and Orders</u>

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Diversified Services, Ltd. ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 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 of Respondent or of the property (as hereinafter defined) 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 defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent is a demolition company contracted to demolish a structure located at 215 Water Alley in Bowerston, Ohio (Harrison County). The above-referenced structure is considered a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18). Respondent was an "operator" as defined in OAC Rule 3745-20-01(B)(39).

2. "Facility" as defined by OAC Rule 3745-20-01(B)(18) means, in part, any institutional, commercial, public, industrial or residential structure, installation, or building, excluding residential structures having four or fewer dwelling units.

3. "Owner or operator" as defined by OAC Rule 3745-20-01(B)(39) means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation or both.

4. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-20 was adopted by Ohio EPA pursuant to ORC Chapter 3704.

5. OAC Rule 3745-20-02(A) states, in part, that each owner or operator of any demolition or renovation operation shall have the affected facility or part of the facility where a demolition or renovation operation will occur thoroughly inspected by a certified asbestos hazard evaluation specialist, in accordance with paragraph (C) of rule 3701-34-02 of the Administrative Code prior to the commencement of the demolition or renovation for the presence of asbestos.

6. 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 demolish or renovate. The notification is required to be submitted at least ten working days prior to the beginning of any demolition operation.

7. On September 1, 2015, Ohio EPA Southeast District Office ("SEDO") received a complaint from the Bowerston Volunteer Fire Department regarding the demolition of a structure on the old Bowerston Lumber Company property, located at 215 Water Alley, in Bowerston. On November 5, 2015, SEDO conducted an inspection and observed that a building had been completely demolished and demolition debris removed from the property. Upon investigation, Ohio EPA identified Respondent as the operator in the demolition of the facility.

8. By letter dated December 18, 2015, SEDO issued a Notice of Violation ("NOV") letter to Respondent for violating OAC Chapter 3745-20-02(A), OAC Chapter 3745-20-03(A) and ORC § 3704.05(G) associated with the demolition of the structure located at 215 Water Alley. The violations resulted because Respondent performed the demolition without submitting an Ohio EPA Notification of Demolition to Ohio EPA and for failing to have the facility thoroughly inspected for asbestos prior to demolition.

9. By letter dated December 21, 2015, Respondent acknowledged receipt of the December 18, 2015 NOV and explained that it was assumed that the owner of the property had an asbestos survey completed and submitted the appropriate notification of demolition to Ohio EPA. On December 2, 2015, SEDO had a phone conversation with the property owner and learned that it was unknown to the property owner if an asbestos survey had been completed or notification submitted for the project at that time.

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 of Ohio EPA hereby issues the following Orders:

1. Respondent shall pay the amount of nine thousand dollars (\$9,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for nine thousand dollars (\$9,000). The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V of these Orders.

VII. OTHER CLAIMS

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operations of Respondent.

VIII. 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.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: James Kavalec

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

XII. WAIVER

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

Respondent hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waive any and all rights Respondent 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 appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIII. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

XIV. SIGNATORY AUTHORITY

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 these Orders.

ORDERED AND AGREED:

Ohio Environmental Protection Agency




Craig W. Butler
Director

8/18/16
Date

AGREED:

Diversified Services, Ltd.



Signature

8-2-16
Date

Kenneth Hostetler

Printed or Typed Name

Partner

Title