



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

December 14, 2016

CERTIFIED MAIL

Howard Buckley
PHD Services
P.O. Box 9714
Columbus, Ohio 43209

Re: Final Findings and Orders for violations of
Ohio's air pollution regulations

Dear Mr. Buckley:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date that is stamped on the first page of the Orders.

Sincerely,



James Kavalec, Manager
Compliance/Enforcement Section
Division of Air Pollution Control

ec: James Lee, PIC
Lee Tullis, DAPC
Kara Philibin, DAPC
Don Vanterpool, Legal Office
Tan Tran, DAPC
Kelly Toth, CDO
Rich Fowler, CDO

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OHIO EPA

2016 DEC 14 AM 9:07

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

LEGAL OFFICE

In the Matter of:

PHD Services	:	<u>Director's Final Findings</u>
P.O. Box 9714	:	<u>and Orders</u>
Columbus, Ohio 43209	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to PHD Services ("Respondent PHD") 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 PHD and successors in interest liable under Ohio law. No change in ownership of the facility (as hereinafter identified) 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 makes the following findings. Nothing in these findings of the Director shall be considered to be an admission by Respondent of any matter of law or fact.

1. In August of 2015, Respondent PHD was hired as the asbestos abatement contractor by the property owner, MI Homes, to perform the asbestos abatement work for a demolition of a commercial building, formerly known as the Rivera Golf Clubhouse, located at 8205 Avery Road in Dublin, Franklin County, Ohio. The above-referenced commercial structure constituted a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18). Respondent PHD was an "operator" by OAC Rule 3745-20-01(B)(39). The above-referenced project involved a "demolition," as defined in OAC Rule 3745-20-01(B)(13).



2. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition operation involving a facility to submit a written notice of intention to demolish ("Notification") to Ohio EPA at least ten working days prior to beginning demolition activities, asbestos stripping or removal work, or any other activity including salvage activities and preparations that break up, dislodge or similarly disturb asbestos material.

3. OAC Rule 3745-20-04(A)(1) requires, in part, the owner or operator of a subject demolition project as described in OAC Rule 3745-20-02(B)(1) to remove all regulated asbestos-containing material ("RACM") from a facility being demolished before any activity begins that would break up the materials, unless as otherwise provided in that rule.

4. OAC Rule 3745-20-04(A)(6) requires, in part, the owner or operator of a subject demolition project to maintain removed or stripped friable asbestos materials in a wetted condition until the materials are collected for disposal.

5. ORC § 3704.05(G) prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. OAC Chapter 3745-20 was adopted by the Director pursuant to ORC Chapter 3704.

6. On July 14, 2015, an asbestos survey of the above-referenced facility was performed by Geotechnical Consultants Inc. The survey indicated that an estimated 23,000 square feet of RACM drywall material was reported to be present inside the building.

7. On October 23, 2015, the Ohio Environmental Protection Agency, Central District Office, Division of Air Pollution Control ("CDO-DAPC"), inspected the above-referenced facility and observed that the asbestos abatement had almost been completed. At this inspection, CDO-DAPC documented the followings: (1) the asbestos abatement project was done without submitting proper notification; (2) the abatement of RACM was improperly performed with RACM debris scattered throughout both interior and exterior of the facility; and (3) RACM demolition debris was not being kept adequately wet. Since Notification was not submitted for the above-referenced demolition, Respondent PHD was in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G). In addition, since all RACM had not been properly removed from the facility before any activity begun that would break up the materials, Respondent PHD was in violation of OAC Rule 3745-20-04(A)(1) and ORC § 3704.05(G). Lastly, Respondent PHD failed to keep RACM demolition debris in adequately wetted condition until collected for disposal, in violation of OAC Rule 3745-20-04(A)(6) and ORC § 3704.05(G).

8. On December 2, 2015, CDO-DAPC issued a notice of violation ("NOV") letter to Respondent PHD for the violations that were documented during the October 23, 2015 inspection. In this NOV letter, CDO-DAPC requested Respondent PHD to

submit a copy of all the Waste Shipment Records associated with the abatement project within 30 days of the receipt of the NOV letter. As of January of 2016, the requested records have not yet been received by CDO-DAPC.

9. 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. Pursuant to ORC Chapter 3704, Respondent PHD is assessed a civil penalty of twenty thousand dollars (\$20,000) in settlement of Ohio EPA's claims for civil penalties. Respondent PHD shall pay to Ohio EPA the amount of twenty thousand dollars (\$20,000) pursuant to the following schedule:

- five thousand dollars (\$5,000) due by March 15, 2017;
- five thousand dollars (\$5,000) due by September 15, 2017;
- five thousand dollars (\$5,000) due by March 15, 2018; and
- five thousand dollars (\$5,000) due by September 15, 2018.

Payments to Ohio EPA shall be made by an official checks made payable to "Treasurer, State of Ohio" (split to Funds 6960 and 6A10). The official checks 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 PHD'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, operations by Respondent PHD.



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 PHD.

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 PHD pursuant to these Orders shall be addressed to:

Ohio Environmental Agency
Central District Office - DAPC
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Kelly Toth, Air Unit Manager

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Jim Kavalec, Manager,
Compliance and Enforcement Section

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 PHD all 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 PHD consents 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 PHD's liability for the violations specifically cited herein.

Respondent PHD hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent PHD 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 PHD agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent PHD retains the right to intervene and participate in such appeal. In such an event, Respondent PHD 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

12/12/16

Date

AGREED:

PHD Services

PHD Services By Howard Buckley
Signature

12-5-16
Date

PHD Services HOWARD BUCKLEY
Printed or Typed Name

OWNER
Title