

NOV - 1 2013

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Page Excavating, Inc.	:	<u>Director's Final Findings</u>
2398 Applegate Road	:	<u>and Orders</u>
Lucas, Ohio 44843	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Page Excavating, Inc. ("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

These Orders shall apply to and be binding upon Respondent and heirs and successors in interest liable under Ohio law.

III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meaning as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates an asbestos abatement company which is located at 2398 Applegate Road, in Lucas, Ohio, Richland County. Respondent is an "owner or operator," as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(39).
2. 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 the Director pursuant to ORC Chapter 3704.

3. OAC Rule 3745-20-01(B)(18) states, in part, that a "Facility" means any institutional, commercial, public, industrial or residential structure, installation, or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, or any operation involving the renovation/demolition of multiple residential structures identified by an owner or operator within a scheduled period of time; any ship; and any active or inactive waste disposal site. For purposes of this definition, any structure, installation or building that contains a loft used as a dwelling is not considered a residential structure, installation or building. Any structure, installation or building that was previously subject to this rule due to its prior use or function is not excluded, regardless of its current use or function.

4. On December 13, 2012, Ohio EPA received an asbestos demolition and renovation notification form from Respondent which indicated that 120 linear feet and 3,400 square feet of Regulated Asbestos-Containing Material (RACM), in the form of duct work and plaster, was to be removed from a demolition project at 191 Atcheson Avenue, in Mansfield, Ohio. The notification form indicated that the duct work would be removed using wetting methods and glove bags and the plaster areas would be sealed off, negative pressure machines used, with the plaster wetted down and double bagged.

5. On December 29, 2012, Ohio EPA conducted an asbestos inspection at the 191 Atcheson Avenue demolition project. During the inspection, Ohio EPA observed the dry removal of plaster. Approximately, 1,000 square feet of RACM (broken plaster), including at least 20 bags, was removed without being properly wetted and maintained wet, in violation of OAC Rules 3745-20-04(A)(3) and (A)(6) and ORC § 3704.05(G). Ohio EPA also noted that Respondent failed to post evidence that the required asbestos training had been completed, in violation of OAC Rule 3745-20-04(B)(4) and ORC § 3704.05(G). By letters dated January 7 and January 11, 2013, Ohio EPA notified Respondent of these violations.

6. On January 17, 2013, Respondent submitted a waste manifest to Ohio EPA demonstrating that the RACM was removed from the facility and properly disposed.

7. 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. Respondent shall pay the amount of five thousand six hundred dollars (\$5,600) 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 four thousand four hundred and eighty dollars (\$4,480) of the total amount [split to Fund 6960 and Fund 6A10]. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining one thousand one hundred and twenty dollars (\$1,120) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project (SEP) by making a contribution in the amount of \$1,120 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$1,120. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of each of the above checks shall be sent to Bruce Weinberg, Manager Enforcement Section, or his successor, at the following address:

Ohio EPA  
Division of Air Pollution Control  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$1,120 of the civil penalty in accordance with the procedures in Order 1.

## **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, 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  
347 North Dunbridge Road  
Bowling Green, Ohio 43402  
Attn: Tom Sattler

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Bruce Weinberg

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 consents to the issuance of these Orders and agrees 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 waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives 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**

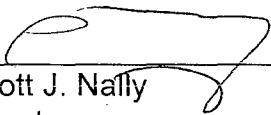
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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**

  
\_\_\_\_\_  
Scott J. Nally  
Director

10/30/13  
\_\_\_\_\_  
Date

**AGREED:**

**Page Excavating, Inc.**

  
\_\_\_\_\_  
Signature

10/17/13  
\_\_\_\_\_  
Date

Landa Page  
\_\_\_\_\_  
Printed or Typed Name

Secretary, AS, HES  
\_\_\_\_\_  
Title