

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Dimmian Baskharoon	:	<u>Director's Final Findings</u>
383 East 156 <sup>th</sup> Street	:	<u>and Orders</u>
Cleveland, Ohio 44110-1765	:	
	:	
RESPONDENT	:	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Dimmian Baskharoon ("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 heirs and successors in interest liable under Ohio law. No change in ownership of the Respondent's property 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** was the owner of a commercial/residential building previously located at 4616 Lorain Avenue, Cleveland, Ohio. The building was a "facility" as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18) and was subject to the applicable requirements specified in OAC Chapter 3745-20 ("Asbestos Emission Control Standards").

On June 20, 1997, the City of Cleveland, Division of Building & Housing ("City") sent a notice of violation of housing ordinances to Respondent. The notice declared the facility to be a public nuisance in that it constituted an imminent danger and peril to human life and public health, safety and welfare, and the condition of the facility constituted an emergency. The notice required Respondent to correct all violations by July 20, 1997. More, the notice stated, in part, that if the violations were not corrected by said date, the City would summarily abate the facility by demolition.

2. OAC Rule 3745-20-01(B)(38) defines, in part, the "owner or operator" as any person who owns, leases, operates, controls, or supervises the facility being demolished; or any person who owns leases, operates, controls or supervises the demolition of the facility, or both. Respondent owned, operated, controlled, and supervised the facility; therefore retained responsibility for the discovery, presence, handling, removal and disposal of all asbestos-containing material.

3. OAC Rule 3745-20-02(A) requires, in part, the owner and operator of a demolition operation to have the facility thoroughly inspected prior to commencement of demolition for the presence of asbestos.

4. OAC Rule 3745-20-01(B)(20) defines, in part, "friable asbestos material" as any material containing more than one percent asbestos by area, that when dry can be crumbled, pulverized, or reduced to powder by hand pressure.

5. OAC Rule 3745-20-01(B)(41) defines, in part, "regulated asbestos-containing material" ("RACM") as friable asbestos material, Category I nonfriable asbestos-containing material that has become friable, Category I nonfriable asbestos-containing material that will or has been subject to sanding, grinding, cutting or abrading; or Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations.

6. OAC Rule 3745-20-01(B)(9) defines, in part, "Category I nonfriable asbestos-containing material" as asbestos-containing packing, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos. OAC Rule 3745-20-(B)(10) defines, in part, "Category II nonfriable asbestos-containing material" as any material containing more than one percent asbestos, excluding Category I nonfriable asbestos-containing material, that when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

7. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition operation to provide Ohio EPA with written notice of intention to demolish prior to starting of any demolition operation if the structure being demolished contains amounts of

RACM of at least 260 linear feet on pipes or at least 160 square feet on other facility components ("work practice thresholds"). Such notification must be received at least ten (10) days before any planned demolition operation begins.

8. OAC Rule 3745-20-04(A) requires, in part, the owner and operator of a demolition operation that exceeds the work practice thresholds to comply with specified work practices for the control of asbestos emissions. The control measures include, in part, the removal of all RACM before any demolition activity starts that could break up, dislodge, or similarly disturb the material and to adequately wet the RACM that is being removed from the facility.

9. OAC Rule 3745-20-05(B)(2) prohibits, in part, the discharge of any visible emissions to the outside air and requires the owner and operator of a demolition operation that exceeds the work practice thresholds to keep asbestos-containing waste material adequately wet at all times during and after demolition, and during handling, loading, transport and disposal.

10. ORC § 3704.05(G) prohibits any person from violating any order, rule or determination of the Director issued, adopted, or made under ORC Chapter 3704.

11. In early 2003, the City was granted permission by the **Respondent** to have the facility inspected to determine the amount of asbestos-containing materials. The inspection was conducted by Eden Environmental, Inc.

12. On January 22, 2003, Eden Environmental, Inc. conducted an asbestos inspection and took one hundred ten bulk samples for analyses from thirty-one distinct homogeneous areas in the facility.

13. On February 7, 2003, Eden Environmental, Inc. submitted the facility's asbestos inspection report to the City. Based on the analyses of the samples, the report identified several areas in the facility that contained RACM over the work practice threshold level. Thus, prior to the start of any demolition operation, the owner or operator was required to remove the RACM as well as follow specified work practices to prevent asbestos emissions during removal and disposal.

14. On December 24, 2003, Respondent signed a contract with Prime Services & Management Company, Inc. ("Prime") to provide all the labor, materials and equipment to demolish the facility.

15. On December 29, 2003, Prime submitted a notice to the City of Cleveland, Division of Air Quality ("CDAQ") for the demolition of the facility. The notice stated that no asbestos-containing materials were in the facility. A letter from Tommy Dille & Associates

dated June 28, 1999, was attached to the notice. This letter stated that the facility was surveyed to determine the presence of asbestos-containing materials and that no asbestos-containing material was present that needed to be removed prior to demolition. The scheduled starting date for the demolition was listed as January 12, 2004.

16. On December 30, 2003, CDAQ, based on the information contained in the December 29, 2003 notice, sent a letter to Prime authorizing the removal and disposal of asbestos-containing material from the facility.

17. On January 6, 2004, Arick's Environmental Management Services, Inc. ("Arick") sent a notice of intention to demolition to Ohio EPA, Northeast District Office ("NEDO"). The notice stated that 4,335 square feet of RACM was to be removed from the surface areas of the facility. The asbestos removal was scheduled to start on January 19, 2004.

18. On January 20, 2004, the following events occurred:

- NEDO received a telephone message from Arick. The message stated that Arick had been hired by the City to remove the asbestos from the facility. However, on January 19, 2004, when Arick arrived at the facility to prepare for the asbestos abatement, the facility was being demolished by a contractor hired by Respondent. Arick stated it informed the demolition contractor, and later Respondent, that there was RACM in the facility that needed to be removed prior to the start of demolition. Further, Arick stated it actually showed the contractor the asbestos inspection report the City had had conducted and the locations of the RACM. Respondent told Arick he was taking care of the demolition and that the demolition contractor had submitted a notice of intention to demolish to CDAQ that stated that the facility did not contain any asbestos. Respondent and the demolition contractor continued with the demolition even after being informed that the facility contained RACM that needed to be removed.
- The City telephoned NEDO regarding the demolition of the facility. The City stated that it had condemned the facility and taken control of the abatement because Respondent was not doing anything to correct the problems with the facility. Additionally, the City stated that it had conducted an asbestos inspection and had contracted with Arick to abate the RACM. The City thought the RACM was not removed from the facility prior to the demolition. The City also stated that it had contacted Respondent in the past about the asbestos inspection results and the cost for the abatement.

- Arick sent a facsimile to NEDO withdrawing the notice of intention to demolish the facility. The facsimile cover sheet stated that the reason for the cancellation was because “a contractor was tearing down the building with all the asbestos in it without using water and contaminating the whole neighborhood.”
- The City sent a letter to NEDO to confirm the telephone conversation regarding the demolition of the facility. The letter stated that based on a building permit, Prime was the contractor doing the demolition. Additionally, the letter said that the City had contacted Respondent at least twice, i.e., once in February 2003, to get permissions to conduct the asbestos inspection, and in November 2003 to inform Respondent the results of the bid to abate the asbestos. Further, the City stated “I (City) specifically told him (Respondent) that the low bid to abate asbestos was \$9,152.50, but I (City) do not recall if I (City) discussed with him (Respondent) in detail the materials that needed to be abated.”
- NEDO observed that the facility had been completely demolished. NEDO took photographs and collected samples of suspect asbestos - containing material from the top of the debris pile at various locations. NEDO also observed that the debris was dry. A person on site informed NEDO that the demolition took place on January 19, 2004, by Prime and that Respondent was the owner of the facility.
- NEDO talked with Prime and Respondent regarding the alleged demolition of the facility without the removal of RACM. Prime told NEDO that a notice of intention to demolish was submitted to CDAQ along with a report provide by Respondent saying the facility did not contain any asbestos. Prime also confirmed that on January 19, 2004, a person arrived at the facility and told it and Respondent that the facility contained RACM. Prime stated that they (i.e., Prime and Respondent) continued the demolition, because they thought everything was in order. NEDO informed Respondent and Prime that samples of the debris had been taken to be analyzed for the presence of asbestos. Additionally, NEDO stated that the debris would have to be kept wet to prevent visible emissions of dust and disposed of in accordance with the applicable asbestos standards (unless it could be conclusively demonstrated that the facility contain no asbestos).

19. On January 22, 2003, NEDO received the analytical results of the samples of the facility's debris. One of the four samples contained three percent asbestos confirming that the facility contained RACM. NEDO informed Respondent and Prime of the results and the necessity to properly dispose of the debris.

20. On January 23, 2004, NEDO sent letters to Respondent and Prime stating that initial investigation found the debris pile from the demolition of the facility contained RACM. The letters also required that Respondent immediately submit a plan for disposing of the debris, and that it be handled in accordance with the requirements of OAC 3745-20-05, "Asbestos Waste Handling."

21. On January 29, 2004, Prime sent NEDO copies of the proposed asbestos debris trucking contract and disposal plan. The contract indicated that the trucking and disposal would comply with the requirements of OAC Chapter 3745-20.

22. On February 1, 2004, Arick sent a facsimile to NEDO confirming its January 20, 2004, telephone message.

23. On February 2, 2004, on behalf of Respondent, Tommy Dille & Associates sent NEDO a reply to the January 23, 2004, NOV. The reply stated that demolition was a private matter, which had its own sample analysis. Attached to the reply was an "after-the-fact" sample analysis that showed that the friable material in the facility was non-detectable for asbestos-containing material. Additionally, the reply asked for the debris sample that tested positive for RACM (i.e., sample taken by NEDO on January 20, 2004), in order to have two additional laboratories conduct a quality control and assurance analysis to confirm the results. It should be noted that the samples were taken on January 25, 2004, after the facility had been demolished, and the location of the samples were not provided.

24. On February 3, 2004, NEDO talked with Respondent by telephone regarding the January 23, 2004, reply submitted by Tommy Dille & Associates. NEDO informed Respondent that the Tommy Dille & Associates analysis results were incomplete and vague, and that the inspection conducted by Eden Environmental, Inc. was much more extensive and thorough. Therefore, the debris would have to be cleaned up in accordance with OAC Chapter 3745-20. Additionally, Respondent was informed that he could have a split sample of the debris material that tested positive.

25. On February 9, 2004, NEDO observed that the disposal of the debris from the facility was taking place and in accordance with the requirements of OAC Chapter 3745-20.

26. On February 27, 2004, a Notice of Violation ("NOV") was sent to Respondent stating that the facility contained approximately 4,000 square feet of RACM and it was demolished on January 19, 2004, without removing the RACM, in violation of the requirements of OAC Chapter 3745-20. The NOV requested Respondent to submit, within ten days after receipt of the NOV, any clarification, response, explanation or evidence that pertained to the demolition of the facility. Additionally, a similar NOV was sent to Prime on the same day.

27. On March 12, 2004, Prime sent a letter to NEDO recapping the events of the

demolition of the facility and the disposal of the demolition debris. The recaps confirmed the facts mentioned in the above Findings. Additionally, Prime stated that it was not aware of the hazardous materials at the time of the project and it did not do work that involved hazardous materials. Further, Prime said it had relied on the Tommy Dille & Associates' report provided by Respondent, that stated that the facility's asbestos content was low enough that the building could be demolished without any asbestos removal.

28. Respondent is the "owner and operator" of the facility as defined in OAC Rule 3734-20-01(B)(38). Therefore, Respondent was responsible for submitting an accurate written notice of intention to demolish and for assuring that the facility was thoroughly inspected to determine the presence and amounts of asbestos-containing materials prior to the start of demolition. Respondent failed to comply with these requirements, in violation of OAC Rules 3745-20-02(A) and 3745-20-03(A) and ORC § 3704.05(G). Additionally, Respondent continued to demolish the facility even after being informed of the amount of RACM and the requirements to remove it and to employ other control measures. Respondent failed to comply with the requirements of OAC Rules 3745-20-04(A)(1) and 3745-20-05(B)(2) by failing to remove the RACM prior to the start of demolition operations and by failing to keep the RACM and the asbestos-containing waste material adequately wet until it was collected and contained or treated in preparation for disposal. This omission was also a violation of ORC § 3704.05(G). It should be noted that Respondent started to maintaining the asbestos-containing waste material (i.e., debris) adequately wet on or around January 21, 2004, after being informed by NEDO of the requirement specified in OAC Rule 3745-20-05(B)(2).

29. 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 makes the following Order:

Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA a civil penalty in the amount of two thousand two hundred dollars (\$2,200) in settlement of Ohio EPA's claim for civil penalties which may assessed pursuant to ORC § 3704.06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$2,200. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA

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

A copy of the above check shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio Environmental Protection Agency  
Northeast District Office  
Attn: Dennis Bush  
2110 East Aurora Road  
Twinsburg, Ohio 44087

## **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official check 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 this demolition operation.

## **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  
Northeast District Office  
Attn: Dennis Bush  
2110 East Aurora Road  
Twinsburg, Ohio 44087

and to:

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

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.

#### **IT IS SO ORDERED AND AGREED:**

\_\_\_\_\_  
Joseph P. Koncelik  
Director

\_\_\_\_\_  
Date

#### **IT IS SO AGREED:**

Dimmian Baskharoon

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_

Title