

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY** OHIO E.P.A.

In the Matter of:

DEC 14 2006

ENTERED DIRECTOR'S JOURNAL

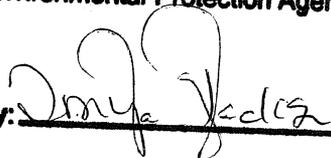
Alpha-Omega Chemical Company : Director's Final Findings
4500 Lee Road, Suite 215 : and Orders
Cleveland, Ohio 44128 :

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

By:  Date: 12-14-06

These Director's Final Findings and Orders ("Orders") are issued to Alpha-Omega Chemical Company ("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 successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facility (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 meanings as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

The Director of the Ohio EPA has determined the following findings:

1. The Regional Air Pollution Control Agency ("RAPCA") acts as an agent of Ohio EPA, Division of Air Pollution Control in Montgomery County.
2. Respondent was hired by Titan Wrecking & Environmental, LLC ("Titan") as the asbestos abatement contractor for the former NIBCO Foundry, 1800 McCall Street, Dayton, Ohio. Respondent is a licensed asbestos abatement contractor and, therefore, is knowledgeable of applicable asbestos removal requirements.
3. On December 10, 2003, Respondent submitted a notification to RAPCA for asbestos abatement. The asbestos abatement involved the removal of approximately

1,130 linear feet of regulated asbestos-containing material ("RACM") in the form of thermal system insulation and 36,000 square feet of Category I non-friable RACM from the former NIBCO foundry. As such, Respondent was required to follow the regulations in Ohio Administrative Code ("OAC") Chapter 3745-20 pertaining to asbestos emission control and disposal. The removal was to take place from December 15, 2003 through December 30, 2003. Subsequent revisions increased the abatement quantity to a total of 1,350 linear feet and 500 square feet of RACM in the form of thermal system insulation and 59,000 square feet of Category II Non-friable RACM in the form of transite. The removal schedule was revised to begin on March 16, 2004 and be complete by May 20, 2004.

4. On March 24, 2004, a RAPCA representative performed a routine inspection of the facility. During the inspection, damaged suspect RACM transite boards were observed above ceiling tiles on the second floor of the building. Respondent stated that this material was not on the asbestos survey and was damaged during asbestos removal activities. RAPCA issued a verbal warning during the inspection that if the transite boards are damaged they must be managed as friable RACM.

5. On April 26, 2004, a RAPCA representative, along with representatives of the Ohio Department of Health ("ODH"), City of Dayton, and Titan performed a post-abatement/pre-demolition inspection of the former NIBCO foundry. Respondent had completed the asbestos abatement and was no longer on site. At the time of the inspection, approximately ninety-five percent of the RACM was to have been removed. Two areas of RACM (roof windows and exterior transite wall) were to remain because access to those areas was limited until partial building demolition was complete. This RACM was to be removed at a later date.

6. During the April 26, 2004 inspection, the RAPCA representative discovered dry, friable RACM in the form of transite, window caulking, thermal system insulation, and fiber board in various areas of the buildings. The amount of asbestos left in place was not able to be quantified. A description of the asbestos that was discovered during the inspection is listed below:

- a. Building C: Dry, friable RACM in the form of thermal system pipe insulation debris observed on the ground under red pipe along north wall, in roofing debris piles, and on the ground under piping at the east end of the building.
- b. Building L: Dry, friable, damaged RACM in the form of transite debris observed on the ground near the divider wall between buildings L&M and on the ground under an existing RACM wall that is to remain in place until demolition occurs. There was also additional RACM thermal system pipe insulation that had not been removed from the northeast wall of the building.
- c. Building N: Dry, friable, damaged RACM in the form of fiberboard debris was observed on the ground and on top of cabinets. RACM window caulking remained in windows that had not been removed from the building.

- d. Building O: Dry, friable, damaged RACM in the form of transite debris was observed on the ground throughout the area both inside and outside of the building. Window frames with dry, brittle, damaged RACM window caulk were observed piled by the south wall of the building.
7. RAPCA collected samples and photographs were taken of all the areas in question.
8. Following the April 26, 2004 inspection, Respondent returned to the facility and removed the remaining RACM.
9. On October 12, 2004, RAPCA sent a Notice of Violation ("NOV") to Respondent outlining rules violated and also sent Findings and Orders that offered a proposed penalty to settle the violations. The NOV cited Respondent for the following violations of the OAC Chapter 3745-20:
 - OAC Rule 3745-20-04 (A) (1) - Failure to remove all RACM prior to demolition.
 - OAC Rule 3745-20-04 (A)(6)(a) - Failure to adequately wet RACM that has been removed.
 - OAC Rule 3745-20-04 (C) - Improper handling of RACM that have been damaged or made friable by demolition, renovation or adjacent stripping operations.
 - OAC Rule 3745-20-05 (A) - Failure to properly dispose of removed RACM in a timely manner.
 - OAC Rule 3745-20-05 (B)(1) - Failure to control visible emissions of RACM.
 - OAC Rule 3745-20-05 (C) - Asbestos waste container violations.
 - OAC Rule 3745-20-05 (G) - Improper control of asbestos waste during transport.
10. On October 26, 2004, RAPCA received a letter from Respondent stating that they were willing to attempt to settle the matter at the local level.
11. On November 12, 2004, a conference call was held between RAPCA and Respondent during which the violations in the NOV were discussed. A mutual resolution could not be reached. Respondent requested that the case be referred to the State for resolution.
12. On February 8, 2005, RAPCA issued a letter to Respondent, Titan, and the City of Dayton stating RAPCA's intent to refer the case to Ohio EPA for resolution.

13. On March 8, 2005, RAPCA received a letter from Respondent along with a proposal of settling the case at the local level for two thousand dollars (\$2,000).

14. On April 14, 2005, RAPCA issued letters to Respondent, Titan, and the City of Dayton stating RAPCA's intent to refer the case to Ohio EPA for resolution. This letter stated that Respondent's \$2,000 monetary proposal is not consistent with violations settled at the local level of similar nature and, therefore, the case will be referred to Ohio EPA for resolution.

15. On April 22, 2005, RAPCA referred the Alpha-Omega case to Ohio EPA. The referral was received on April 29, 2005.

16. In a letter dated September 7, 2006, Respondent alleged an inability to pay the civil penalty proposed by Ohio EPA and submitted documentation in support of this claim. Ohio EPA Fiscal reviewed this documentation and on September 13, 2006, determined that the Respondent was unable to pay the proposed amount, but could pay a lesser amount. Mitigation of the civil penalty was provided by Ohio EPA in response to this determination.

17. 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 four thousand dollars (\$4,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by official checks made payable to "Treasurer, State of Ohio" for three thousand two-hundred dollars (\$3,200) of the total amount, which shall be paid in installments per the following schedule after the effective date of these Orders:

- One thousand dollars (\$1,000) due within 150 days
- One thousand dollars (\$1,000) due within 270 days
- One thousand two hundred dollars (\$1,200) due within 360 days

The official checks 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

2. In lieu of paying the remaining eight hundred dollars (\$800) of civil penalty,

Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$800 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD) Respondent shall tend an official check in the amount of \$800 due within 30 days of the effective date of these Orders. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD, to the above-stated address.

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

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, OH 43216 - 1049

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$800 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, the Respondent's activities at the Facility.

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. 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:

Regional Air Pollution Control Agency
117 South Main Street
Dayton, Ohio 45422
Attn: Sarah Gostomsky

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: John Paulian

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:

Ohio Environmental Protection Agency



Joseph P. Koncelik
Director

Date 12/7/06

IT IS SO AGREED:

Alpha-Omega Chemical Company



Signature

11/27/06
Date

George W. Jackson
Printed or Typed Name

President
Title