

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
MAR - 1 2007

ENTERED DIRECTOR'S JOURNAL

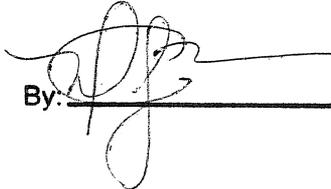
In the Matter of:

Bruns General Contracting, Inc. : Director's Final Findings
3050 Tipp-Cowlesville Road : and Orders
Tipp City, Ohio 45371 :

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:

By:  Date: 3-1-07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Bruns General Contracting, 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 BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the property identified below 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

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a general contracting business located at 3050 Tipp-Cowlesville Road, Tipp City, Ohio.
2. Respondent hired BHE Environmental, Inc. ("BHE"), of 11733 Chesterdale Road,

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Cincinnati, Ohio, to provide oversight during the asbestos abatement activities at the seven residential structures located at 11, 17, and 23 N. Third Street; 22 Fourth Street; 10, 14, and 18 Walnut Street, Tipp City, Ohio. Respondent was hired by Zion Lutheran Church, owner of the Church, located at 11 North 3rd Street, Tipp City, Ohio. Zion Lutheran Church hired the Respondent to oversee the demolition of the seven residential structures for the parking lot expansion project. American Services Group ("ASG"), of Cleves, Ohio, was employed by BHE to first remove asbestos-containing materials from the seven residential structures. The seven buildings were each approximately 1,800 square feet in area, and were planned for demolition for the Church parking lot expansion project. The buildings were a "facility," as defined in OAC Rule 3745-20-01(B)(18). Respondent was an "operator," as defined in OAC Rule 3745-20-01(B)(38).

3. On June 8, 2005, and pursuant to the notification requirements of OAC Rule 3745-20-03(A), the Regional Air Pollution Control Agency ("RAPCA"), Ohio EPA's contractual representative in Miami County, received a notification form from ASG for the asbestos abatement of the facility. The notification indicated that asbestos removal from the facility would be conducted on June 20, 2005 and would be completed on June 28, 2005. Furthermore, the notification indicated that 1,165 square feet of regulated asbestos-containing material ("RACM") and 11,225 square feet of Category II non-friable asbestos material would be removed. The notification was completed, signed and submitted by ASG. ASG was found to be in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G) for failing to submit a notice of intent to perform the asbestos removal portion of the demolition operation at least 10 days prior to beginning such removal.

4. On June 8, 2005, RAPCA received a complaint from a neighbor of the project site, stating that ASG was removing asbestos siding improperly. In response to the complaint, RAPCA inspected the facility on June 22, 2005, and observed work practice violations of OAC Chapter 3745-20 by ASG. ASG was found to be in violation of OAC Rules 3745-20-04 and 3745-20-05, and ORC § 3704.05(G) for the failure to comply with work practice requirements. During the inspection, the RAPCA representative also informed BHE's on-site representative, Mr. David Gregory, that the existing notification did not include demolition, which had been initiated. Additionally, RAPCA informed BHE to inform its client, Respondent, that the demolition contractor would need to submit a notification for the demolition operation.

5. Pursuant to OAC Rule 3745-20-02(B)(1), in part, the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to the owner or operator of a facility being demolished if the amount of regulated friable asbestos materials in such facility is at least 260 linear feet on pipes or at least 160 square feet on other facility components.

6. "Friable asbestos material" is defined in OAC Rule 3745-20-01(B)(20) as any material containing more than one percent, by area, of the forms of asbestos identified in OAC Rule 3745-20-01(B)(3) that hand pressure can crumble, pulverize, or reduce to

powder when dry.

7. "Regulated asbestos-containing materials" is defined in OAC Rule 3745-20-01(B)(41) and includes any Category II non-friable asbestos-containing material ("ACM") 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 regulated by this chapter.

8. During the July 28, 2005, inspection, the RAPCA representative was informed that the Church owner had hired the Respondent to demolish the seven residential structures located at 11, 17, and 23 N. Third Street, 10, 14, and 18 Walnut Street, and 22 Fourth Street, Tipp City, Ohio. Additionally, RAPCA was informed that the Respondent hired BHE to perform pre-demolition asbestos surveys of the facility, prepare instructions to bidders, review bids, manage and oversee abatement work, prepare a complete package of close-out reports with pertinent project records including Ohio Department of Health notifications in which BHE would complete applicable portions of the Ohio EPA and ODH notifications. Since no notification had been received by RAPCA or Ohio EPA from Respondent, Respondent, as the operator in control of the project, was in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G) for failure to file a timely notification of demolition.

9. On March 16, 2005, a Notice of Violation ("NOV") letter was sent to Respondent by certified mail. The NOV cited Respondent with a violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G) for failure to submit a notification at least 10 days prior to the beginning of the demolition operation at this facility.

10. Based upon the above findings, Ohio EPA finds that Respondent violated OAC Rule 3745-20-03(A) and ORC § 3704.05(G) by failing to submit a notification at least 10 days prior to the beginning of the demolition operation at this facility.

11. 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 the 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 seven thousand dollars (\$7,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) 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 five thousand and six hundred dollars (\$5,600) of the total amount. 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

2. In lieu of paying the remaining one thousand and four hundred dollars (\$1,400) of civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$1,400 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$1,400. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address.

3. A copy of each of the above checks 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, Ohio 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 \$1,400 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 by 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:

Regional Air Pollution Control Agency
117 South Main Street
Dayton, Ohio 45422-1280
Attn: Sarah Gostomsky

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman, Manager, 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 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

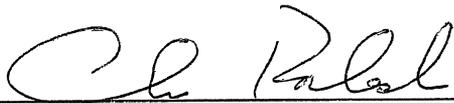
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Chris Korleski
Director

2/27/07
Date

IT IS SO AGREED:

Bruns General Contracting, Inc.



Signature

2/3/07
Date

STEVE BRUNS
Printed or Typed Name

PRESIDENT
Title