

OHIO E.P.A.

AUG 13 2008

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

RTM, Inc.  
5280 W. 161<sup>st</sup> Street  
Brook Park, Ohio 44142

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:  
:

Director's Final Findings  
and Orders

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to RTM, 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 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 is licensed as an asbestos abatement contractor with the Ohio Department of Health and has a business address of 5280 W. 161<sup>st</sup> Street, Brook Park, Ohio. In or about December 2006, Respondent was hired by the City of Hubbard to conduct an asbestos removal for a demolition project at the City of Hubbard Police Station building located at 33 W. Liberty Street, Hubbard, Trumbull County, Ohio. The above-referenced structure constituted a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18). Respondent was an "operator" as defined by OAC Rule 3745-20-01(B)(39).

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.

By:  Date: 8-13-08

2. Pursuant to OAC Rule 3745-20-02(B)(1), the owner or operator of a demolition project must comply with the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05 if the combined amount of regulated asbestos-containing material in a facility being demolished is at least 260 linear feet on pipes or at least 160 square feet on other facility components, or at least 35 cubic feet off facility components where the length or area could not be measured previously. Regulated asbestos-containing material ("RACM") is as defined in OAC Rule 3745-20-01(B)(42).

3. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition project to submit a written notice of intention to demolish ("notification") to Ohio EPA at least ten days prior to the start of the demolition if the project is as described in OAC Rule 3745-20-02(B)(1). ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA. OAC Chapter 3745-20 was adopted by the Director of Ohio EPA.

4. From December 4 through 19, 2006, Respondent demolished the City of Hubbard Police Station and removed 190 linear feet of aircell on pipes and 3,832 square feet of surfacing plaster without providing a notification to Ohio EPA or M-TAPCA at least 10 days prior to the start of the demolition project, in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G).

5. On December 28, 2006, the Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA"), a contractual representative of Ohio EPA in Trumbull County, learned of the demolition and debris removal of the former City of Hubbard Police Station building in Hubbard, Trumbull County.

6. On January 25, 2007, M-TAPCA issued a notice of violation ("NOV") letter to Respondent for the notification violation concerning the asbestos removal between December 4 through 19, 2006. In this NOV, M-TAPCA requested Respondent to submit a complete notification within three days upon receipt of the NOV.

7. On January 30, 2007, M-TAPCA received a complete notification for the above-referenced asbestos removal project.

8. On April 2, 2007, M-TAPCA received a copy of the asbestos survey which was performed by Professional Service Industries, Inc. on August 15, 2006. The asbestos survey indicated that the aircell on pipes and surfacing plaster contained from 3 to 10% chrysotile asbestos.

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. Respondent shall pay the amount of nine thousand dollars (\$9,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.06. 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 seven thousand and two hundred dollars (\$7,200) 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  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining one thousand and eight hundred dollars (\$1,800) of civil penalty to Ohio EPA, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$1,800 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). 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 \$1,800. The official check shall be submitted to Brenda Case, 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 James A. Orlemann, Assistant Chief, SIP Development and Enforcement, 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 timeframe in Order 2, Respondent shall immediately pay to Ohio EPA \$1,800 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 demolition of this 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 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;

Mahoning-Trumbull Air Pollution Control Agency  
Oakhill Renaissance Place  
2<sup>nd</sup> Floor - Room 25  
345 Oak Hill Avenue  
Youngstown, Ohio 44502  
Attention: William Slanina

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
50 West Town Street, Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: 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 specially 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

  
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Chris Korleski  
Director

8/6/08  
Date

**IT IS SO AGREED:**

RTM, Inc.

  
\_\_\_\_\_

Signature

7/11/08  
Date

ENZO Maddalena  
Printed or Typed Name

Owner  
Title