OHIO E.P.A.

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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Tuscarawas County YMCA 600 Monroe Street Dover, Ohio 44266	: : :	Director's Final Findings and Orders

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: 4 2.10

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Tuscarawas County YMCA ("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

The Director of Ohio EPA makes the following findings:

1. Tuscarawas County YMCA ("Respondent"), whose business address is 600 Monroe Street, Dover, Ohio 44266, is the owner of the structure located at that address. In late 2007, Respondent conducted a major renovation of the structure, which included the removal of two boilers and associated piping in the boiler room of the structure. The structure constituted a "facility," as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18).

2. Respondent is an "owner or operator," as defined in OAC Rule 3745-20-01(B)(39)(a), of the renovation of the boiler room at the facility.

3. In early December, Respondent had dismantled the two boilers with piping and associated asbestos at the facility and placed the debris in a dumpster at the facility around December 27, 2007. Samples taken of material covering the boilers and around associated piping showed that the materials contained regulated asbestos-containing material ("RACM"), as defined in OAC Rule 3745-20-01(B)(42).

4. On or about December 3, 2007, the boilers and associated piping were removed from the facility by M-COR, Inc. ("M-COR"), a contractor hired by Respondent. An estimated 61 cubic feet of RACM was removed from the facility. About 59 cubic feet of that amount was taken to the Warmington Road Recycling Center, a scrap yard, located at 780 Warmington Street SW, Navarre, Ohio. Roughly 2 cubic feet of that amount remained at the facility. Since the amount of RACM exceeded 35 cubic feet off of facility components, this renovation project was subject to the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05, pursuant to the provisions of OAC Rule 3745-20-02(B)(4). In removing the RACM as part of the boiler removal, Respondent failed to comply with the notification and work practice requirements of those rules, in violation of those rules.

5. On January 17, 2008, Ohio EPA sent a notice of violation ("NOV") letter to Respondent in reference to the renovation of Respondent's facility.

6. Final cleanup of the boiler room at the facility was completed by Cardinal Environmental on January 31, 2008.

7. On February 4, 2008, Ohio EPA received a response to the NOV, which included documentation that the RACM associated with the boilers and piping had been removed to an approved asbestos waste disposal facility. The materials had initially been disposed of at a recycling center, the Warmington Road Recycling Center.

8. As a result of its removal of the boiler and associated boiler equipment and piping on or about December 3 to 14, 2007, Respondent committed the following violations.

Failure to have the facility inspected for the presence of asbestos by a certified asbestos hazard evaluation specialist prior to beginning any renovation operation:

9. OAC Rule 3745-20-02(A), in part, requires each owner or operator of any renovation operation to have the affected facility or part of the facility, where a renovation operation will occur, thoroughly inspected by a certified asbestos hazard evaluation specialist, in accordance with OAC Rule 3701-34-02 prior to the commencement of the renovation operation for the presence of asbestos, including Category I and Category II nonfriable asbestos-containing material.

10. Prior to but at least beginning on December 13, 2007, Respondent failed to have the facility inspected for asbestos by a certified asbestos hazardous evaluation specialist prior to commencement of the renovation, in violation of OAC Rule 3745-20-02(A).

11. On January 25, 2008, Ohio EPA received a copy of the asbestos survey for the renovation at the Facility including the boiler room.

Failure to submit written notification to Ohio EPA at least 10 days prior to beginning the renovation operation:

12. OAC Rule 3745-20-03(A), in part, requires each owner or operator of any renovation operation described in OAC Rule 3745-20-02(B)(4) to provide the Director of Ohio EPA with written notice of intention to renovate at least ten working days before the beginning of any renovation operation.

13. Prior to but at least beginning on December 13, 2007, Respondent failed to notify Ohio EPA of the renovation activities at least 10 days prior to beginning the renovation, in violation of OAC Rule 3745-20-03(A).

Failure to have a trained authorized representative present at the location of the renovation operation:

14. OAC Rule 3745-20-04(B)(1), in part, prohibits any regulated asbestos-containing material from being stripped, removed, or otherwise handled or disturbed at a facility regulated by OAC Chapter 3745-20 unless at least one authorized representative, trained in the provisions of OAC Chapter 3745-20 and the means of complying with them, is present at the location of operations.

15. Prior to but at least beginning on December 14, 2007, and continuing until December 18, 2007, Respondent failed to have an authorized representative, trained in the asbestos regulations and means of complying with them, present on site, in violation of OAC Rule 3745-20-04(B)(1).

Failure to adequately wet the materials and ensure that the materials remain adequately wet until collected and contained or treated in preparation for disposal:

16. OAC Rule 3745-20-04(A)(6)(a), in part, requires each owner or operator of a renovation operation subject to this rule, for all regulated asbestos-containing material including material that has been removed or stripped, to adequately wet the materials and ensure that the materials remain adequately wet until collected and contained or treated in preparation for disposal in accordance with OAC Rule 3745-20-05.

17. Prior to but at least beginning on December 13, 2007 and continuing until January 31, 2008, Respondent failed to adequately wet the RACM that was removed or stripped and ensure the RACM remains adequately wet until collected and contained for disposal, in violation of OAC Rule 3745-20-04(A)(6)(a).

Failure to deposit all asbestos-containing waste material as soon as is practical by the waste generator at an approved disposal facility:

18. OAC Rule 3745-20-05(A), in part, requires that all asbestos-containing waste material from an affected facility be deposited as soon as is practical by the waste generator at (a) a waste disposal site in Ohio operated in accordance with the provisions of OAC Rule 3745-20-06 or (b) a waste disposal site not in Ohio operated in accordance with the provisions of 40 CFR 61.154, or (c) a site that converts RACM and asbestos-containing waste material into nonasbestos material in accordance with the provisions of OAC Rule 3745-20-13.

19. Prior to but at least beginning on December 13, 2007, and until January 23, 2008, Respondent disposed of asbestos-containing waste material at the Warmington Road Recycling facility in Ohio, which is not a waste disposal site operated in accordance with the provisions of OAC Rule 3745-20-06, in violation of OAC Rule 3745-20-05(A).

Failure to use one of the methods listed in the rule for the control of visible emissions during handling of asbestos-containing waste material:

20. OAC Rule 3745-20-05(B), in part, requires each owner or operator of any renovation operation subject to this rule to use one of the methods specified in paragraphs (B)(1) to (B)(4) of this rule for the control of visible emissions during the collection, processing, packaging, transporting, or deposition of any asbestos-containing waste material.

21. Prior to but at least beginning on December 13, 2007 and continuing until January 31, 2008, Respondent failed to use one of the methods specified in OAC Rule 3745-20-05(B) to control visible emissions , primarily the failure to keep asbestos-containing waste material adequately wet at all times during and after demolition, and handling, transport, and disposal at an active waste disposal site, in violation of OAC Rule 3745-20-05(B).

Failure to keep waste shipment records:

22. OAC Rule 3745-20-05(E), in part, requires each waste generator and owner or operator of a waste disposal site to maintain waste shipment records that are legible, complete, signed and dated by the waste generator and waste disposal site operator and contain the items listed in such rule.

23. Prior to but at least beginning on December 13, 2007 and continuing until January 23, 2008`, Respondent failed to keep waste shipment records for the asbestos-containing waste material taken from the facility to the Warmington Road Recycling facility, in violation of OAC Rule 3745-20-05(E).

Failure to comply with State law by violating the rules of OAC Chapter 3745-20 as shown above:

24. ORC § 3704.05(G) states, in part, that no person shall violate any rule adopted by the Director of Ohio EPA, pursuant to ORC § 3704.03. OAC Chapter 3745-20 was adopted by the Director pursuant to ORC § 3704.03.

25. Respondent violated ORC § 3704.05(G) by violating the rules identified in the above findings.

26. 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 eight thousand dollars ($8,000) 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 six thousand dollars ($6,000) 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 two thousand dollars ($2,000) of civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $2,000 to Ohio EPA's Clean Diesel School Bus Program 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 $2,000. 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 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 time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA $2,000 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 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:

Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attn: Steve Lowry

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: 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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency

Chris Korleski
Director

Date 3/31/10

AGREED:

Tuscarawas County YMCA

Signature

Date 3/25/10

KEITH A. LANDS
Printed or Typed Name

EXECUTIVE DIRECTOR
Title