

OHIO E.P.A.

NOV - 1 2011

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Selvey's Dirt Works, Ltd.
P.O. Box 53
Clyde, Ohio 43410

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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 Selvey's Dirt Works, Ltd. ("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 makes the following findings:

1. Famous Realty of Cleveland, Inc. ("Famous") is the owner of the Apex Building, which is located at 1623 1st Street in Sandusky, Erie County, Ohio. Respondent was hired by Famous to demolish the front three bays of the Apex Building.

2. The Apex Building is a "facility" as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18), and the project was a "demolition" as defined in OAC Rule 3745-20-01(B)(13).

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.

Dmya Cassiter Date: 11-1-11

3. Respondent was an "owner or operator," as defined in OAC Rule 3745-20-01(B)(39)(a), of the demolition project.

4. OAC Rule 3745-20-02(A) requires each owner or operator of any demolition operation to have the affected facility or part of the facility, where a demolition operation is to occur, thoroughly inspected by a certified asbestos hazard evaluation specialist prior to the commencement of the demolition for the presence of asbestos, including category I and category II nonfriable asbestos-containing material as defined in OAC Rule 3745-20-01(B)(9) and (B)(10).

5. An asbestos survey of the Apex Building was conducted in February 2002 and identified the following "regulated asbestos-containing material" ("RACM"), as defined in OAC Rule 3745-20-01(B)(42), in front of the building and in the boiler house:

Boiler house: 375 square feet of boiler insulation and 185 square feet of tank insulation.
Piping on first floor: 2,075 linear feet of pipe insulation with cementitious fittings, of which approximately 1,000 linear feet of pipe insulation is in the front three bays of the building.

6. Since the amount of RACM in the front three bays of the facility exceeded the threshold level of 260 linear feet on pipe and pursuant to OAC Rule 3745-20-02(B)(1), the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 applied to the owner or operator of this demolition operation.

7. On November 15, 2007, and pursuant to the notification requirements of OAC Rule 3745-20-03(A), Affiliated Environmental Services ("AES") submitted to Ohio EPA a notification of intent to perform an asbestos abatement at the facility. The amount of RACM to be removed was identified as 1,000 linear feet on pipes and the dates for removal were identified as November 28 through 30, 2007. Only the asbestos in the front three bays of the facility was to be removed, and did not include the boiler house which was also a part of the front of the building.

8. On November 20, 2007, and pursuant to the notification requirements of OAC Rule 3745-20-03(A), Respondent submitted to Ohio EPA a notification of intent to perform a demolition of the facility from December 5, 2007 through June 2008. This notification identified the site location for demolition as "Front of the Building" and was not specific concerning demolition of the boiler house portion of the building.

9. From December 3 through 5, 2007, AES removed approximately 1,000 linear feet of pipe insulation (RACM) from the front of the building, excluding the boiler house.

10. On or about June 12, 2008, the entire front of the building, including the boiler house, had been demolished by Respondent, with 560 square feet of boiler and tank insulation and an unknown amount of pipe insulation (RACM) still inside of the boiler house, and only rubble remained at the site. Samples of insulation and paint were collected by Ohio EPA personnel from the debris pile near the previous location of the boiler, and subsequent analyses indicated the presence of asbestos above the threshold level for regulation.

11. ORC § 3704.05(G) prohibits the violation of any rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. OAC Chapter 3745-20 was adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704.

Failure to Submit Notification of Intent to Demolish a Facility Prior to Beginning Demolition:

12. OAC Rule 3745-20-03(A), in part, requires each owner or operator of any demolition operation described in OAC Rule 3745-20-02(B)(1) to provide the Director of Ohio EPA with written notice of intention to demolish a facility at least ten working days before the beginning of any demolition operation.

13. In or about June 2008, Respondent began demolition of the boiler house of the facility without submitting a notification to Ohio EPA, in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G).

Failure to Remove RACM Prior to Beginning Demolition of a Facility:

14. OAC Rule 3745-20-04(A)(1), in part, requires each owner or operator of a demolition operation to whom this rule applies, to remove all RACM from a facility being demolished before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal.

15. Respondent failed to remove all RACM from the boiler house before beginning demolition of the front of the structure in or about June 2008, in violation of OAC Rule 3745-20-04(A)(1) and ORC § 3704.05(G).

Failure to Have Trained Representative Present at the Site During Demolition:

16. OAC Rule 3745-20-04(B)(1), in part, prohibits any RACM to be 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, is present at the location of the demolition.

17. Respondent allowed RACM to be handled or disturbed during the demolition of the boiler house at the Apex Building in or about June 2008 without having at least one authorized representative, trained in the provisions of OAC Chapter 3745-20, present at the location of such demolition, in violation of OAC Rule 3745-20-04(B)(1) and ORC § 3704.05(G).

Failure to Keep Asbestos-Containing Waste Material Adequately Wet After Demolition Where RACM Was Not Removed Prior to Demolition:

18. OAC Rule 3745-20-05(B)(2) requires each owner or operator of a subject demolition operation, where asbestos was not removed prior to demolition, to keep asbestos-containing waste material adequately wet at all times during and after demolition and during handling, loading, transport and disposal at an active waste disposal site.

19. Respondent failed to keep asbestos-containing waste material adequately wet during and after demolition of this portion of the facility where asbestos was not removed prior to demolition, in violation of OAC Rule 3745-20-05(B)(2) and ORC § 3704.05(G).

20. On June 16 and June 17, 2008, an Ohio EPA inspector returned to inspect the demolition project. During the inspection, Ohio EPA found dry, friable asbestos-containing waste material still laying on the site, in continued violation of OAC Rule 3745-20-05(B)(2) and ORC § 3704.05(G).

21. On June 18, 2008, an Ohio EPA inspector spoke with Respondent's representative regarding the current findings at the Apex building demolition site. Respondent was informed that the presence of asbestos in the debris requires the debris pile to be maintained adequately wet.

22. On June 19 and 20, 2008; and July 2, 7, and 11, 2008, an Ohio EPA inspector returned to the site and found debris partially covered and dry, in continued violation of OAC Rule 3745-20-05(B)(2) and ORC § 3704.05(G).

23. After the Ohio EPA inspector visited the facility on June 20, 2008, the demolition project was halted and Partners Environmental Consulting, Inc. was hired by Famous to oversee the cleanup and GCS Industrial Services, Ltd. was hired to perform an asbestos abatement. The final asbestos abatement was completed on August 21, 2008.

24. On June 23 and July 9, 2008, notice of violation ("NOV") letters were sent to Respondent for the violations of OAC Chapter 3745-20.

25. On June 29, 2011, Ohio EPA sent Respondent proposed Director's Final Findings and Orders, which contained a civil penalty of \$20,700, to attempt to address the violations administratively. On July 20, 2011, Ohio EPA received financial documents from the Respondent that showed Ohio EPA that he was unable to pay the entire civil penalty.

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 relation to benefits to the people of the State be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of two thousand and five hundred dollars (\$2,500) in administrative penalties pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$2,500. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the following address:

Ohio EPA
Office of Fiscal Administration
50 West Town Street
Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

2. A copy of the check shall be sent to Thomas Kalman, Acting 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

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, 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 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 EPA
Northwest District Office
347 North Dunbridge Road
Bowling Green, Ohio 43402-9395
Attn: Tom Sattler

and to:

Ohio EPA
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman, Acting Assistant Chief,
SIP Development and Enforcement

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

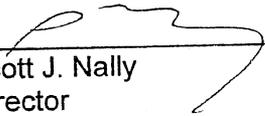
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



Scott J. Nally
Director

10/18/11

Date

AGREED:

Selvey's Dirt Works, Ltd.



Signature

10-14-2011

Date

G Selvey

Printed or Typed Name

Owner

Title