



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

February 13, 2012

CERTIFIED MAIL

Mr. Robert R. Wantz, Esq.
107 Water Street
Chardon, Ohio 44024 -

Re: Final Findings and Orders for: Asbestos
Emissions Control Standard violations by
Donald Haueter, d.b.a. Haueter
Construction, Inc., regarding the
demolition of the former VFW building at
752 Water Street, Chardon, Ohio

Dear Mr. Wantz:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date that is stamped on the first page of the Orders.

Sincerely,

Thomas J. Kalman, P.E.
Acting Assistant Chief, SIP Development and Enforcement
Division of Air Pollution Control

TJK/ef

xc: Carol Hester, PIC
Erica Fetty, DAPC
Akia Smith, Fiscal Office (Agency # 20)
Donald L. Vanterpool, Legal Office
Tan Tran, DAPC
Bert Mechenbier, Lake Co.
Donald Haueter

OHIO E.P.A.
FEB 13 2012
DIRECTOR'S JOURNAL

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Donald Haueter d.b.a.
Haueter Construction, Inc.
Grant Street Extension
Chardon, Ohio 44024

:
:
:
:

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 Donald Haueter d.b.a. Haueter Construction, 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 or heirs in interest liable under Ohio law.

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. Veterans of Foreign Wars Post 6519 ("VFW Post 6519") is the owner of a former abandoned post building which was located at 752 Water Street, Chardon, Geauga County, Ohio, and was demolished in 2007 by Respondent and at the request of VFW Post 6519. The above-referenced building 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). The demolition of the building was a "demolition," as defined in OAC Rule 3745-20-01(B)(13).

2. The Lake County General Health District ("LCGHD"), a contractual representative of Ohio EPA in Geauga County, first learned about the demolition project through an anonymous complaint that it received on March 17, 2008. Further, through its investigation, LCGHD discovered that the above-referenced facility had already been demolished and the debris removed sometime in late summer of 2007. In addition, LCGHD was able to obtain a copy of the asbestos survey dated August 18, 2004 and prepared by EA Group for Roger Provost of VFW Post 6519, as required pursuant to OAC Rule 3745-20-02(A). Based on the information from this survey, the facility contained approximately 13,124 square feet of plaster which was classified as regulated asbestos-containing material ("RACM") as defined in OAC Rule 3745-20-01(B)(42). In addition, the facility contained the following amounts of Category I non-friable asbestos-containing material: 31 square feet of 9-inch by 9-inch yellow floor tile and mastic, 1,698 square feet of 12-inch by 12-inch off-white floor tile and mastic, and 2,456 square feet of roofing.

3. 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 RACM 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.

Failure to comply with the notification requirements

4. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition operation involving a facility to submit a written notice of intention to demolish ("Notification") to Ohio EPA at least ten working days prior to the start of the demolition if the project is as described in OAC Rule 3745-20-02(B)(1).

5. Respondent performed the demolition of the facility and failed to submit a Notification to Ohio EPA at least ten working days prior to the start of the demolition operation, in violation of OAC Rule 3745-20-03(A).

Failure to completely remove RACM before any breakup of the materials

6. OAC Rule 3745-20-04(A)(1) requires, in part, the owner or operator of a subject demolition as described in OAC Rule 3745-20-01(B)(13) to remove all RACM from a facility being demolished before any activity begins that would breakup the materials, unless as otherwise provided in that rule.

7. Respondent failed to completely remove RACM before any breakup of the materials due to the demolition, in violation of OAC Rule 3745-20-04(A)(1).

Failure to comply with the waste disposal requirements

8. OAC Rule 3745-20-05(A) requires, in part, the owner or operator of a subject demolition operation to dispose of asbestos-containing waste material as soon as practicable and only at the disposal sites identified in the rule.

9. Respondent improperly disposed of the asbestos-containing waste material from the above-referenced demolition, in violation of OAC Rule 3745-20-05(A). According to LCGHD, the asbestos-containing waste material from the demolition was deeply buried under ground at the site in 2007, and the site is fully covered by thick grass. Therefore, the site is now classified as an "inactive waste disposal site," as defined in OAC Rule 3745-20-01(B)(27), and is subject to the standard requirements of OAC Rule 3745-20-07.

Violations of ORC § 3704.05(G)

10. ORC § 3704.05(G) prohibits any person from violating 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.

11. The OAC rule violations identified in the above findings also constitute violations of ORC § 3704.05(G).

12. On July 29, 2010, Ohio EPA sent proposed Orders to Respondent to attempt an administrative settlement of the above-mentioned violations. The proposed Orders included a civil penalty demand of \$88,170.

13. Based on Respondent's current financial condition, Ohio EPA has determined that Respondent is unable to pay any amount of penalty; therefore, no penalty has been assessed in these Orders.

14. 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 Order:

From the effective date of these Orders, Respondent shall comply with the requirements specified in OAC Chapter 3745-20 (Asbestos Emission Control Standards) in any subject demolition or renovation operation conducted in the State of Ohio.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify

Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be signed and submitted by Respondent to Ohio EPA.

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:

Lake County General Health District
33 Mill Street
Painesville, Ohio 44077
Attention: Bert Mechenbier

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 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

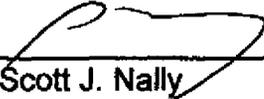
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

2/9/12
Date

AGREED:

Donald Haueter, d.b.a. Haueter Construction, Inc.



Signature

1-30-12
Date