**BEFORE THE**

**OHIO ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.

DEC 28 2007

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

| | | |
|---|---|---|
| Dacar Industries, Inc.<br>1007 McCartney Street<br>Pittsburgh, PA 15220 | :<br>:<br>: | 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 the Dacar Industries, 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 heirs 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 has determined the following findings:

1. Dacar Industries, Inc., of 1007 McCartney Street in Pittsburgh, Pennsylvania, owns a commercial building ("facility") located at 1798 Michigan Avenue, East Liverpool, Ohio. Respondent contracted with Fred Lucas, address unknown, to demolish a portion of this commercial building.

2. On July 7, 2005, Northeast District Office of Ohio EPA ("NEDO") observed an ongoing demolition at the Respondent's facility located at 1798 Michigan Avenue, East Liverpool, Ohio. The single story offices at the front of the building, which were approximately 480 square feet in area, were being demolished. The offices were an addition to the original building. The offices were a "facility," as defined in OAC Rule 3745-20-01(B)(18). Respondent was an "owner or operator," as defined in OAC Rule 3745-20-01(B)(38).

3. At the time of the inspection, Fred Lucas was working at the location, and the inspector from NEDO took photographs of the site, and noted the presence of some demolition debris that contained suspected asbestos-containing material. There was also some suspected asbestos-containing materials in the partially demolished offices of the building. Additionally, Mr. Lucas stated that the area being demolished consisted of offices located at the front of the building and that the demolition began on June 26, 2005. Mr. Lucas also informed the NEDO representative that none of the materials were removed from the site before demolition of the offices.

4. Pursuant to OAC Rule 3745-20-02(A), each owner or operator of any demolition or renovation operation shall have the affected facility or part of the facility where a demolition or renovation operation will occur thoroughly inspected prior to the commencement of the demolition or renovation for the presence of asbestos.

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 combined amount of regulated friable asbestos material in such facility is at least 260 linear feet on pipes or at least 160 square feet on other facility components.

6. Pursuant to OAC Rule 3745-20-02(B)(2), in part, the requirements of OAC Rule 3745-20-03 apply to the owner or operator of a facility being demolished if the combined amount of regulated friable asbestos material is less than 260 linear feet on pipes and less than 160 square feet on other facility components, and less than 35 cubic feet of facility components where the length or area could not be measured previously or if there is no friable asbestos-containing material in a facility being demolished.

7. Pursuant to 3745-20-03(A), in part, each owner or operator shall provide the Ohio EPA field office having jurisdiction in the county where the demolition is to occur, with written notice of intention to demolish a facility at least 10 working days before beginning any demolition operation.

8. "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.

9. "Regulated asbestos-containing materials" is defined in OAC Rule 3745-20-01(B)(41) and includes any friable asbestos material or 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.

10. On July 13, 2005, NEDO inspected the site again. At the time of the inspection, NEDO collected a number of samples for analysis. Six (6) samples of suspected asbestos-containing material were taken from the demolition debris. The samples were submitted to an accredited laboratory for analysis. The sample results indicate that the non-friable roofing material contained chrysotile asbestos and was above the 1% threshold level and, therefore, met the definition of "Category II non-friable asbestos material" in OAC Rule 3745-20-01(B)(10).

11. On September 7, 2005, the NEDO representative spoke with Diane Morrow, Respondent's representative, and she informed NEDO that Respondent was not aware that a demolition notification was required and that there was another structure on the property that had been demolished without notification to Ohio EPA.

12. Ohio EPA finds the Respondent in violation of OAC Rules 3745-20-02(A) and 3745-20-03(A), and ORC § 3704.05(G), since no asbestos inspection was performed and no notification was submitted to Ohio EPA prior to beginning demolition of the structure.

13. On September 16, 2005, NEDO issued a Notice of Violation ("NOV") letter to Respondent for violations of Ohio's "Asbestos Emission Control Rules" in OAC Chapter 3745-20, and the National Emission Standards for Asbestos at 40 CFR 61.140, discovered during the inspections on July 7 and 13, 2005. The violations cited in the NOV included OAC Rules 3745-20-02(A) and 3745-20-03(A), and ORC § 3704.05(G). The NOV requested that Respondent submit a written response to NEDO within ten (10) days, including a complete "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form, copies of any asbestos survey that may have been conducted inside the structure prior to demolition, and any clarifications or evidence pertaining to the violations listed in the NOV.

14. In response to the NOV, Respondent stopped all work on the demolition project and sent a response letter to Ohio EPA. On September 29, 2005, NEDO received an asbestos notification postmarked on September 29, 2005, which stated the demolition dates will be determined based on the results of the asbestos survey pending.

Additionally, the letter stated the Respondent was not aware of the requirements of OAC Chapter 3745-20, and the National Emission Standards for Hazardous Air Pollutants for Asbestos, Subpart M, cited in the NOV. The notification submitted to Ohio EPA was considered incomplete since demolition date, removal contractor information, dates of ACM removal, waste transporter, and waste disposal information was missing from the form.

15. According to the response letter Ohio EPA received from Respondent, Respondent was planning on getting an asbestos survey for the demolished building and filing the proper documentation before the work is resumed.

16. In July 2006, NEDO observed the debris from the facility, except for the roofing materials, was cleared and that the main portion of the building was still in use. Additionally, NEDO observed that the roofing materials were still on-site, in large plastic-lined crates. Respondent did not inform NEDO that debris removal was to take place.

17. In a FAX to NEDO dated September 15, 2006, Respondent submitted copies of an internal memo dated April 25, 2006, and sampling results for samples taken from the debris on February 12, 2006. The sampling results from PSI, Inc. in Pittsburgh, Pennsylvania indicated that only the roofing material contained any asbestos. The roofing material was a Category II non-friable asbestos-containing material, with 5 percent chrysotile asbestos content. As a result, the memo indicated that cleanup of the site could proceed with the roofing material being disposed at A & L Salvage in or near Lisbon, Ohio.

18. 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 four thousand eight hundred and seventy-three dollars ($4,873) in two monthly payments of $2,436.50 each, in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. The payments shall be due pursuant to the following schedule:

first payment of $2,436.50 due within 30 days after the effective date of these Orders; and second payment of $2,436.50 due within 60 days after the effective date of these Orders.

Each of the above payments to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for $2,436.50. Each 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. 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

## 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:

Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: Darren Machuga

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
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

Date 12/26/07

**IT IS SO AGREED:**

**Dacar Industries, Inc.**

Signature

Date 12/12/07 (Second execution of agreement)

James R. Datesh
Printed or Typed Name

President
Title