

OHIO E.P.A.

FEB 22 2008

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Total Environmental Services, LLC :  
1950 Clinton Street :  
Toledo, Ohio 43607 :

Director's Final Findings  
and Orders

Respondent

### PREAMBLE

It is agreed by the parties hereto as follows:

#### I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Total Environmental Services, LLC ("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 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

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent, an Ohio limited liability company, incorporated as a business with the Ohio Secretary of State, and located at Clinton Street, Toledo, Lucas County, Ohio, is licensed with the Ohio Department of Health as an asbestos abatement contractor.

2. Ohio EPA's Northeast District Office ("NEDO"), Division of Air Pollution Control ("DAPC") in Twinsburg, Ohio is responsible for administration of OAC Chapter 3745-20 in its jurisdiction.

3. "Facility" as defined by OAC Rule 3745-20-01(B)(18) means, in part, any institutional, commercial, public, industrial or residential structure, installation, or building, excluding residential structures having four or fewer dwelling units.

4. "Friable asbestos material" as defined by OAC Rule 3745-20-01(B)(20) means, in part, any material containing more than 1 percent asbestos by area that hand pressure can crumble, pulverize or reduce to powder when dry.

5. "Regulated asbestos-containing material" ("RACM") as defined by OAC Rule 3745-20-01(B)(42) means, in part, any friable asbestos material and any Category I or Category II asbestos-containing materials ("ACM") that will become friable during the course of the renovation operations.

6. "Renovation" as defined by OAC Rule 3745-20-01(B)(44) means, in part, altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component.

7. "Owner or operator" as defined by OAC Rule 3745-20-01(B)(39) means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation or both.

8. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-20 was adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704.

9. OAC Rule 3745-20-04(A)(6) states, in part, that, for all RACM that has been removed or stripped from a facility, the RACM shall be adequately wet to ensure that such RACM remains adequately wet until collected and contained or treated in preparation for disposal pursuant to OAC Rule 3745-20-05.

10. OAC Rule 3745-20-05(B)(1) states, in part, that each owner or operator of any subject renovation operation shall wet and seal all asbestos-containing waste material while wet in durable leak-light containers or wrapping.

11. The Ohio Agricultural Research & Development Center located at 1551 Thorne Road, Wooster, Wayne County, Ohio, is owned by The Ohio State University Office of Planning and Development ("OSU") of 400 Class Building, 2009 Milikin Road, Columbus, Franklin County, Ohio. The building ("Gourley Hall") at this center is a "facility" as defined in OAC Rule 3745-20-01(B)(18).

12. On December 23, 2005, Respondent submitted a notification of demolition and renovation form to NEDO for a renovation project which involved, in part, the removal of 160 linear feet of RACM in the form of pipe insulation and 260 square feet of RACM in the form of acoustical ceiling plaster from the building. The RACM was going to be removed from the building and renovation performed from January 9 through April 5, 2006. Numerous revised notifications were subsequently submitted to NEDO, the last three of which NEDO received on January 20, 27 and 30, 2006, for the abatement of 580 linear feet of RACM in the form of pipe insulation and 8,000 square feet of RACM in the form of acoustical ceiling plaster. Each of the last three notifications indicated that the asbestos abatement and renovation would take place from January 30 through April 5, 2006.

13. Since this project constituted a "renovation," as defined in OAC Rule 3745-20-01(B)(44) and the amount of RACM exceeded 260 linear feet on pipes or 160 square feet on facility components, this project was subject to the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05.

14. Respondent was an "operator," as defined in OAC Rule 3745-20-01(B)(39), of the asbestos removal portion of this renovation operation.

15. On February 15, 2006, two NEDO inspectors visited the facility for inspection. The inspectors observed at least one hundred (100) disposal bags, labeled as containing asbestos waste, in a roll-off located outside at the rear end of the building. Three bags were opened at random, and the inspectors found the contents to be dry. No puddling at the bottom of the bags, and no moisture or condensation, were felt on the inside lining of the bags. The inspectors found the surface of the material to show very little, if any, discoloration from wetting. Samples of material were obtained from each of the three bags and sent to EA GROUP, located at 7118 Industrial Park Blvd., Mentor, Ohio, for analysis. The analysis results dated February 23, 2006, showed that two of the samples contained 10% chrysotile asbestos each (i.e., greater than the regulatory threshold of 1% chrysotile asbestos). The on-site supervisor, Mr. Shawn Tompkins, informed the inspectors that the roll-off contained all of the abated acoustical ceiling plaster from the east half of the first floor, and that the abatement in this area started on February 13, 2006. Based on the "description of work" by KRRRA, this area consisted of 2,000 square feet of acoustical ceiling plaster, or 25% of the total 8,000 square feet that was to be abated. Respondent's failure to adequately wet RACM that had been removed or stripped and ensure such RACM remained wet until collected for disposal constituted a violation of OAC Rule 3745-

20-04(A)(6). Furthermore, Respondent's failure to wet asbestos-containing waste material prior to sealing in bags constituted a violation of OAC Rule 3745-20-05(B)(1). These violations also constituted violations of ORC § 3704.05(G).

16. The inspectors informed Mr. Tompkins that all the contents of the asbestos disposal bags would have to be re-wetted, and observed this being conducted prior to their departure from the premises.

17. On February 28, 2006, NEDO sent a notice of violation ("NOV") letter to Respondent due to the results of the February 15, 2006 inspection. The NOV in part, cited Respondent for the violations of OAC Rule 3745-20-04(A)(6) for failure to adequately wet RACM that had been removed or stripped and ensure such ACM remained wet until collected for disposal, and OAC Rule 3745-20-05(B)(1) for failure to ensure asbestos-containing waste material remained wet and be sealed in a durable leak-tight container during collection for disposal. Therefore, NEDO requested that Respondent submit the following within ten days after the receipt of the letter:

- a. a copy of the "Scope of Work" Respondent was contracted to perform at the facility (Gourley Hall);
- b. a copy of any facility survey or inspection report Respondent may have in its possession;
- c. copies or result of any final clearance air monitoring conducted in the abatement areas after February 9, 2006;
- d. the date the waste disposal bags found in the roll off behind the facility (Gourley Hall) on February 9, 2006, were reinspected and rewetted;
- e. copies of the waste shipment records for disposal of the asbestos-containing waste material that was generated at the site on and after February 15, 2006; and
- f. any clarifications, explanations or evidence on Respondent's behalf, pertaining to these violations.

18. In response to NEDO's February 28, 2006 NOV, Respondent, in its letter dated March 10, 2006 (received by NEDO on March 13, 2006), supplied the requested information. Respondent denied all violations and claimed that during the asbestos abatement, the ACMs that were stripped were adequately wetted during stripping and when bagged.

19. In conclusion, the Director finds that Respondent violated the following OAC Rules on February 13 through 15, 2006: (1) OAC Rule 3745-20-04(A)(6) for not adequately wetting the RACM that had been stripped and ensuring such RACM remained wet until collected for disposal; and (2) OAC Rule 3745-20-05(B)(1) for failing to wet the asbestos-containing waste material during collection and prior to sealing in bags. These violations also constituted violations of ORC § 3704.05(G). After the inspection on February 15, 2006, no further violations took place.

20. 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 twelve thousand six hundred dollars (\$12,600) 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 ten thousand and eighty dollars (\$10,080). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying 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 five hundred and twenty dollars (\$2,520) of the civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$2,520 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$2,520. 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  
P.O. Box 1049  
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$2,520 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. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XI of these Orders.

#### **XI. 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.

#### **XII. EFFECTIVE DATE**

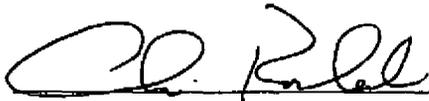
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

#### **XIII. 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**

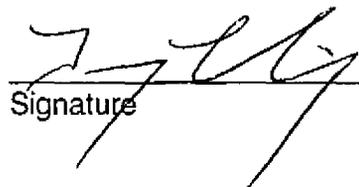


Chris Korleski  
Director

\_\_\_\_\_  
Date 2/20/08

**IT IS SO AGREED:**

**Total Environmental Services, LLC**



Signature

\_\_\_\_\_  
Date 1/2/08

Terry Luhring  
\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
President  
\_\_\_\_\_  
Title