

DEC 23 2009

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY DIRECTOR'S JOURNAL

In the Matter of:

Hosea Project Movers, LLC  
3951 Madison Pike  
Covington, Kentucky 41017

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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 Hosea Project Movers, 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 heirs and successors in interest liable under Ohio law. No change in ownership of the Respondent's facility (as hereinafter defined) 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. Respondent, of 3951 Madison Pike, Covington, Kentucky, was the owner of a commercial building named the Crosley Building, which is located at 1333 Arlington Street, Cincinnati, Hamilton County, Ohio. The interior of the Crosley Building was ordered to be completely removed by the Cincinnati Fire Department in the middle of 2007 due to a fire hazard concern. The above-referenced building constitutes a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18). Respondent is an "owner or operator" as defined by OAC Rule 3745-20-01(B)(39)(a).

2. Pursuant to OAC Rule 3745-20-02(A), the owner or operator of any renovation operation shall have the affected facility or part of the facility where a renovation

operation will occur thoroughly inspected prior to the commencement of the renovation for the presence of asbestos, including Category I and Category II nonfriable asbestos-containing material as defined in OAC Rules 3745-20-01(B)(9) and 3745-20-01(B)(10).

3. Pursuant to OAC Rule 3745-20-02(B)(1), the owner or operator of a renovation 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 regulated asbestos-containing material in a facility being renovated 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. Regulated asbestos-containing material ("RACM") is as defined in OAC Rule 3745-20-01(B)(42). Information from the notification of renovation ("Notification") for the cleanup (after the involvement of Hamilton County Department of Environmental Services, a contractual representative of Ohio EPA in Hamilton County) indicates that an additional 2,000 square feet of RACM was to be removed, which confirms that 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.

4. On September 6, 2007, the Hamilton County Department of Environmental Services ("HCDES") conducted an inspection at Crosley Building. At this inspection, HCDES took twelve samples for analysis. Eight of them were later found to contain greater than one percent chrysotile asbestos. The following violations were documented by HCDES during its September 6, 2007 inspection and were found to be violations by the Director of Ohio EPA.

**Failure to submit Notification prior to the start of renovation**

5. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a subject renovation project to submit a written notice of intention to renovate ("Notification") to Ohio EPA at least ten days prior to the start of the renovation if the project is as described in OAC Rule 3745-20-02(B)(1).

6. Respondent began renovation of the Crosley Building facility on or about September 6, 2007 but failed to submit a Notification to HCDES or Ohio EPA at least ten days prior to the start of the renovation. Therefore, Respondent was in violation of OAC Rule 3745-20-02(B)(1).

**Failure to completely remove RACM before any breakup of the materials**

7. OAC Rule 3745-20-04(A)(1) requires, in part, the owner or operator of a subject renovation project as described in OAC Rule 3745-20-02(B)(1) to remove all RACM from a facility being renovated before any activity begins that would breakup the materials, unless as otherwise provided in that rule.

8. Respondent began renovation activity that disturbed RACM without first removing the RACM and asbestos-containing waste material was observed scattered on floors 2 through 6 during the inspection by HCDES on September 6, 2007. Therefore, Respondent was in violation of OAC Rule 3745-20-04(A)(1).

**Failure to adequately maintain RACM in wetted condition until collected for disposal**

9. OAC Rule 3745-20-04(A)(6)(a) requires, in part, the owner or operator of a subject renovation project to maintain removed or stripped friable asbestos materials in a wetted condition until the materials are collected for disposal.

10. During Respondent's renovation of the Crosley Building facility on at least September 6, 2007, RACM debris, on floors 2 through 6, was in a dry condition at the time of HCDES's September 6, 2007 inspection. Respondent failed to maintain removed friable asbestos materials in a wetted condition until the materials were collected for disposal and was in violation of OAC Rule 3745-20-04(A)(6)(a).

**Failure to seal all asbestos-containing waste material while wet in durable leak-tight containers**

11. OAC Rule 3745-20-05(B)(1)(c) requires, in part, the owner or operator of a renovation project, where the selected control method is wetting, to seal all asbestos-containing waste material while wet in durable leak-tight containers or wrapping that complies with OAC Rule 3745-20-05(C).

12. During Respondent's renovation of the Crosley Building facility on at least September 6, 2007, RACM debris, on floors 2 through 6, were not maintained in wetted condition and sealed in durable leak-tight containers. Therefore, on at least September 6, 2007, Respondent was in violation of OAC Rule 3745-20-05(B)(1)(c).

**Failure to comply with the labeling requirements**

13. OAC Rule 3745-20-05(C)(1) requires, in part, the owner or operator of a subject renovation project to comply with the minimum standards for labeling of asbestos waste containers.

14. Dumpsters and RACM debris were not bagged and labeled in accordance with the labeling requirements at the time of HCDES's September 6, 2007 inspection. Therefore, Respondent was in violation of OAC Rule 3745-20-05(C)(1).

**Violations of ORC § 3704.05(G)**

15. 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.

16. The OAC violations cited in the above findings also constitute violations of ORC § 3704.05(G).

17. On September 18, 2007, HCDES issued a notice of violation letter to Respondent for the violations that were documented during its inspection of the site on September 6, 2007.

18. Between October 8, 2007 and November 12, 2007, Environmental Demolition Group, an asbestos abatement contractor hired by Respondent, conducted the removal of remaining RACM and cleanup of the asbestos-containing waste material.

19. On November 14, 2007, HCDES visited the site as the final walk through for the cleanup of the remaining ACM of the Crosley Building. At this inspection, HCDES observed that the removal of remaining RACM and the cleanup were done in compliance with OAC Chapter 3745-20.

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

#### V. ORDERS

The Director hereby issues the following Orders:

Respondent shall pay the amount of twenty-two thousand dollars (\$22,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC § 3704.06. Within thirty (30) days after the effective date of these Orders, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$4,400 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). For the remaining seventeen thousand and six hundred dollars of the penalty, Respondent shall pay Ohio EPA in accordance with the following payment schedule:

- Four thousand and four hundred dollars (\$4,400) due within ninety (90) days after the effective date of these Orders;
- Four thousand and four hundred dollars (\$4,400) due within one hundred and eighty (180) days after the effective date of these Orders;
- Four thousand and four hundred dollars (\$4,400) due within two hundred and seventy (270) days after the effective date of these Orders; and
- Four thousand and four hundred dollars (\$4,400) due within three hundred and sixty (360) days after the effective date of these Orders.

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks 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

A copy of each check 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 of 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 renovation of this 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:

Hamilton County Department of Environmental Services  
250 William Howard Taft Road  
Cincinnati, Ohio 45219  
Attention: Ken Wilkins

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.

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**XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specially 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

  
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Chris Korleski  
Director

12/21/09  
Date

**IT IS SO AGREED:**

Hosea Project Movers, LLC

  
\_\_\_\_\_

Signature

12/17/09  
Date

D. Todd Hosea  
\_\_\_\_\_

Printed or typed name

V.P.  
\_\_\_\_\_

Title