

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Total Environmental Services, LLC	:	<u>Director's Final Findings</u>
1950 Clinton Street	:	<u>and Orders</u>
Toledo, Ohio 43607	:	

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 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

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03(R) 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, of 1950 Clinton Street, Toledo, Ohio, is an asbestos removal contractor in the State of Ohio. In July of 2007, Respondent was hired by the Nelsonville-York City School District, of 2 Buckeye Drive, Nelsonville, Ohio, to remove asbestos-containing material for a renovation project at Nelsonville-York Elementary School, which is located at ½ Buckeye Drive, Nelsonville, Athens County, Ohio. 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).

2. Pursuant to OAC Rule 3745-20-02(B)(4), 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).

3. OAC Rule 3745-20-05(B)(1)(c) requires, in part, the owner or operator of a renovation project 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).

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

5. 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.

6. On June 25, 2007, the Ohio EPA, Southeast District Office ("SEDO") received an Ohio EPA Notification of Demolition and Renovation form ("Notification") from Respondent for the renovation project at the above-referenced structure. According to the Notification, Respondent was to remove 500 linear feet of RACM and 32,000 square feet of Category I non-friable asbestos material from this facility beginning on July 16, 2007 and ending on August 3, 2007. A revision to this Notification was submitted by Respondent on July 27, 2007, which reflected an increase to 1,000 linear feet of RACM to be removed. Based on the amount of RACM indicated on the Notifications, 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. The Notification indicated that Respondent had selected the method in OAC Rule 3745-20-05(B)(1) to control any emission from the handling of asbestos-containing material.

7. On July 26, 2007, SEDO conducted a routine inspection of the facility to ensure that the asbestos removal was being conducted in compliance with Ohio EPA regulations. Upon arrival, the SEDO representative documented that: (1) several double bags inside the dumpster were ripped and punctured, in violation of OAC Rule 3745-20-05(B)(1)(c); and (2) the dumpster contents (some of the bags and two fire doors) were not labeled as required, in violation of OAC Rule 3745-20-05(C)(1).

8. On August 3, 2007, SEDO issued a notice of violation ("NOV") letter to Respondent for the violations that were documented during its inspection of the site on July 26, 2007. In this NOV letter, SEDO required Respondent, within ten (10) days after the receipt of the NOV letter, to submit to SEDO a summary of how the violations would be addressed and other general information concerning the removal of RACM at the Nelsonville-York Elementary School.

9. By a letter dated August 17, 2007, Respondent replied to SEDO's August 3, 2007 NOV letter. In this letter, Respondent informed SEDO that it had addressed its concerns by: (1) re-wetting the RACM inside the bags, (2) re-double bagging the bags that were ripped or punctured at the time of inspection, (3) re-applying correct labeling to the dumpster contents, and (4) re-lining the inside of the dumpster. Respondent also informed SEDO that it had re-educated its employees on the correct procedure for labeling and disposal of RACM to prevent the same situation from recurring.

10. In summary, the Director of Ohio EPA finds Respondent violated the following rules:

a. OAC Rule 3745-20-05(B)(1)(c) for failing to maintain disposal bags in a leak-tight condition; and

b. OAC Rule 3745-20-05(C)(1) for failing to label some of the dumpster contents.

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

12. 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:

1. Respondent shall pay the amount of five thousand dollars (\$5,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.06. 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 four thousand dollars (\$4,000) of the total amount. The 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
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining one thousand dollars (\$1,000) of civil penalty to Ohio EPA, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$1,000 to the Ohio EPA's Clean Diesel School Bus

Program Fund (Fund 5CD0). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$1,000. 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
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe in Order 2, Respondent shall immediately pay to Ohio EPA \$1,000 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. NOTICE

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA-Southeast District Office
2195 Front Street
Logan, Ohio 43138
Attention: Steve Lowry

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 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

9/14/09
Date

IT IS SO AGREED:

Total Environmental Services, LLC



Signature
Terry Luhring

8/31/09
Date

Printed or Typed Name

Member

Title