

OHIO E.P.A.

JAN 20 2010

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

The Afco Group : Director's Final Findings  
763 Broadway Avenue : and Orders  
Lorain, Ohio 44052 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to The Afco Group ("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

The Director of Ohio EPA makes the following findings:

1. Respondent was the asbestos abatement contractor for the Elyria City School demolition project located at 511 West Avenue, Elyria, Lorain County, Ohio. Respondent was the "operator," as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(39)(a), of the asbestos removal activities located at this address.

2. On January 11, 2008, Ohio EPA received an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form from Respondent indicating that 7,650 square feet of regulated asbestos-containing material ("RACM"), as defined in OAC Rule 3745-20-01(B)(42), was to be removed from the house referenced in Finding No. 1 of these Orders beginning on January 20, 2008, and ending on January 23, 2008. Several amended notifications were submitted to Ohio EPA, the last of which indicated that the asbestos removal would be completed by February 18, 2008. This amount of RACM made this demolition subject to the work practice standards identified in OAC Rule 3745-20-02(B)(1).

3. On February 14, 2008, Ohio EPA conducted an inspection at the site. The stripping of the plaster from the walls and ceilings had been completed. There was plaster debris on the floors and steps throughout the first floor, second floor and basement of the house, as well as outside the house. Approximately 2,250 square feet of RACM as debris was still on-site. At the time of the inspection, Respondent's employees were sweeping and putting plaster debris into asbestos waste disposal bags. All the debris was dry and no wetting of material was occurring during this activity and throughout the inspection. Six samples of suspected asbestos-containing waste material were taken by Ohio EPA at this time.

4. On March 6, 2007, the six samples taken by Ohio EPA were analyzed and three of the six samples were found to contain "friable asbestos-containing material," as defined in OAC Rule 3745-20-01(B)(20), which is RACM as defined in OAC Rule 3745-20-01(B)(42).

Sample No.	Location of Sample	Description of Sample	Type of Asbestos (if any)	Asbestos Content by Area (%)
146675-1	1 <sup>st</sup> floor hallway	Plaster	Chrysotile	Trace
146676-2	Disposal bag on 1 <sup>st</sup> floor	Plaster	None	NA
146677-3	Stairwell	Plaster	Chrysotile	2%
146678-4	2 <sup>nd</sup> floor bedroom	Plaster	Chrysotile	Trace
146379-6	2 <sup>nd</sup> floor window sill on east side of house	Plaster	Chrysotile	2%
146380-5	Outside east side of house on ground under 2 <sup>nd</sup> floor window	Plaster	Chrysotile	2%

5. As a result of the February 14, 2008 inspection, the Director has determined that Respondent had, inter alia:

a. Failed to adequately wet the RACM that was removed or stripped and ensure the RACM remained adequately wet until collected and contained for disposal, in violation of OAC Rule 3745-20-04(A)(6)(a) and ORC § 3704.05(G); and

b. Failed to use one of the methods specified in OAC Rule 3745-20-05(B)(1) to (B)(4) during the collection and packaging of the asbestos-containing waste material in the house and outside on the ground, in violation of OAC Rule 3745-20-05(B) and ORC § 3704.05(G).

6. ORC Chapter 3704.05(G) states, in part, that no person shall violate any rule adopted by the Director of Ohio EPA, pursuant to ORC § 3704.03. OAC Chapter 3745-20 was adopted by the Director pursuant to ORC § 3704.03.

7. On February 18, 2008, Respondent completed the asbestos removal at the site.

8. By letter dated March 27, 2008, Ohio EPA notified Respondent of the violations referenced in Finding No. 5 of these Orders.

9. On November 18, 2008, Ohio EPA sent proposed Director's Final Findings and Orders to Respondent for the aforementioned air pollution control permit, rule and law violations.

10. On May 4, 2009, Respondent submitted financial documents, to Ohio EPA, showing that it had limited financial ability to pay a civil penalty.

11. 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 one thousand dollars (\$1,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by official checks made payable to "Treasurer, State of Ohio" and shall be paid in installments per the following schedule:

a. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two hundred and fifty dollars (\$250);

b. Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two hundred and fifty dollars (\$250);

c. Within ninety (90) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two hundred and fifty dollars (\$250); and

d. Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of two hundred and fifty dollars (\$250).

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

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:

Ohio Environmental Protection Agency  
2110 East Aurora Road  
Twinsburg, Ohio 44087  
Attn: Bob Princic

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Thomas Kalman

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**

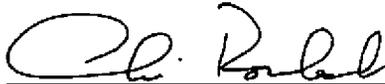
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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**

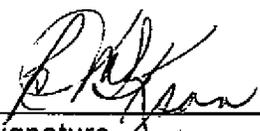
  
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Chris Korleski  
Director

1/14/10  
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Date

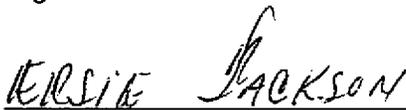
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LEGAL OFFICE

**IT IS SO AGREED:**

**The Afco Group**

  
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Signature

1-6-09  
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Date

  
\_\_\_\_\_  
Printed or Typed Name

CEO  
\_\_\_\_\_  
Title