

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

JAN 12 2010

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

Henning Construction Company :  
5800 Merle Hay Road :  
Suite 14 :  
P.O. Box 394 :  
Johnston, IA 50131 :

Director's Final Findings  
and Orders

and

New Day Farms, LLC :  
27322 State Route 739 :  
Raymond, Ohio 43067 :

I certify this to be a true and accurate copy of the  
official documents as filed in the records of the Ohio  
Environmental Protection Agency.

and

Reichert Excavating Incorporated :  
11418 State Route 274 :  
Lewistown, Ohio 43333 :

By: Jim Lassiter Date: 1-12-10

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Henning Construction Company, New Day Farms, LLC, and Reichert Excavating Incorporated ("Respondents"), 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**

These Orders shall apply to and be binding upon Respondents and successors in interest liable under Ohio law. No change in ownership of Respondents or of the Facility (as hereinafter defined) shall in any way alter Respondents' obligations under these Orders.

### III. DEFINITIONS

Unless otherwise stated, all terms used in these Orders shall have the same meanings as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

### IV. FINDINGS

The Director of the Ohio EPA has determined the following findings:

1. Respondents were the "owner/operators" of the facilities being demolished at New Day Farms located at 27322 State Route 739 in Raymond, Ohio as that term (owners/operators) is defined in the Ohio Administrative Code ("OAC") Rule 3745-20-01(B).

2. Respondent New Day Farms is the owner of several poultry barns at its Raymond, Ohio facility. Respondent Henning Construction company was hired by New Day Farms to be the general contractor for the demolition of several poultry barns at the Raymond, Ohio facility.

3. Respondent Reichert Excavating Incorporated was hired by Henning Construction Company to be the demolition contractor for several poultry barns at the New Day Farms Raymond, Ohio facility.

4. On June 12, 2008, Ohio EPA Central District Office ("CDO") received an anonymous complaint that demolition of the poultry barns was occurring at New Day Farms. The complainant was concerned that the poultry barns contained asbestos.

5. ORC Chapter 3704.05(G) states, in part, that no person shall violate any rule issued by the Director of Ohio EPA.

6. On June 12, 2008, a CDO inspector visited New Day Farms and inspected the demolition project. When the CDO inspector arrived on site, two barns had already been demolished and removed from the site. Two additional barns were in the process of being demolished. Samples collected from a hard transite material present in each of the barns indicated the presence of asbestos above the regulated level.

7. During the inspection, CDO discovered multiple violations of OAC Chapter 3745-20. Specifically, Respondents' actions at the demolition sites violated:

- OAC Rule 3745-20-02(A) by failing to conduct a thorough inspection for asbestos prior to beginning the demolition.
- OAC Rule 3745-20-03(A) by failing to provide notification of demolition or renovation at least ten working days before the beginning of any demolition operation.

- OAC Rule 3745-20-04(A)(1) by failing to remove all regulated asbestos-containing materials ("ACM") prior to conducting demolition activities.
- OAC Rule 3745-20-03(B)(1) by not having an authorized person trained in the provisions of OAC Rule 3745-20-04(B) on site during demolition.
- OAC Rule 3745-20-05(B)(1) by failing to control visible emissions during the demolition.
- OAC Rule 3745-20-04(A)(6)(a) by failing to adequately wet ACM during demolition.
- OAC Rule 3745-20-04(C)(92) by failing to ensure that all regulated ACM which has been damaged or made friable by demolition are repaired, encapsulated, or removed in accordance with OAC Rule 3745-20-05.

8. After CDO visited the facility, the demolition project was halted and Central Insulation Services was hired to complete the asbestos abatement. The asbestos abatement was completed on August 15, 2008.

9. On July 7, November 21, and December 4, 2008, notice of violation ("NOV") letters were sent to Respondents for violations of OAC Chapter 3745-20.

10. 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. Respondents shall pay the amount of fifty-five thousand two hundred dollars (\$55,200) 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 check made payable to "Treasurer, State of Ohio" for forty-four thousand one hundred sixty dollars (\$44,160) of the total amount within 30 days of the effective date of these Orders. The official checks shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondents 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 eleven thousand forty dollars (\$11,040) of civil penalty, Respondents shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$11,040 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondents shall tend an official check in the amount of \$11,040 due within 30 days of the effective date of these Orders. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondents and Fund 5CD0, to the above-stated address.

3. 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  
50 West Town Street  
Suite 700  
P.O. Box 1049  
Columbus, OH 43216 - 1049

4. Should Respondents fail to fund the SEP within the required timeframe set forth in Order 2, Respondents shall immediately pay to Ohio EPA \$11,040 of the civil penalty in accordance with the procedures in Order 1.

## **VI. TERMINATION**

Respondents' obligations under these Orders shall terminate upon Ohio EPA's receipt of the valid 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 Respondent's activities at the 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 Respondents.

## **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties. 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 Respondents pursuant to these Orders shall be addressed to:

Ohio EPA  
Central District Office  
50 West Town Street  
Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Richard Fowler

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
50 West Town Street  
Suite 700  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: John Paulian

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, Respondents consent 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 Respondents' liability for the violations specifically cited herein.

Respondents hereby waive 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 Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

### XIII. EFFECTIVE DATE

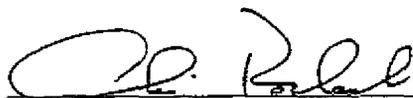
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

### 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

12/22/09  
Date

**IT IS SO AGREED:**

Henning Construction Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

New Day Farms, LLC

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

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

Reichert Excavating Incorporated

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

Director's Final Findings and Orders  
Henning Construction Company/New Day Farms/Reichert Excavating  
Page 7 of 7

**IT IS SO AGREED:**

Henning Construction Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

New Day Farms, LLC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

Reichert Excavating Incorporated

*Daniel J Reichert*  
\_\_\_\_\_  
Signature

*12-11-09*  
\_\_\_\_\_  
Date

*Daniel J Reichert*  
\_\_\_\_\_  
Printed or Typed Name

**IT IS SO AGREED:**

Henning Construction Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

New Day Farms, LLC

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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

Henning Construction Company  
~~Reichert Excavating Incorporated~~

  
\_\_\_\_\_  
Signature

11/24/09  
\_\_\_\_\_  
Date

*ALAN LOCK CEO*  
\_\_\_\_\_  
Printed or Typed Name

*HENNING CONST CO.*