

OHIO E.P.A.
MAY 24 2013
BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

National Salvage & Service Corporation	:	<u>Director's Final Findings</u>
6755 Old State Road 37	:	<u>and Orders</u>
Bloomington, Indiana 47401	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to National Salvage & Service Corporation ("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

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent or of the 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 regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA makes the following findings:

1. Respondent owns and operates a demolition company located at 6755 Old State Road 37, in Bloomington, Indiana. Respondent was contracted by Tice Enterprises to perform demolition activities at the former King Forge facility located at 820 Steiner Avenue in Kenton, Ohio. Respondent was the "operator" at the King Forge facility as that term is defined in Ohio Administrative Code (OAC) rule 3745-20-01.

2. On June 18, 2010, Keramida Inc. conducted an asbestos inspection of the five buildings located at the King Forge facility. As a result of this inspection, Keramida concluded that Building 1, Building 5, and the Blast Building contained asbestos-containing material. The inspection report prepared by Keramida Inc. indicated that along with other suspect materials at the facility, Building 5 contained 100 square feet of air cell pipe insulation and up to an estimated 64,000 square feet of roofing debris which contained between 20% and 50% Chrysotile asbestos. The inspection report indicated that the air cell pipe insulation and roofing debris on the ground were in poor condition and friable. A copy of the asbestos survey was provided to Respondent prior to demolition activities.

3. OAC Rule 3745-20-01(B)(42) states, in part, that regulated asbestos-containing material means friable asbestos material; Category I nonfriable asbestos-containing material that has become friable; Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting or abrading; or Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to a powder by the forces expected to act on the material in the course of demolition or renovation operations.

4. On June 20, 2011, Respondent submitted a Notification of Demolition to the Northwest District (NWDO) of Ohio EPA. The notification indicated that the 65,000 square feet of roofing material was nonfriable asbestos. Furthermore, the notice failed to list 1,200 square feet of linoleum tile that was also listed as a suspect material in the asbestos survey performed by Keramida Inc. On June 29, 2011, Respondent submitted a revised Notice of Demolition that identified Environmental Assurance Company Inc. (EACI) as the asbestos contractor for the project. On July 1, 2011, Ohio EPA received a second, revised Notification of Demolition from EACI which indicated that 1,200 square feet of linoleum tile and 250 linear feet of pipe insulation were to be removed from the facility as regulated asbestos-containing material (RACM). The notification form did not make any reference to the 65,000 square feet of roofing material previously identified.

5. On July 7, 2011, after receiving conflicting notices regarding the demolition project at the King Forge facility, an inspector from the Ohio EPA's NWDO performed an inspection at the facility. At the time of this inspection, Ohio EPA observed that Respondent proceeded with the demolition of Building 5 prior to the ACM in the Building 5 roof tar paper being removed. As a result of the inspection, it was determined that Respondent had, among other things:

a. Failed to remove all regulated asbestos-containing material from the facility prior to the beginning the demolition activities that broke up, dislodged, or disturbed the materials or precluded access to the materials for subsequent removal, in violation of OAC Rule 3745-20-04(A)(1). On July 7, 2011, Ohio EPA observed post-demolition debris piles at the King Forge facility that contained roofing material that had been deemed to be RACM;

b. Failed to adequately wet the RACM and ensure it remained adequately wet until it was collected and contained or treated in preparation for disposal, in violation of OAC rule 3745-20-04(A)(6). On July 7, 2011, Ohio EPA observed that the friable roofing material was not being kept adequately wet;

c. Failed to have at least one authorized representative trained in the provisions of OAC Chapter 3745-20 at the King Forge facility while the regulated asbestos-containing material was being stripped, removed, or otherwise handled or disturbed, in violation of OAC rule 3745-20-04(B)(1);

d. Discharged visible emissions to the outside air during the collection of asbestos-containing material, in violation of OAC rule 3745-20-05(B). During the July 7, 2011 inspection, Ohio EPA observed visible emissions being released while Respondent was segregating debris into various piles throughout the site; and

e. Failed to ensure that all containers of asbestos-containing waste material were properly labeled and sealed, in violation of OAC Rule 3745-20-05(C). On July 7, 2011, Ohio EPA observed a roll-off container which contained asbestos-containing material that was not labeled or lined.

6. By letter dated July 26, 2011, Ohio EPA notified Respondent of the violations referenced in Finding No. 5 of these Orders. By letter dated August 1, 2011, Respondent submitted a response to Ohio EPA's July 26, 2011 letter. On August 15, 2011, Respondent and other parties connected to the King Forge project submitted a clean-up plan to Ohio EPA that addressed the asbestos issues at the facility. The plan detailed what sampling would be conducted and the clean-up levels that would have to be met before the site was deemed to be back in compliance.

7. On August 17, 2011, Ohio EPA conducted a follow-up inspection of the King Forge facility. During the inspection, Ohio EPA observed visible emissions emanating from dry debris piles containing ACM. OAC rule 3745-20-05(B) states that each owner or operator of any demolition, renovation, manufacturing, fabricating or spraying operation to whom this rule applies, shall discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, transporting, or deposition of any asbestos-containing waste material. Therefore, Respondent failed to eliminate discharges of asbestos-containing material during demolition activities, in violation of OAC 3745-20-05(B). By letter dated August 25, 2011, Ohio EPA notified Respondent of the aforementioned violation.

8. On September 14, 2011, EACI finished up the asbestos removal activities at the facility. EACI updated the Notification of Demolition form to show that 130,950 cubic feet of material handled as if it was RACM was taken off-site. On September 20, 2011,

Keramida Inc. submitted lab results to Ohio EPA that demonstrated the site had less than one percent Chrysotile and therefore was clean.

9. 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 Ohio EPA the amount of fifty thousand four hundred dollars (\$50,400) 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" for \$50,400 of the total amount, which shall be paid in installments per the following schedule:

a. Within sixty (60) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of sixteen thousand eight hundred dollars (\$16,800);

b. Within ninety (90) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of sixteen thousand eight hundred dollars (\$16,800); and

c. Within one hundred and twenty (120) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of sixteen thousand eight hundred dollars (\$16,800).

The official checks shall be submitted to Carol Butler, 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 twelve thousand six hundred dollars (\$12,600) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in

the amount of \$12,600 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 \$12,600. The official check shall be submitted to Akia Smith, 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 Bruce Weinberg, Manager Enforcement Section, 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 time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$12,600 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 an admission of fact or law or 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
347 North Dunbridge Road
Bowling Green, Ohio 43402
Attn: Tom Sattler

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
Attn: Bruce Weinberg

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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency



Scott J. Nally
Director

5/23/13

Date

AGREED:

National Salvage & Service Corporation



Signature

May, 16, 2013

Date

Victoria Schopp

Printed or Typed Name

President

Title