

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

AbateTech, Inc.	:	<u>Director's Final Findings</u>
30 Maple Avenue	:	<u>and Orders</u>
P.O. Box 25	:	
Lumberton, New Jersey 08048	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to AbateTech, Inc. ("Respondent") pursuant to the authority vested in the Director of 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 regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates an asbestos abatement company with offices located at 30 Maple Avenue, Lumberton, New Jersey. Respondent is licensed in Ohio as an asbestos abatement contractor (Ohio Department of Health license number 1709).

2. The Lake County General Health District ("LCGHD") is Ohio EPA's contractual representative in Lake County for the administration of Ohio Administrative Code ("OAC") Chapter 3745-20 ("Asbestos Emission Control Standards").

3. The Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") is Ohio EPA's contractual representative in Mahoning County for the administration of OAC Chapter 3745-20.

4. OAC Rule 3745-20-02(A)(4) states, in part, that, if at least two hundred sixty linear feet of friable asbestos materials on pipes or at least one hundred sixty square feet of friable asbestos materials on other facility components are to be stripped or removed at a facility being renovated, all the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to the owner or operator of a renovation operation.

5. OAC Rule 3745-20-03(A) states, in part, that each owner or operator to whom this rule applies shall provide the Director of Ohio EPA with written notice of intention to renovate. Pursuant to paragraph (A)(2)(d) of OAC Rule 3745-20-03, this notice shall be either postmarked or delivered to the Ohio EPA field office having jurisdiction in the county where the renovation operation is to occur at least five days before any planned renovation operation begins at a facility.

6. OAC Rule 3745-20-05(A) states, in part, that each owner or operator of a renovation operation to whom this rule applies shall dispose of asbestos-containing waste material at an active disposal site operated in accordance with OAC Rule 3745-20-06.

7. J.C. Penney Company, Inc. ("J.C. Penney") Store #1816, a commercial structure located at the Great Lakes Mall, 7850 Mentor Avenue, Mentor, in Lake County, is a "facility" as defined in OAC Rule 3745-20-01(B)(12).

8. J.C. Penney Store #1936, a commercial structure located at the Southern Park Mall, 7401 Market Street, Youngstown, in Mahoning County, is a "facility" as defined in OAC Rule 3745-20-01(B)(12).

J.C. Penney Store #1816, Mentor

9. On October 12, 2000, LCGHD investigated a complaint that a renovation operation involving asbestos-containing materials was being conducted at J.C. Penney Store #1816, located at the Great Lakes Mall in Mentor. The inspector contacted the store manager and was informed that asbestos-containing ceiling tile and floor tile had been removed from the facility during recent renovation operations. Further discussion between the inspector, the store manager, and a representative of G&C Environmental Services ("G&C") of Newton Square, Pennsylvania (contracted by J.C. Penney to conduct an asbestos survey of the renovation area) indicated that 300 square feet of friable ceiling tile containing 15% to 20% amosite asbestos had been removed from the facility under containment. In addition, the LCGHD inspector was informed that a quantity of non-friable floor tile and mastic containing 10% asbestos had also been removed in a manner such that the material remained non-friable. The asbestos content information was contained in an asbestos survey report prepared by American Analytical Laboratories, Inc., dated December 1, 1989. G&C stated

that a notification had been sent to the Ohio Department of Health, but not to LCGHD or Ohio EPA.

10. On October 13, 2000, Respondent contacted the LCGHD inspector to learn the status of the investigation and determine what corrective actions were necessary. The LCGHD inspector informed Respondent of the requirement to submit a completed "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form to LCGHD or Ohio EPA. LCGHD faxed a copy of the form to the Respondent to be completed. LCGHD received a completed notification from the Respondent on October 16, 2000. Respondent was named as removal contractor in the notification. Per the notification, 300 square feet of regulated friable asbestos materials were removed from the facility between August 21, 2000 and the completion date of October 9, 2000. An additional 11,800 square feet of Category I non-friable asbestos-containing material was also shown as removed from the facility. The notification also stated that waste from the renovation project was sent for disposal to Geneva Landfill in Ashtabula County. Based on the information provided in the completed form, more than 160 square feet of friable asbestos materials were removed from the facility. Therefore, pursuant to OAC Rule 3745-20-02(A)(4), the renovation operation was subject to the requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05. Pursuant to OAC Rule 3745-20-01(B)(20), Respondent was the "operator" of this renovation operation.

11. On November 10, 2000, LCGHD sent a Notice of Violation ("NOV") to Respondent informing the firm of its violation of OAC Chapter 3745-20. Specifically, the Respondent, as operator of a renovation operation, was cited for failing to provide either LCGHD or Ohio EPA at least five working days of notice prior to the start of the renovation operation, in violation of OAC Rule 3745-20-03(A).

12. After reviewing the facts of the case, Ohio EPA agrees with LCGHD's finding that the Respondent violated OAC Rule 3745-20-03(A) and believes that Respondent also violated OAC Rule 3745-20-05(A) by disposing of asbestos-containing waste material from the renovation operation at J.C. Penney Store #1816 at the Geneva Landfill, as this landfill had not been authorized to accept friable asbestos-containing waste materials as an active waste disposal site, in accordance with OAC Rule 3745-20-06.

J.C. Penney Store #1936, Youngstown

13. In April, 2002, LCGHD (after learning of the activity from an Ohio Department of Health inspector) informed M-TAPCA of an asbestos abatement project that had been conducted by the Respondent at J.C. Penney Store #1936, located at the Southern Park Mall, 7401 Market Street, Youngstown, in Mahoning County. M-TAPCA was not aware of this project and, after review of its records, determined that an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form had not been submitted by the Respondent prior to the start of this project, in violation of OAC Rule 3745-20-03(A).

14. On April 26, 2002, M-TAPCA sent a NOV to Respondent informing the firm of its apparent violation of OAC Rule 3745-20-03(A) for failing to provide either M-TAPCA or

Ohio EPA at least five working days of notice prior to the start of the renovation operation. M-TAPCA requested that Respondent submit a completed notification form within five days of receipt of the letter.

15. In a written response received by M-TAPCA on May 6, 2002, Respondent submitted the documentation requested by M-TAPCA. Included in this response was a letter of explanation, in which Respondent described the scope of the asbestos abatement project and provided details regarding the methodology used for the removal of both friable and non-friable asbestos-containing materials. A copy of the initial Ohio Department of Health's "Prior Notification of Asbestos Hazard Abatement Project" form, dated August 4, 2000, and copies of three subsequently revised forms, were also provided. A completed "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form was also included in the response.

16. The "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form submitted for the asbestos abatement project at J.C. Penney Store #1936 was dated May 1, 2002 and named Respondent as removal contractor. Per the notification, 1,500 square feet of regulated friable asbestos materials and 31,645 square feet of Category I non-friable asbestos-containing material (described in the letter as floor tile and mastic) were removed from the facility between July 24, 2000 and the completion date of January 16, 2001. Per the notification form, the regulated asbestos-containing waste materials from this renovation operation were disposed of at Greenridge Reclamation solid waste landfill located in Scottdale, Pennsylvania. The Pennsylvania Department of Environmental Protection, Bureau of Air Quality, confirmed that this facility is authorized to accept regulated asbestos-containing waste materials.

17. Based on the information provided in the completed form, more than 160 square feet of friable asbestos materials were removed from this facility. Therefore, pursuant to OAC Rule 3745-20-02(A)(4), this renovation operation was subject to the requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05. Pursuant to OAC Rule 3745-20-01(B)(20), Respondent was the "operator" of this renovation operation.

18. After reviewing the facts of the case, Ohio EPA finds that Respondent violated OAC Rule 3745-20-03(A) by failing to provide the required notice of intent to renovate at least five days prior to beginning the renovation project.

19. The above violations of the OAC also constitute violations of ORC § 3704.05(G).

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:

1. Respondent shall pay the amount of nineteen thousand dollars (\$19,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704. 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 fifteen thousand and two hundred dollars (\$15,200) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the sites of the renovation operations, to:

Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

The remaining three thousand and eight hundred dollars (\$3,800) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver an official check in this amount and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban area tree-planting projects in Ohio. This check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

A copy of both checks shall be sent to James A. Orlemann, Assistant Chief, Enforcement Section, or his successor, at the following address:

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

VI. TERMINATION

Respondent's obligations under these orders shall terminate upon Ohio EPA's and Ohio Department of Natural Resources' 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 Respondent's conduct of the renovation operations specified in these Orders.

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 the Respondent.

IX. MODIFICATIONS

These Orders may be modified by mutual 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 by these Orders, unless otherwise specified in writing, shall be addressed to:

Lake County General Health District
Air Pollution Control
33 Mill Street
Painesville, Ohio 44077
Attention: Bert Mechenbier, Air Pollution Control Supervisor

and to:

Mahoning-Trumbull Air Pollution Control Agency
Oakhill Renaissance Place
2nd Floor, Room 25
345 Oak Hill Avenue
Youngstown, Ohio 44502
Attn: Larry Himes, Asbestos Coordinator

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049

Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Supervisor, Enforcement Section

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondent each reserve all rights, privileges, and cause 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 the Respondent's liability for the violations specifically cited herein.

The 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 the Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, the Respondent retains the right to intervene and participate in such an appeal. In such event, the Respondent shall continue to comply with these Orders unless said 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

Christopher Jones
Director

Date

IT IS SO AGREED:

AbateTech, Inc.

Signature

Date

Printed or Typed Name

Title