

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Holy Trinity Episcopal Church	:	<u>Director's Final Findings</u>
25 East Walnut Street	:	<u>and Orders</u>
Oxford, Ohio 45056	:	
	:	
RESPONDENT	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Holy Trinity Episcopal Church ("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 relating to the Respondent's operation or location as hereinafter identified 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. All violations noted herein are pursuant to the rules in effect at the time of the renovation.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent, Holy Trinity Episcopal Church, located at 25 East Walnut Street, Oxford, Butler County, Ohio, contracted architectural firm Beckwith Chapman Associates, Inc.

(Beckwith Chapman) to design and supervise a renovation project at Respondent's building structure. Respondent's building is defined as a "facility" in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12); therefore, Respondent is subject to the applicable requirements specified in OAC Chapter 3745-20 ("Asbestos Emission Control Standards"). Also, the work involved a "renovation" as defined in OAC Rule 3745-20-01(B)(14).

2. OAC Rule 3745-20-01(B)(20) defines, in part, the "owner or operator" of a facility as any person who owns, leases, operates, controls, or supervises a renovation operation. Respondent controlled and supervised this renovation project and otherwise retained responsibility for the discovery, presence, handling, removal or disposal of hazardous materials, including asbestos, at the facility.

3. OAC Rule 3745-20-01(B)(14) defines, in part, "friable asbestos material" as any material containing more than one percent asbestos by area, that hand pressure can crumble, pulverize, or reduce to powder when dry.

4. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a renovation operation to provide Ohio EPA with written notice of intention to renovate prior to starting any renovation operation if the structure being renovated contains amounts of friable asbestos materials of at least 260 linear feet on pipes or at least 160 square feet on other facility components ("work practice thresholds"). Such notification must be received at least five (5) days before any planned renovation operation begins.

5. OAC Rule 3745-20-04(A) requires, in part, the owner and operator of a renovation operation that exceeds the work practice thresholds to comply with specified work practices for the control of asbestos emissions.

6. OAC Rule 3745-20-04(A)(5) requires, in part, the owner or operator of a subject renovation operation to keep any friable asbestos material that has been removed or stripped adequately wet until collected for disposal.

7. OAC Rule 3745-20-01(B)(2) defines, in part, "adequately wet" as sufficiently mix or penetrate or coat with liquid to prevent dust emissions.

8. OAC Rule 3745-20-05(C) requires, in part, the owner or operator of a subject renovation operation to seal all friable asbestos-containing waste materials into durable leak-tight disposal containers.

9. ORC § 3704.05(G) prohibits any person from violating any order, rule or determination of the Director issued, adopted, or made under ORC Chapter 3704.

10. On January 17, 2001, Hamilton County Department of Environmental Services ("HAMCO"), a contractual representative of Ohio EPA for Butler County, received Notification Number SO01098 from Central Insulation Systems ("CIS") for the clean-up and abatement of the renovation project at the facility. The notice indicated that 900 square feet of regulated friable asbestos material would be removed from the facility, which indicated that the notification and work practice requirements of OAC Chapter 3745-20 applied to this renovation project. In response to the notice, HAMCO visited the facility on March 22, 2001, and discovered:

- Arcon Building, Ltd. was contracted to install an elevator. Additionally, Arcon Building, Ltd. contracted GM Mechanical Inc. to install a new heating, ventilation, and air conditioning ("HVAC") system. This information was supplied by Dick Lodge, a volunteer representative of Respondent. Mr. Lodge informed HAMCO, that on December 21, 2000, that he noticed suspect friable asbestos material had been removed from the facility. As a result, he ordered workers of GM Mechanical Inc. and/or Arcon Building, Ltd. to leave the facility work site and closed the facility to the public. Additionally, he contacted Steve Rucker of HC Nutting Company to obtain air and dust samples. The samples tested positive for asbestos; Respondent hired Central Insulation Systems (CIS) to clean and abate the facility.
- In the basement of the facility, a larger portion of suspect friable asbestos materials (drywall and 9 inch by 9 inch floor tile) had been removed to facilitate the installation of a new HVAC system and an elevator. HAMCO sampled the remaining dry suspect friable asbestos-containing ceiling material (three samples) and floor tile (one sample). All four samples of suspect material tested positive for friable asbestos material (chrysotile asbestos in quantities of 1 to 10 percent).
- HAMCO observed employees from CIS in the initial stages of the clean-up wiping down church pews in the facility in compliance with the requirements of OAC Chapter 3745-20.
- Dusty material throughout the first floor on the floor and surface areas of the facility provided evidence that the friable asbestos material had not been adequately wet until collected for disposal.

11. On March 27, 2001, HAMCO spoke with Gerald Miller, the owner of GM Mechanical concerning possible violations associated with the improper removal of the suspect friable asbestos materials from the facility. He informed HAMCO that his company

was hired by Arcon Building, Ltd. to complete the duct-work for the HVAC system in the basement of the facility. He stated that he was not aware of any cutting or removal of asbestos-containing material. Additionally, GM Mechanical had not been on site since January when the company's personnel were removed because of the suspicion of asbestos. Mr. Miller recommended that any further inquiries concerning Respondent's renovation project be forwarded to Lance Miller of GM Mechanical and Tim Shellabarger, the owner of Arcon Building, Ltd.

12. On March 29, 2001, Arcon Building, Ltd. informed HAMCO that it was not aware of any asbestos being cut or removed from the facility nor if any of Arcon Building, Ltd. employees were present during the violations.

13. On April 4, 2001, HAMCO sent Notices of Violation ("NOVs") to Gerald Miller, Owner of GM Mechanical, and David Ferguson, Junior Warden for Respondent, and Arcon Building, Ltd. for violations of OAC Chapter 3745-20 and ORC § 3704.05(G). The NOVs required the submittal of the mandatory notification along with copies of the waste shipment manifests which identified the transporter and the location of asbestos-containing waste materials. Further, it required the submittal of a compliance plan to prevent future violations.

14. On April 11, 2001, Steve Rucker of H.C. Nutting Company informed HAMCO that the abatement would be done in about four weeks. Mr. Rucker said he would contact the contractors and help them prepare the required notifications and compliance plans.

15. On April 20, 2001, HAMCO received the required notification of renovation form and compliance plan from Arcon Building, Ltd. The notice estimated the amount of friable asbestos material removed at 388 square feet of surface area, greater than the work practice threshold. Thus, this required that a notice of intention to renovate be submitted prior to the start of renovation operations, specified controls be employed, and proper disposal of asbestos-containing waste materials be performed. The compliance plan stated that the plaster ceiling was removed on September 25 through 28, 2000, and the floor sawing and removal was done from November 7 through 9, 2000. Arcon Building, Ltd. additionally stated the removed material and asbestos-containing waste material, was placed in a dumpster supplied by Best Hauling.

16. On April 20, 2001, HAMCO also received the required notification of renovation form from Respondent which stated that 388 square feet of surface area of regulated friable asbestos material had been removed from the facility. This information confirmed that the renovation was subject to the notification and work practice requirements of OAC Chapter 3745-20.

17. On April 25, 2001, HAMCO received a letter from Lance Miller of GM

Mechanical rejecting accusations that it removed any friable asbestos material from the facility. Mr. Miller stated his company was unaware of any asbestos in the plaster ceiling or in the floor tile.

18. On April 27, 2001, HAMCO received Respondent's compliance plan.

19. On July 18, 2001, HAMCO spoke with CIS and was informed that the abatement had been completed in compliance with the requirements of OAC Chapter 3745-20 (under negative pressure and in full containment).

20. On May 14, 2002, Ohio EPA received a copy of Addendum # 1, dated May 11, 2000, of the Abbreviated Form of Agreement Between Owner and Contractor ("Contract") for the renovation of the facility. The addendum contained modifications and clarifications of the Contract. Clarification Item 5 of the Addendum stated: "At this time, asbestos abatement is not included in this project. Existing encapsulated asbestos shall be avoided by this scope of work. Possible abatement of asbestos in the existing women's washroom and elsewhere will be addressed after initiation of construction. Investigation is in progress." The owner of Arcon Building, Ltd., the contractor, told Ohio EPA that asbestos abatement was not part of the scope of work and that Respondent never informed him of the results of the asbestos investigation or that the floor and ceiling tiles contained asbestos.

21. On June 18, 2002, Ohio EPA received a copy of the Contract (dated January 7, 2000), stating, in part, that Respondent would furnish tests, inspections and reports including tests for hazardous materials.

22. Respondent's representative was present during the renovation. Respondent is the "owner" as defined in OAC Rule 3745-20-01(B)(20). In accordance with OAC Rule 3745-20-03(A), Respondent was required to submit the notice of intention to renovate at least five days before the renovation operation began. Respondent failed to comply with this requirement, in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G).

23. Additionally, as observed during the March 22, 2001 facility visit, Respondent failed to adequately wet and to keep the friable asbestos material (the asbestos dust material on the pews, surface areas and floor) wet prior to being collected for disposal, in violation of OAC Rule 3745-20-04(A)(5) and ORC § 3704.05(G).

24. By allowing the friable asbestos containing waste materials to be placed in a dumpster rather than be sealed in durable leak-tight disposal containers, Respondent violated OAC Rule 3745-20-05(C) and ORC § 3704.05(G).

25. 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 makes the following Order:

Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of five thousand dollars (\$5,000) in settlement of Ohio EPA's claim for civil penalties. Respondent shall pay Ohio EPA the five thousand dollars (\$5,000) in five consecutive monthly installments, beginning with the first payment due within thirty (30) days after the effective date of these Orders. Each payment shall be made by an official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case or her successor at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

A copy of each check shall be sent to James A. Orlemann, Assistant Chief, Enforcement Section, or his successor, at the Division of Air Pollution Control, Ohio EPA, 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 this renovation operation.

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 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 Respondent pursuant to these Orders shall be addressed to:

Hamilton County Department of Environmental Services
Air Quality Programs
Attn: Cory Chadwick
250 William Howard Taft Road
Cincinnati, Ohio 45219-2660

and to:

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

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 the violations related to the renovation project cited herein. 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 related to the renovation project cited

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:

Christopher Jones
Director

Date

IT IS SO AGREED:

Holy Trinity Episcopal Church

Signature

Date

Printed or Typed Name

Title