

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

OHIO E.P.A.

DEC 28 2007

In the Matter of:

ENTERED DIRECTOR'S JOURNAL

A & D Contracting, Inc.  
3620 Pearl Road  
Cleveland, Ohio 44109

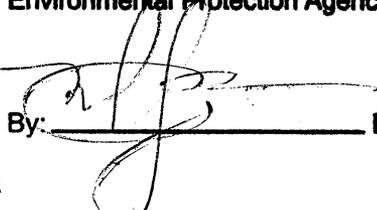
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Director's Final Findings  
and Orders

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: 

Date: 12/28/07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to A & D Contracting, Inc. ("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 or of the Facilities (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 has determined the following findings:

1. Respondent is an asbestos remediation contractor with a business address of 4429 State Rd., Cleveland, Cuyahoga County, Ohio.
2. On August 1, 2006, Respondent submitted an initial "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form, and subsequently submitted several amended notifications, indicating that Respondent intended to remove 3,700 linear feet of pipe wrap, 5,500 square feet of pipe debris, 140 square feet of duct wrap, 2 heat shields, 535 fittings, and 220 square feet of boiler breeching insulation, all of which were identified as regulated asbestos-containing material

("RACM") as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(41), from Robinson G. Jones School located at 4550 W. 150<sup>th</sup> Street, Cleveland, Ohio, from October 2, 2006 until November 7, 2006. Furthermore, the amended notification indicated the demolition of the facility would occur from November 13, 2006 through December 29, 2006.

3. Also, on August 1, 2006, Respondent submitted an initial "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form, and subsequently submitted several amended notifications, indicating that Respondent intended to remove 3,388 linear feet of pipe wrap, 230 square feet of boiler breeching insulation, and 455 fittings, which were all identified as RACM, from Artemus Ward Elementary School ("Facility") located at 4315 W. 140<sup>th</sup> Street, Cleveland Ohio, from October 2, 2006 until November 10, 2006. Also, the notification identified 3,691 square feet of category I floor tile to be removed and 9,964 square feet of category I floor tile not to be removed. The last amended notification stated that removal of the RACM was to begin October 2, 2006 and be completed by November 10, 2006. Furthermore, the last amended notification indicated the demolition of the facility would occur from November 13, 2006 through December 29, 2006.

4. On October 23, 2006, an inspector from Ohio EPA performed an inspection of the asbestos removal operation underway at the Robinson G. Jones School. Prior to the inspection, Respondent indicated to the inspector that it consolidated the RACM removed from both facilities in one dumpster located at the Jones School. Furthermore, Respondent told the Ohio EPA inspector that the bags of RACM towards the top of the dumpster were from the Artemus Ward Elementary School removal project.

5. During the inspection, bags containing RACM removed from the Artemus Ward Elementary School were opened and the RACM contents were found to be inadequately wet. Specifically, the RACM contents of one bag were found to only contain small traces of water, had no significant discoloration associated with the presence of water content and little or no water was puddling in the bags. The contents of a second bag that was opened were found to be completely dry and showed no sign of wetting. These observations indicated that the RACM that had been removed from the Artemus Ward Elementary School had not been adequately wetted throughout the removal process.

6. While the bags were open for inspection, samples were taken and upon conclusion of the inspection, the samples were submitted to a lab for analysis. The subsequent lab results revealed that the samples contained greater than one percent (1%) chrysotile and amosite asbestos, and were therefore "friable asbestos-containing material" as defined in OAC Rule 3745-20-01(B)(20).

7. Artemus Ward Elementary is a "Facility" as that term is defined in OAC Rule 3745-20-01(B)(18).

8. Respondent is an "operator" as that term is defined in OAC Rule 3745-20-

01(B)(38).

9. The Facility contained RACM as that term is defined in OAC Rule 3745-20-01(B)(41).

10. OAC Rule 3745-20-02(B)(1) requires an operator of an asbestos removal project to comply with the requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05 if the combined amount of regulated asbestos-containing material in a facility is at least two hundred sixty linear feet on pipes or at least one hundred and sixty square feet on other facility components. Respondent removed 3,388 linear feet of pipe wrap, 230 square feet of boiler breeching insulation, and 455 fittings from the Facility.

11. On October 23, 2006, Respondent removed RACM from the Facility's "components," as that term is defined in OAC Rule 3745-20-01(B)(19).

12. On October 23, 2006, Respondent was performing a "demolition" operation at the Facility, as that term is defined in OAC Rule 3745-20-01(B)(13).

13. OAC Rule 3745-20-04(A)(3) requires, in part, an operator of an asbestos demolition operation to adequately wet RACM when it is stripped from components at a facility. On October 23, 2006, Respondent failed to adequately wet the RACM as it was being removed from the Facility's components, in violation of OAC Rule 3745-20(A)(3) and ORC § 3704.05(G).

14. OAC Rule 3745-20-04(A)(6)(a) requires an operator of a demolition operation to adequately wet all RACM after it has been removed from a facility's components and continue wetting to ensure that the removed RACM is adequately wet until it is collected and contained for disposal. On October 23, 2006, Respondent failed to adequately wet the RACM once it was removed from the Facility's components to ensure that the RACM remained adequately wet, in violation of OAC Rule 3745-20-04(A)(6)(a) and ORC § 3704.05(G).

15. OAC Rule 3745-20-05(B)(1)(c) requires all asbestos-containing waste material to be wetted prior to being sealed in durable leak-tight containers. Respondent failed to adequately wet the asbestos-containing waste material removed from the Facility prior to sealing it in bags and placing the bags in a dumpster located at the Robinson G. Jones School, in violation of OAC Rule 3745-20-05(B)(1)(c) and ORC § 3704.05(G).

16. On November 28, 2006, Ohio EPA issued a Notice of Violation to Respondent detailing the asbestos work practice violations Ohio EPA observed on October 23, 2006.

17. 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 the amount of fourteen thousand dollars (\$14,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) 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 eleven thousand two hundred dollars (\$11,200) of the total amount. The official check 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

A copy of the 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  
P.O. Box 1049  
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining two thousand eight hundred dollars (\$2,800) of the civil penalty, Respondent shall fund the supplemental environmental project ("SEP") identified in Order 3. In the event Respondent defaults or otherwise fails to complete the project as specified in Order 3, the \$2,800 for the project in Order 3, shall immediately become due and payable to Ohio EPA. Such payment shall be made by an official check made payable to "Treasurer, State of Ohio" and sent to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address. A copy of the check shall be sent to James A. Orlemann, or his successor, at the above-stated address.

3. Respondent shall fund a SEP by making a contribution in the amount of \$2,800 to Ohio EPA's fund for the Clean Diesel School Bus Program (Fund 5CD0). Respondent shall make payment within thirty (30) days after the effective date of these Orders by an official check made payable to "Treasurer, State of Ohio" for \$2,800. The official check shall be submitted to Brenda Case, or her successor, together with a letter

identifying the Respondent, to the above-stated address. A copy of this check also shall be sent to James A. Orlemann, or his successor, at the above-stated address.

## **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, 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 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:

Ohio Environmental Protection Agency  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio 444087  
Attn: Jennifer Kurko

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center

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**

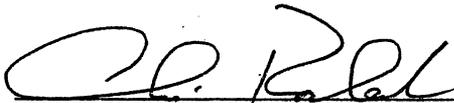
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

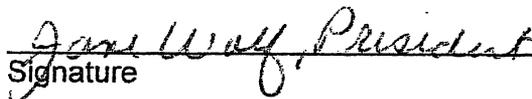
Ohio Environmental Protection Agency

  
Chris Korleski  
Director

12/27/07  
Date

**IT IS SO AGREED:**

A & D Contracting, Inc.

  
Signature

11-30-07  
Date

Jane Wolf  
Printed or Typed Name

President  
Title