United States Environmental Protection Agency
Region 5

IN THE MATTER OF:	)	
	)	
Darby Creek Excavating Circleville, Ohio	)	**FINDING OF VIOLATION**
	)	
	)	**EPA-5-01-OH-21**
	)	
Proceedings Pursuant to the Clean Air Act, 42 U.S.C. §§ 7401 et seq.	)	
	)	

FINDING OF VIOLATION

The United States Environmental Protection Agency finds that Darby Creek Excavating (Darby) has violated Section 112 of the Clean Air Act, 42 U.S.C. § 7412. Specifically, Darby has violated the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos at 40 C.F.R. part 61, subpart M as follows:

Regulatory Authority

1. The NESHAP for asbestos, at 40 C.F.R. § 61.145(a), requires, prior to the commencement of the demolition or renovation and in order to determine which requirements of paragraphs in this part apply to the owner or operator, a thorough inspection of the affected facility or the part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable asbestos containing material (ACM).

2. The NESHAP for asbestos applies to each owner or operator of a renovation and/or demolition activity at a facility, as those terms are defined at 40 C.F.R. § 61.141. Specifically, if the combined amount of regulated asbestos-containing material ("RACM") in the facility being demolished is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or at least 1 cubic meter (35 cubic feet) of facility components where the length or area could not be measured previously (renovation over "cut-off"), then the notification requirements set forth in 40 C.F.R. § 61.145(b) and the procedures for emission control set forth in 40 C.F.R. § 61.145(c) apply.

3. The NESHAP for asbestos, at 40 C.F.R. § 61.145(b)(1), requires each owner or operator of a demolition or renovation activity to provide the Administrator with a written notice of intention to demolish or renovate.

4. The NESHAP for asbestos, at 40 C.F.R. § 61.145(b)(2), requires each owner or operator of a demolition or renovation activity to update the required written notice of intention to demolish or renovate.

5. The NESHAP for asbestos, at 40 C.F.R. § 61.145(b)(4)(ii), requires that the written notice sent to the Administrator prior to a demolition or renovation activity include the name, address, and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator.

6. The NESHAP for asbestos, at 40 C.F.R. § 61.145(b)(4)(iv), requires that the written notice sent to the Administrator prior to a demolition or renovation activity include a description of the facility including the size (square feet and number of floors), age, and present and prior use of the facility.

7. The NESHAP for asbestos, at 40 C.F.R. § 61.145(b)(4)(v), requires that the written notice sent to the Administrator prior to a demolition or renovation activity include the procedure, including the analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

8. The NESHAP for asbestos, at 40 C.F.R. § 61.145(b)(4)(vi), requires that the written notice sent to the Administrator prior to a demolition or renovation activity include an estimate of the amount of RACM to be removed from the facility in terms of ... surface area in square feet. Also, it must include an estimate of the approximate amount of Category I and Category II nonfriable ACM in the affected facility that will not be removed before demolition.

9. The NESHAP for asbestos, at 40 C.F.R. § 61.145(b)(4)(viii), requires that the written notice sent to the Administrator prior to a demolition or renovation activity include the scheduled starting and completion dates of the asbestos removal work in a demolition project.

10. The NESHAP for asbestos, at 40 C.F.R. § 61.145(b)(4)(x), requires that the written notice sent to the Administrator

prior to a demolition or renovation activity include the description of the planned demolition or renovation work to be performed and method(s) to be employed, including demolition or renovation techniques to be used and description of affected facility components.

11. The NESHAP for asbestos, at 40 C.F.R. § 61.145(b)(4)(xi), requires that the written notice sent to the Administrator prior to a demolition or renovation activity include a description of work practices and engineering controls to be used to comply with the requirements of this subpart, including asbestos removal and waste handling emission control procedures.

12. The NESHAP for asbestos, at 40 C.F.R. § 61.145(b)(4)(xiii), requires that the written notice sent to the Administrator prior to a demolition or renovation activity include a certification that at least one person trained as required by the paragraph (c)(8) of 40 C.F.R. § 61.145 will supervise the stripping and removal described by this notification.

13. The NESHAP for asbestos, at 40 C.F.R. § 61.145(c)(1), requires the removal of all RACM and Category II asbestos from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

14. The NESHAP for asbestos, at 40 C.F.R. § 61.150(b)(1), requires all asbestos-containing waste material to be deposited as soon as is practical by the waste generator at a waste disposal site operated in accordance with the provisions of 40 C.F.R. § 61.154.

Finding of Facts

15. CVS owns a property at 6659 East Main Street, Reynoldsburg, Ohio (6659 East Main). 6659 East Main was originally purchased as two separate properties, 6633 and 6669 East Main Street, and then combined into one address.

16. CVS joined Skilken Properties Company (Skilken), 910 East Broad Street, Columbus, Ohio, in a Development Contract for the property at 6659 East Main. Skilken was designated as the Developer.

17. On October 22, 1998, an asbestos survey was conducted by Toltest, Inc. at four structures at 6659 East Main. The

survey listed the addresses as 6633 and 6669 East Main. The survey indicated 600 square feet of Category II non friable asbestos (Transite siding containing 14% Chrysotile) present in or on one of the structures. Skilken commissioned the survey.

18. The survey report, sent to Patrick Fribley of the Ohio Environmental Protection Agency, contained the following sentences on the second page of section *9.0 Asbestos Survey*;

> "Often materials are located in confined or inaccessible locations with little or no visible manifestation of their presence. ... Accordingly, our survey may serve as a first reference but cannot be looked upon as a comprehensive listing of each material present that contains asbestos."

19. Skilken contracted Mullet/Miller Construction (MMC) for the demolition of the four structures located at 6659 East Main.

20. MMC subcontracted the demolition of the four structures at 6659 East Main on October 1, 1999, to Darby Creek Excavating (Darby).

21. Skilken submitted a Notification of Demolition (Notice) to the Ohio EPA on October 6, 1999, for demolition of four structures located at 6659 East Main. The Notice listed the addresses as 6633 and 6669 East Main and identified Skilken as the owner and Darby as the demolition operator. The Notice was incomplete, inaccurate, or incorrect as pertaining to 40 C.F.R. § 63.145(b)(4)(ii), (iv), (v), (vi), (viii), (x), (xi), (xii), and (xiii). A track excavator was listed as the demolition method.

22. Darby subcontracted the demolition of the four structures at 6659 East Main on October 12, 1999, to C.D. Roberts Company (CD Roberts). An update to the Notice was not submitted.

23. Sometime between October 20 and 30, 1999, the four structures located at 6659 East Main were demolished by CD Roberts.

24. Mr. Fribley inspected the demolition site at 6659 East Main on October 27, 1999. Mr. Fribley noted that the Notice indicated Darby as the listed demolition contractor and that CD Roberts was performing the demolition. Mr. Fribley took photos of the demolition site that show a track excavator at work.

25. The debris from the demolition site was transported to Scott's Wrecking Inc., 5336 Ebright Road, Canal Winchester, Ohio.

26. CVS, Skilken, MMC, Darby, and CD Roberts have all stated that they did not remove the Transite siding prior to the demolition.

Violations

27. As an operator of the property, Darby is required to thoroughly inspect the affected facility to detect for the presence of asbestos, including Category I and Category II nonfriable ACM, where demolition is to occur. Toltest Inc. performed an inspection, but stated on the second page of section *9.0 Asbestos Survey* of the inspection report,

> "Often materials are located in confined or inaccessible locations with little or no visible manifestation of their presence. ... Accordingly, our survey may serve as a first reference but cannot be looked upon as a comprehensive listing of each material present that contains asbestos."

Darby is in violation of 40 C.F.R. § 61.145(a) for failing to perform a thorough inspection.

28. As an operator of the property, Darby is required to provide the Administrator with an update to the required written notice of intention to demolish or renovate (Notice). An updated Notice was necessary to include the additional operators in the demolition, MMC and CD Roberts, whose names did not appear on the original Notice and to repair the other deficiencies on the Notice, cited elsewhere in this FOV as violations. Darby is in violation of 40 C.F.R. § 61.145(b)(2) for failing to provide Ohio EPA with an update to the Notice.

29. As an operator of the property, Darby is required to provide the Administrator with a written Notice that includes the name, address, and telephone number of both the facility owner and operator and the asbestos removal contractor owner or operator. Darby is in violation of 40 C.F.R. § 61.145(b)(4)(ii) for failing to provide Ohio EPA with a written Notice identifying CVS as the owner and for failing to identify MMC and CD Roberts as contractors and operators.

30. As an operator of the property, Darby is required to provide the Administrator with a written Notice that includes a description of the facility including the size (square feet

and number of floors), age, and present and prior use of the facility. Darby is in violation of 40 C.F.R. § 61.145(b)(4)(iv) for failing to provide Ohio EPA with a written Notice that included the age of the facilities.

31. As an operator of the property, Darby is required to provide the Administrator with a written Notice that includes the procedure, including the analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM. Darby is in violation of 40 C.F.R. § 61.145(b)(4)(v) for failing to provide Ohio EPA with a written Notice that included the procedure, including the analytical methods, employed to detect the presence of RACM and Category I and Category II nonfriable ACM.

32. As an operator of the property, Darby is required to provide the Administrator with a written Notice that includes an estimate of the amount of RACM to be removed from the facility in terms of ... surface area in square feet. Also, it must include an estimate of the approximate amount of Category I and Category II nonfriable ACM in the affected facility that will not be removed before demolition. Darby is in violation of 40 C.F.R. § 61.145(b)(4)(vi) for failing to provide Ohio EPA with a written Notice that included an estimate of the amount of RACM to be removed from the facility and an estimate of the approximate amount of Category I and Category II nonfriable ACM not to be removed before demolition.

33. As an operator of the property, Darby is required to provide the Administrator with a written Notice that includes a scheduled starting and completion dates of the asbestos removal work in a demolition project. Darby is in violation of 40 C.F.R. § 61.145(b)(4)(viii) for failing to provide Ohio EPA with a written Notice that included a schedule for asbestos removal.

34. As an operator of the property, Darby is required to provide the Administrator with a written Notice that includes the description of the planned demolition or renovation work to be preformed and method(s) to be employed, including demolition or renovation techniques to be used and a description of affected facility components. Darby is in violation of 40 C.F.R. § 61.145(b)(4)(x) for failing to provide Ohio EPA with a written Notice that included demolition techniques to be used and a description of the affected facility components.

35. As an operator of the property, Darby is required to provide the Administrator with a written Notice that includes a description of work practices and engineering controls to be used to comply with the requirements of 40 C.F.R § 61.145, including asbestos removal and waste handling emission control procedures. Darby is in violation of 40 C.F.R. § 61.145(b)(4)(xi) for failing to provide Ohio EPA with a written Notice that included work practices and engineering controls to be used to comply with the requirements of this subpart.

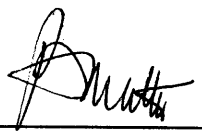
36. As an operator of the property, Darby is required by to provide the Administrator with a written Notice that includes the certification that at least one person trained as required by 40 C.F.R. § 61.145(c)(8) will supervise the stripping and removal of the asbestos. Darby is in violation of 40 C.F.R. § 61.145(b)(4)(xiii) for failing to provide Ohio EPA with a written Notice that included such a certification.

37. As an operator of the property, Darby is responsible for removal of all RACM prior to demolition. The use of a track excavator for demolition would cause sufficient force to change Category II non friable asbestos into RACM. Darby is in violation of 40 C.F.R. § 61.145(c)(1) for failing to remove all RACM before demolition.

38. As an operator of the property, Darby is required by 40 C.F.R. § 61.150(b)(1) to dispose of all asbestos-containing waste materials as soon as is practical by the waste generator at a waste disposal site operated in accordance with 40 C.F.R. § 61.154. The facility where the waste was deposited, Scotts Wrecking Inc., 5336 Ebright Road, Canal Winchester, Ohio, does not meet the standards of 40 C.F.R. § 61.154. Darby is in violation of 40 C.F.R. § 61.150(b)(1) for failing to dispose of asbestos-containing waste at a waste disposal site in accordance with 40 C.F.R. § 61.154.

9-25-01

Date



Bharat Mathur, Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Loretta Shaffer, certify that I sent a Finding of Violation, No. EPA-5-01-OH-21, by Certified Mail, Return Receipt Requested, to:

Kevin Steward, President
Darby Creek Excavating, Inc.
6790 Brooksmiller Road
Circleville, Ohio 43113

I also certify that I sent copies of the Finding of Violation by first class mail to:

Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio Environmental Protection Agency
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049

and:

Isaac Robinson, APC Supervisor
Central District Office
Ohio Environmental Protection Agency
3232 Alum Creek Drive
Columbus, Ohio 43207-3417

on the 26th day of September, 2001.

Loretta Shaffer

Loretta Shaffer, Secretary
AECAS, (MN/OH)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9581 5411