



Mike DeWine, Governor
Jon Husted, Lt. Governor
Laurie A. Stevenson, Director

August 16, 2019

Carol Mazzaro Nicoletti
P.O. Box M
Clinton, PA 15026

Re: Empire Excavating
Director's Final Findings and Orders (DFFO)
DFFO
Construction & Demolition Debris
Columbiana County
CDDL019955

Subject: Final Findings and Orders of the Director

Dear Sir or Madam:

Transmitted herewith are the Final Findings and Orders of the Director concerning the matter regarding Empire Excavating.

If you have any questions, please contact Teri Finrock at (614) 644-3037

Sincerely,

A handwritten signature in blue ink that reads "Jeri Main". The signature is written in a cursive, flowing style.

Jeri Main, Administrative Professional Unit
Division of Materials & Waste Management

Enclosure

cc: Bruce McCoy, DMWM, CO
Carl Mussenden, DMWM, CO
Colum McKenna, DMWM, NEDO
Lynn Sowers, DMWM, NEDO
Troy Harter, Legal
Teri Finrock, Legal

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter Of

Carol Mazzaro Nicoletti	:	<u>Director's Final Findings</u>
P.O. Box M	:	<u>and Orders</u>
Clinton, PA, 15026	:	

Respondent

I. JURISDICTION

Ohio EPA AUG 16 '18
Entered Directors Journal

These Director's Final Findings and Orders ("Orders") are issued to Carol Mazzaro Nicoletti ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3714.12, and 3734.13.

II. PARTIES

These Orders shall apply to and be binding upon the Respondent, and its heirs and successors in interest liable under Ohio law. No change in ownership of the Property (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 used in ORC Chapters 3714. and 3734. and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Upon This Rock, Inc. is the owner of the property located at 13526 State Route 7, Lisbon, Columbiana County, Ohio, parcel number 40-02364.000 (the "Property").
2. Raymond Nicoletti, Empire Environmental Services and Upon this Rock are responsible for open dumping of solid waste and the illegal disposal of C&DD on the Property.
3. Raymond Nicoletti passed away on February 13, 2018. Prior to his death, Mr. Nicoletti created a Last Will and Testament (see Attachment) on June 27, 2017 where he named Respondent as the executrix to administer his estate upon his

death. Mr. Nicoletti also bequeathed all of his real and personal property, including items titled under corporate names, to Respondent.

4. As declared in a financing statement filed with the Ohio Secretary of State on January 20, 1999 (see Attachment), Respondent was named the secured party to collateral owned by Upon This Rock, including the Property.
5. Respondent is a "person" as that term is defined in ORC §§ 3714.01(H), 3734.01(G), and in Ohio Administrative Code ("OAC") Rules 3745-27-01(P)(3) and 3745-400-01(P)(1).
6. Respondent, being named as the executrix and beneficiary of Mr. Nicoletti's Last Will and Testament and secured party to collateral including the Property, maintains control over the Property.
7. OAC Rule 3745-37-01(A) states that "[n]o person shall conduct municipal solid waste landfill, industrial solid waste landfill, residual solid waste landfill, compost facility, transfer facility, infectious waste treatment facility, or solid waste incineration facility operations without possessing a separate, valid license for each such operation, as required by Chapter 3734. of the Revised Code and the Administrative Code rules adopted thereunder. Each license shall be obtained from the board of health in the health district in which the facility is located, or by the director, if the director has assumed the licensing function for that health district."
8. ORC § 3734.01(I) defines open dumping as the "depositing of solid wastes into a body or stream of water or onto the surface of the ground at a site that is not licensed as a solid waste facility under section 3734.05 of the Revised Code or, if the solid wastes consist of scrap tires, as a scrap tire collection, storage, monocell, monofill, or recovery facility under section 3734.81 of the Revised Code; the depositing of solid wastes that consist of scrap tires onto the surface of the ground at a site or in a manner not specifically identified in divisions (C)(2) to (5), (7), or (10) of Section 3734.85 of the Revised Code [.]"
9. OAC Rule 3745-27-01(O)(4)(a) defines open dumping as, "[t]he deposition of solid wastes, other than scrap tires, into waters of the state, and also means the final deposition of solid wastes on or into the ground at any place other than a solid waste facility operated in accordance with Chapter 3734. of the Revised Code, and Chapters 3745-27, 3745-29, 3745-30, and 3745-37 of the Administrative Code.."
10. The open dumping of solid waste are violations of ORC § 3734.03 which states that "[n]o person shall dispose of solid wastes by open burning or open dumping."
11. OAC Rule 3745-27-05(C) states, "[n]o person shall conduct, permit, or allow open dumping. In the event that open dumping is occurring or has occurred at a property, the person(s) responsible for the open dumping, the owner of the property, or the person(s) who allow or allowed open dumping to occur, shall promptly remove and dispose or otherwise manage the solid waste in accordance

with Chapter 3734, of the Revised Code, and shall submit verification that the solid waste has been properly managed."

12. ORC § 3734.02(C) states, in pertinent part, "no person shall establish a new solid waste facility... without submitting an application for a permit with accompanying detail plans, specifications, and information regarding the facility and method of operation and receiving a permit issued by the director[.]"
13. ORC § 3734.05(A) states, in pertinent part, "no person shall operate or maintain a solid waste facility without a license issued under this division by the board of health of the health district in which the facility is located[.]"
12. ORC § 3714.06(A) states, in pertinent part, "[n]o person shall operate or maintain a construction and demolition debris facility or processing facility without an annual construction and demolition debris facility or processing facility operation license[.]"
13. OAC Rule 3745-400-01(C)(3) states, in pertinent part, "'[c]onstruction and demolition debris facility' or 'facility' means any site, location, tract of land, installation, or building used for the disposal of construction and demolition debris."
14. OAC Rule 3745-400-04(B) states, in pertinent part, "[n]o person shall conduct or allow illegal disposal of construction and demolition debris."
15. Ohio EPA conducted inspections of the Property on July 26, 2007 and between January 13, 2017 and April 25, 2018. Corresponding Notices of Violation ("NOV") letters were sent via certified mail to Raymond Nicoletti, Empire Environmental Services and Upon this Rock, but were returned to sender marked "unclaimed," "unable to forward," or "no mail receptacle." Violations included the following:
 - ORC § 3734.03 and OAC Rule 3745-27-05(C) for open dumping of solid waste;
 - OAC Rule 3745-37-01(A) for conducting solid waste landfill operations without possessing a separate valid license;
 - OAC Rule 3745-400-04(B) for conducting or allowing illegal disposal of construction and demolition debris;
 - OAC Rule 3745-37-01(A) for operating a solid waste transfer facility without a license;
 - OAC Rule 3745-37-01(C) for establishing, modifying, operating or maintaining a construction and demolition debris facility without a construction and demolition debris facility license;
 - ORC §§ 3734.02(C) and 3734.02(A)(2) for not obtaining a permit for a solid waste facility; and
 - ORC § 3734.03 for open burning.
16. During inspections, Ohio EPA has consistently observed disposal on the Property, including the following:

- a pile of railroad ties (approximately 75 feet in diameter) near trailers parked at the entrance;
 - a pile of treated wood, fencing, plywood, and dimensional lumber in the rear of the Property (east side) behind the maintenance building;
 - a wood pile approximately 120 feet long and 40 feet wide;
 - C&DD buried or partially buried in two separate piles on the east and west of the maintenance building;
 - boat, broken molds, automobile bench seat and other automobile parts, electronics, cushions, foam, and five scrap tires dumped;
 - a pile of scrap metal and plastic parts measuring approximately an acre in size is located across from the maintenance building; and
 - an area of approximately 400 feet long and 50 feet wide on the west end consisting of commingled solid waste and C&DD along the southern portion of the Property.
17. By letter dated June 5, 2018, Respondent notified Ohio EPA that Mr. Nicoletti was deceased and that she was the beneficiary of the will and secured lien holder to Mr. Nicoletti's realties in Ohio.
18. A copy of the will and the lien were submitted electronically to Ohio EPA on October 3, 2018 (see Attachments).

V. ORDERS

Respondent shall achieve compliance with ORC Chapters 3714 and 3734 and the rules promulgated thereunder according to the following compliance schedule:

1. Upon the effective date of these Orders, Respondent shall not conduct, permit, or allow any disposal of solid wastes or construction and demolition debris at the Property and shall comply with ORC Chapters 3714 and 3734 and OAC Chapters 3745-27 and 3745-400.
2. Upon the effective date of these Orders, Respondent shall not conduct, permit, or allow any open burning at the Property.
3. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of visible solid waste, from the Property and dispose of all solid waste at a licensed solid waste disposal facility. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility indicating weight or volume of the solid waste disposed. Respondent shall forward such documentation to Ohio EPA Northeast District Office on a monthly basis by the 10th day of each month until receipts documenting that all solid waste has been appropriately disposed have been provided to Ohio EPA.
4. Not later than one hundred twenty (120) days after the effective date of these Orders, Respondent shall remove or cause the removal of visible C&DD from the Property and dispose of all C&DD at a licensed C&DD facility or at a licensed solid

waste disposal facility. If any C&DD at the Property is commingled with solid waste and cannot be segregated, then all such unsegregated material shall be disposed of at a licensed solid waste disposal facility. Respondent shall obtain disposal receipts from the licensed solid waste disposal facility and/or the licensed C&DD facility indicating weight or volume of C&DD disposed. Respondent shall forward such documentation to Ohio EPA Northeast District Office on a monthly basis by the 10th day of each month until receipts documenting that all C&DD has been appropriately disposed have been provided to Ohio EPA.

5. Not later than one hundred eighty (180) days after the effective date of these Orders, Respondent shall add at least one (1) foot of soil cover and establish vegetation to the area of the Property identified in Attachment A.
6. Not later than thirty (30) days after the effective date of these Orders, Respondent shall record on the plat and deed to the Property, or an other instrument which is normally examined during a title search, the completed deed notation (Attachment B) that will in perpetuity notify any potential purchaser of the potential presence of buried solid waste and C&DD at the Property.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Materials and Waste Management acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "[Name] certifies that the information contained in or accompanying this certification is true, accurate and complete." This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent.

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 Property.

VIII. OTHER APPLICABLE LAWS

All actions required to be taken by Respondent 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 or the Property.

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
Northeast District Office,
Division of Materials and Waste Management
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Unit Supervisor, DMWM

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 the 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



Laurie A. Stevenson, Director

IT IS SO AGREED:

Carol Mazzaro Nicoletti

 
Signature Date

CAROL MAZZARO NICOLETTI
Printed or Typed Name

Attachment A



Attachment B

DEED NOTIFICATION

This instrument is recorded in accordance with Director's Final Findings and Orders dated __/__/__ to provide information pertaining to the property in in Lisbon, Ohio, with the parcel number 40-02364.000. The deeds conveying ownership of the property that comprises the property are recorded with the Recorder of Columbiana County, Ohio.

There previously existed on the property a solid waste and construction and demolition debris open dump. Pursuant to the __/__/__ Director's Final Findings and Orders, visible solid waste and construction and demolition debris were removed from the surface and properly disposed. Additional solid waste and construction and demolition debris may be buried under the soil in the vicinity of the cleanup area and surrounding areas on the property. Further information is available from the Ohio Environmental Protection Agency.