

BEFORE THE

OHIO E.P.A.

OHIO ENVIRONMENTAL PROTECTION AGENCY

JUN 24 2004

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Miller-Yount Paving, Inc.  
2295 Bazetta Road  
Cortland, Ohio 44410

Director's Final Findings  
and Orders

RESPONDENT

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Miller-Yount Paving, 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 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 was the demolition contractor hired by Jay Cole Chevrolet-Oldsmobile automobile dealership ("Cole") to perform the demolition work on a cement block storage building, previously located at 203 South Canal Street in Newton Falls, Trumbull County, Ohio. Respondent's business address is 2295 Bazetta Road, Cortland, Trumbull County, Ohio. Before being demolished, the cement storage building was used

to store boats and prior to that, the building had been used as the automobile dealership's body shop. The building was a "facility" as defined in OAC Rule 3745-20-01(B)(18) and was subject to the applicable requirements specified in OAC Chapter 3745-20 ("Asbestos Emission Control Standards").

2. OAC Rule 3745-20-01(B)(38) defines, in part, the "owner or operator" as any person who owns, leases, operates, controls, or supervises the facility being demolished; or any person who owns leases, operates, controls or supervises the demolition of the facility, or both. Respondent operated, controlled and supervised this demolition project and otherwise retained responsibility for the compliance with the applicable requirements specified in OAC Chapter 3745-20.

3. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition operation, subject to the provisions of OAC Rule 3745-20-03, to provide Ohio EPA with a written notice of intention to demolish at least 10 days prior to starting any demolition work. OAC Rule 3745-20-02(B) states, in part, that a facility being demolished is subject to the requirements (i.e., to submit a demolition notification) of OAC Rule 3745-20-03 even if the facility does not contain any asbestos-containing material.

4. OAC Rule 3745-20-02(A) requires, in part, the owner and operator of a demolition operation to have the facility thoroughly inspected prior to commencement of demolition for the presences of asbestos.

5. 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.

6. On July 17, 2003, a representative of Mahoning-Trumbull Air Pollution Control Agency (" M-TAPCA "), a contractual representative of Ohio EPA for Trumbull County, observed that the facility had been demolished without the required notice of intention to demolish being submitted. The representative was informed by Mr. Denny Valot, the sales manager of the automobile dealership, that Respondent was the demolition operator.

7. On July 17, 2003, M-TAPCA sent a Notice of Violation ("NOV") to Respondent for the violations of OAC Chapter 3745-20 and ORC § 3704.05(G). The NOV required Respondent to submit the delinquent notification of intention to demolish along with information about the date when the demolition began and documentation indicating that the facility was inspected for asbestos-containing materials.

8. On July 22, 2003, Respondent met with M-TAPCA to discuss the July 17, 2003 NOV. Respondent stated that he was not aware of the requirement to submit a notification of the intention to demolish. However, M-TAPCA's records contained several prior notices of intention to demolish submitted by Respondent for other demolition operations.

9. On August 4, 2003, Respondent submitted an incomplete notice of intention to demolish. The notice did not identify the procedure used to detect the presence of asbestos-containing materials, the amount of asbestos-containing materials, and the other pertinent information required by OAC Rule 3745-20-03(A)(4).

10. Respondent is the "owner and operator" of the demolition operator of the facility as defined in OAC Rule 3745-20-01(B)(38). Therefore, Respondent was responsible for submitting a written notice of intention to demolish and for assuring that the facility was thoroughly inspected to determine the presence and amounts of asbestos-containing materials prior to the start of demolition. Respondent failed to comply with these requirements, in violation of OAC Rules 3745-20-02(A) and 3745-20-03(A) and ORC § 3704.05(G).

11. 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:

Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of twelve thousand seven hundred fifty dollars (\$12,750) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704.06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$12,750. The official check shall be submitted 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 facility.

A copy of the official check shall be submitted to James A. Orlemann, Assistant Chief, Enforcement Section, or his successor, at 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 check 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 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:

Mahoning-Trumbull Air Pollution Control Agency  
Attn: Robert Ramhoff, Director  
345 Oak Hill Avenue, Suite 200  
Youngstown, Ohio 44502

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 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.

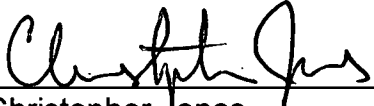
## **XIII. EFFECTIVE DATE**

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.

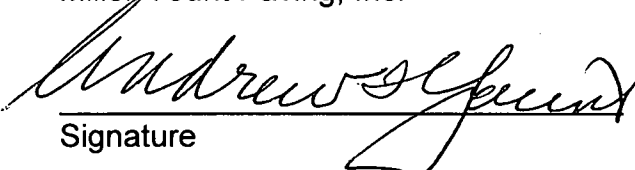
**IT IS SO ORDERED AND AGREED:**

  
\_\_\_\_\_  
Christopher Jones  
Director

6-18-04  
Date

**IT IS SO AGREED:**

Miller-Yount Paving, Inc.

  
\_\_\_\_\_  
Signature

6/8/2004  
Date

Andrew T. Yount  
Printed or Typed Name

Chairman  
Title