

**BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY**

**In the Matter of:**

Drake Construction Company )  
1275 Main Avenue )  
Cleveland, OH 44133 )

Director's Final Findings  
and Orders

**PREAMBLE**

It is hereby agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Drake Construction Company ("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 facility owned by Respondent and 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 in ORC § 3704 and the regulations promulgated thereunder.

**IV. FINDINGS**

The Director of the Ohio EPA has determined the following findings of fact:

1. The clubhouse at Legend Lake Golf Club located at 11235 Auburn Road in Munson Township, Geauga County, Ohio, is a facility as defined by OAC Rule 3745-20-01(B)(12), and managed by Mr. Patrick Alexander.
2. Respondent is a construction company located at 1275 Main Avenue, Cleveland, Ohio, and incorporated as a business with the Secretary of State in the State of Ohio.

OHIO E.P.A.  
OCT 26 2004  
ENTERED DIRECTOR'S JUDICIAL

3. Lake County General Health District ("LCGHC") is Ohio EPA's contractual representative in Lake County for the administration of Ohio Administrative Code ("OAC") § 3745-20 ("Asbestos Emission Control Standards").

4. OAC Rule 3745-20-02(A) states, in part, that notwithstanding any other exclusion of this rule, and to determine which requirements of this rule and of OAC Rules 3745-20-03 and 3745-20-04 of the Administrative Code apply, each owner or operator of any demolition or renovation operation shall have the effected facility or part of the facility where a demolition or renovation operation will occur thoroughly inspected prior to the commencement of the demolition or renovation for the presence of asbestos, including Category I and Category II non-friable asbestos-containing material as defined in OAC Rule 3745-20-01(B)(9) and (B)(10).

5. OAC Rule 3745-20-03(A) states, in part, that each owner or operator to whom this rule applies shall provide the Director of Ohio EPA with written notice of intention to demolish.

6. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-20 was adopted by Ohio EPA pursuant to ORC § 3704.

7. On or before April 9, 2003, Respondent started the partial demolition of south end section of the clubhouse facility. Therefore, Respondent was the "operator" of the demolition operation as defined in OAC Rule 3745-20-01(B)(20).

8. While investigating a subsequent demolition at the site on April 14, 2003, the LCGHC inspector met with Respondent's representative, Mr. Jack Link. After the discussion with Mr. Jack Link, the LCGHC inspector determined that:

- a. An approximately 20 foot by 40 foot section of the facility had been partially demolished which included drywall, ceilings with troweled-on texturing material, and mastic, and the floor tiles had been removed. Only one of the four dumpsters of debris remained at the site.
- b. An asbestos survey of the facility had not been conducted prior to demolition and that an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form had not been submitted to Ohio EPA or its contractual representative LCGHC, prior to the start of the demolition operation.

9. Because Respondent did not provide the Director of Ohio EPA or its contractual representative LCGHC with a written notice of intention to demolish and there was no pre-demolition asbestos inspection performed, proper removal and disposal of regulated asbestos-containing materials, if any, were unknown at the time.

10. Respondent's failure to notify Ohio EPA or its contractual representative LCGHC, prior to the demolition of the facility constitutes a violation of OAC Rule 3745-20-03(A)(1) and ORC § 3704.05(G).

11. On April 16, 2003, Respondent sent samples of the drywall compound, floor tiles, mastic and roof shingles from the undemolished south end section of the facility to F.S.W. Lab Inc. ("F.S.W.") in Beachwood, Ohio for analysis. F.S.W.'s test report was completed on April 18, 2003. The analysis showed that three of the twelve samples contained chrysotile asbestos in the amount equal to or greater than 1% (i.e., 1.0%, 1.25% and 1.25%). These three samples were of drywall compound. Immediately following the F.S.W. analysis, Respondent sent the suspect drywall compound to International Asbestos Testing Laboratories ("IATL") and PSI labs located in Mount Laurel, New Jersey and Pittsburgh, Pennsylvania, respectively, for further analysis.

12. On April 28, 2003, Respondent submitted a complete Ohio EPA Notification of Demolition and Renovation form to LCGHC and hired an asbestos hazard evaluation specialist to survey the remainder of the facility. The notification form listed the following: building size, 10,400 square feet; operator/general contractor, JW Belt; waste transporter, Bencin Disposal Services; asbestos materials to be removed, none; and demolition start and completion dates as April 9, 2003, and June 30, 2003, respectively. However, the only demolition that occurred was on the section aforementioned. The remainder of the building, including the undemolished south end section, was only renovated.

13. On May 13, 2003, Respondent sent copies of the test results from the three laboratories to LCGHC. The results from IATL and PSI showed that asbestos was not present in the suspect drywall compound.

14. On May 15, 2003, LCGHC sent a Notice of violation ("NOV") to Respondent for the partial demolition of the facility along with a copy of OAC Chapter 3745-20 that explained the Asbestos Emission Control Standards. The NOV cited Respondent for the violations of OAC Rule 3745-20-02(A) for failure to thoroughly inspect for the presence of asbestos prior to demolition and OAC Rule 3745-20-03(A)(1) for failure to provide Ohio EPA or LCGHC with a written notice of intent to demolish prior to the demolition.

15. During the April 14, 2003 inspection, LCGHC representative also found that, in addition to the demolition that occurred on the section aforementioned, some interior renovations were still to be completed. There was no asbestos to be removed in the second phase of the project and, therefore, no further rules were violated in the remainder of the building.

16. 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 Order:

Within thirty (30) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of nine thousand dollars (\$9,000) in settlement of Ohio EPA's claims for civil penalties for the violations of air pollution control regulations that occurred at the Munson Township facility, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$9,000. The official check shall be submitted to Brenda Case, or her successor, in care of 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 the check shall be sent to James A. Orlemann, Assistant Chief, Compliance and Enforcement, or his successor, at the following address:

Division of Air Pollution Control  
Ohio Environmental Protection Agency  
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, the operation of Respondent.

## **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:

Lake County General Health District  
Air Pollution Control Agency  
33 Mill Street  
Painesville, Ohio 44077  
Attention: Bert Merchenbier

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attention: Felix Udeani

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**

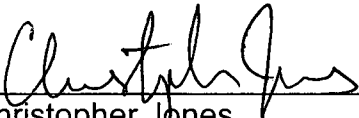
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

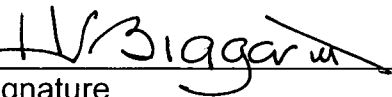
**Ohio Environmental Protection Agency**

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

10-22-04  
\_\_\_\_\_  
Date

**IT IS SO AGREED:**

**Drake Construction Company**

  
\_\_\_\_\_  
Signature

10/4/04  
\_\_\_\_\_  
Date

H.F. BIGGAR III  
\_\_\_\_\_  
Printed or Typed Name

Executive Vice President  
\_\_\_\_\_  
Title

Drake Construction Co.