

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

DiFonzo Excavating Company
36036 Lakeland Boulevard
Eastlake, Ohio 44095

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Director's Final Findings
and Orders

RESPONDENT

ENTERED DIRECTOR'S JOURNAL

SEP - 4 2002

OHIO E.P.A.

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to DiFonzo Excavating Company ("Respondent"), pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under R.C. 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 relating to 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 used in R.C. Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS OF FACT

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

1. Respondent owns and operates a residential demolition business located at 36036 Lakeland Boulevard, Eastlake, Ohio.

2. On July 25, 2001, an inspector from the Lake County General Health District ("LCGHD") noticed that Respondent demolished a commercial building located at 30555 Euclid Avenue, Willowick, Ohio, which was partially destroyed by fire in December 2000. According to the definition in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12), this project involved the demolition of a "facility." Also, Respondent was an "operator," as defined in OAC Rule 3745-20-01(B)(20), of this demolition operation.

3. OAC Rule 3745-20-02(A)(1) states, in part, that the notification requirements of OAC Rule 3745-20-03 apply to each owner or operator of a demolition operation if the amount of friable asbestos materials in a facility being demolished is at least 260 linear feet on pipes or at least 160 square feet on other facility components. In addition, OAC Rule 3745-20-02(A)(2) states that the notification requirements of OAC Rule 3745-20-03 apply to each owner or operator of a demolition operation if the amount of friable asbestos materials in a facility being demolished is less than 260 linear feet on pipes or less than 160 square feet on other facility components, including those facilities that contain no friable asbestos. OAC Rule 3745-20-03(A) states each owner or operator shall provide the Director of Ohio EPA with written notice of intention to demolish at least 10 days before any demolition operation begins if the operation is as described in OAC Rule 3745-20-02(A)(1) and 20 days before any demolition operation begins if the operation is as described in OAC Rule 3745-20-02(A)(2). The above-referenced, planned demolition was subject to the notification requirements of OAC Rule 3745-20-03(A); however, the amount of friable asbestos materials in this facility is unknown to Ohio EPA and, therefore, a notification was due by at least either 10 or 20 days before beginning the demolition operation. Furthermore, a violation of any rule adopted by the Director of Ohio EPA also constitutes a violation of R.C. 3704.05(G).

4. The Lake County records depict the facility as a 4948 square foot restaurant building. The facility was owned by Ms. Vicki Nolidis.

5. LCGHD believes that demolition of the structure may have begun on or about July 18, 2001, and it was determined that no asbestos assessment was conducted prior to the demolition of the facility, as required by the National Emission Standards for Hazardous Air Pollutants for asbestos in 40 CFR, Part 61, Subpart M.

6. On July 25, 2001, an inspector from LCGHD arrived at the site and found the Respondent in the process of removing debris from the demolition of the facility. The facility had been completely demolished by the time the inspector arrived at the site. Therefore, Respondent violated OAC Rule 3745-20-03(A) and R.C. 3704.05(G) by not submitting a Notification for the demolition operation at least 20 days prior to beginning the operation. The inspector did not observe water being used to wet down demolition material prior to loading into trucks. Respondent stopped all work when it was advised of the notification violation of the OAC Rules.

7. During the site visit, LCGHD inspector advised the owner to hire a third party contractor to sample the debris for asbestos-containing materials. The owner hired the EA Group to collect samples of suspected friable asbestos materials from the demolition debris remaining at the facility. EA Group collected 17 samples of suspected friable asbestos materials from the debris piles at the facility. One of the sample results indicated that the roofing/siding materials were above the 1% threshold level in the definition of "friable asbestos material" in OAC Rule 3745-20-01(B)(14). Additionally, the EA Group assumed the drywall, floor tile and mastic to contain asbestos.

8. On August 9, 2001, LCGHD inspector sent a warning letter by certified mail to Respondent informing it of the failure to file a timely notification as required by OAC Rule 3745-20-03(A)(1). The LCGHD inspector believes that Respondent indicated he has demolished commercial buildings before but was unaware of the regulations. The LCGHD inspector requested copies of dump receipts or waste disposal manifests indicating where the demolition debris was deposited.

9. Respondent verbally informed LCGHD that five dumpsters of debris had been sent to a construction and demolition landfill. The remaining debris was cleaned up and disposed of as regulated asbestos-containing waste material by licensed contractor.

10. During negotiations between Ohio EPA and the Respondent, Respondent claimed that the violation identified in Finding 6 was inadvertent. Furthermore, Respondent claimed that, contrary to Finding 8, Respondent had not previously performed commercial demolition work.

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 the 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 maintain compliance with OAC Chapter 3745-20 in any demolition or renovation projects performed by Respondent in the State of Ohio.
2. Pursuant to R.C. 3704.06, Respondent is assessed a civil penalty in the amount of ten thousand dollars (\$10,000) in settlement of Ohio EPA's claim for civil penalties. Within thirty (30) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eight thousand dollars (\$8,000) of the total penalty amount. Payment shall be made by certified check made payable to "Treasurer, State of Ohio" and

sent to Brenda Case, Fiscal Specialist, or her successor, at the following address:

Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

The remaining two thousand dollars (\$2,000) shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver a certified check in this amount and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban area tree-planting projects in Ohio. This check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

A copy of both checks shall be sent to James A. Orlemann, Manager, Engineering Section, 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. 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's business.

VII. NOTICE

All documents required by these Orders, unless otherwise specified by Ohio EPA in writing, shall be addressed to:

Lake County General Health District
33 Mill Street
Painesville, Ohio 445077
Attention: Mr. Bert Mechenbier

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman or successor

VIII. MODIFICATIONS

These Orders may be modified by mutual 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.

IX. RESERVATION OF RIGHTS

Nothing contained herein prevents Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders. Nothing contained herein prevents Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities at the facility pursuant to R.C. Chapter 3704 or any other applicable law in the future. Nothing herein restricts the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions that Ohio EPA may seek to require of Respondent.

X. SIGNATORIES

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 this document.


XI. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's civil liability for the specific violations cited herein. Respondent hereby waives the right to appeal the issuance, terms, and service of these Orders and hereby waives any and all rights it might 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 an appeal. In such event, Respondent shall continue to comply with these Orders unless these Orders are stayed, vacated, or modified.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

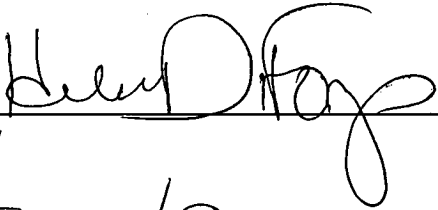


Christopher Jones
Director

8-29-07
Date

IT IS AGREED:

DiFonzo Excavating Company



By
Treas/Sec.

Title

8/21/02
Date