

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
NOV 20 2001
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

JTO, Inc.	:	<u>Director's Final Findings</u>
6011 Heisley Road	:	<u>and Orders</u>
Mentor, Ohio 44060	:	
	:	
RESPONDENT	:	

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to JTO, Inc. ("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 is a multi-diversified company, with principal place of business at 6011 Heisley Road in Mentor, Ohio, whose operations include construction services, landscaping services, and renovation and demolition of structures.

2. Respondent was hired by Trask Properties to demolish a building identified as the old Fifth Third Bank, which was approximately 10,800 square feet in area, located at 6911 Center Street, Mentor, Ohio. This demolition took place in October, 1999. Also, Respondent was hired by Trask Properties to demolish a garage, which was approximately

1,800 square feet in area, located at 6th East Main Street, Madison, Ohio. This demolition took place in January, 2001. The above-referenced structures each constituted a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12). Respondent was an "operator," as defined by OAC Rule 3745-20-01(B)(20).

3. Pursuant to OAC Rule 3745-20-03(A)(2)(a), owners or operators of facilities to be demolished, which contain at least threshold amounts of friable asbestos materials, must postmark or deliver a notice of intention to demolish ("NID") to the Ohio EPA field office having jurisdiction at least 10 days before any demolition operation begins. OAC Rule 3745-20-03(A)(2)(b) states that owners or operators of facilities to be demolished, which contain less than threshold amounts of friable asbestos materials, including those which contain no asbestos, must postmark or deliver a NID to the Ohio EPA field office having jurisdiction at least 20 days before any demolition operation begins.

4. Lake County General Health District ("LCGHD") is Ohio EPA's contractual representative in Lake County for the administration of OAC Chapter 3745-20 ("Asbestos Emission Control Standards").

5. On October 4, 1999, Respondent began demolition of the structure located at 6911 Center Street, Mentor, Ohio. On October 4, 1999, LCGHD staff received a complaint regarding demolition of the building at the above-mentioned location and conducted an investigation of the complaint that day. Upon arrival at the site, LCGHD staff observed that the building was partially demolished and, due to the nature of its partial demolishment, did not consider the building safe to enter to conduct an inspection. Respondent was informed of the NID violation at this time and was requested to stop the demolition of the building until appropriate action could be taken to resume work. On October 5, 1999, JTO hired a certified asbestos hazard evaluation specialist to conduct an asbestos inspection of the building. On October 8, 1999, Respondent submitted to LCGHD a NID for this facility. The NID indicated that samples of building material taken by the certified asbestos hazard evaluation specialist did not indicate the presence of any asbestos. Upon receipt of the NID, demolition of this building was allowed to resume. The demolition of this facility occurred without notification to LCGHD at least 10 or 20 days, whichever was applicable, prior to the start of the demolition project, in violation of OAC Rule 3745-20-03(A) and R.C. 3704.05(G).

6. On October 19, 1999, LCGHD transmitted a Notice of Violation ("NOV") to Respondent, informing Respondent of its violation of OAC Rule 3745-20-03(A) for failing to submit the required notification to LCGHD within the prescribed time period prior to the start of the demolition.

7. On January 17, 2001, Respondent began demolishing the structure located at 6th East Main Street, Madison, Ohio. Later that same day, Respondent submitted to LCGHD by fax an asbestos inspection summary report for this facility. According to the

report, this facility was inspected on October 17, 1999 by a certified asbestos evaluation specialist. The report indicated that the building is about 30 years old and approximately 1,800 square feet in area. All suspect materials such as pipe insulation, vinyl sheet flooring and asphalt roofing were sampled. The analysis of these samples indicated that the structure's roofing material contained 3 percent chrysotile asbestos, which is not regulated because such asbestos is nonfriable. No friable asbestos was found in any of the samples.

8. On January 18, 2001, LCGHD staff arrived on site and observed Respondent working at the facility, hauling away debris from the demolition. The demolition of this structure was completed prior to the arrival of LCGHD staff. Upon speaking with the work crew it was determined that three or four 40-yard dumpsters of debris had already been removed and that proper notification to LCGHD had not been made at least 20 days prior to the start of the building's demolition, in violation of OAC Rule 3745-20-03(A) and R.C. 3704.05(G). At this time, Respondent was requested not to remove any additional material until LCGHD staff could verify the presence or absence of any asbestos-containing materials and whether proper notification to LCGHD was received. Visual inspection of the remaining debris by LCGHD staff did not indicate the presence of friable asbestos. On January 26, 2001, Respondent hand delivered to LCGHD a NID for this facility and was allowed to remove the remaining debris.

9. On January 30, 2001, LCGHD transmitted a NOV to Respondent for failure to notify LCGHD before demolition of this facility began, in violation of OAC Rule 3745-20-03(A).

10. 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 issues the following Orders:

1. Respondent shall maintain compliance with OAC Chapter 3745-20 during any demolition or renovation operation it conducts in Ohio.

2. Pursuant to R.C. 3704.06, Respondent is assessed a civil penalty in the amount of fourteen thousand dollars (\$14,000) in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of eleven thousand two hundred dollars (\$11,200) of the total penalty amount. Payment shall be made by certified check made payable to "Treasurer, State of Ohio" and sent to Vicki Galilei, Fiscal Specialist, or her successor, at the following address:

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

The remaining two thousand eight hundred dollars (\$2,800) 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 demolition operations.

VII. NOTICE

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

Lake County General health District
Attention: Bert Mechenbier
33 Mill Street
Painsville, Ohio 44077

and to:

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

VIII. 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.

IX. 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.

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.

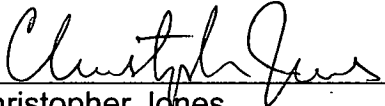
XI. WAIVER

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 it 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

11-16-01
Date

IT IS AGREED:

JTO, Inc.



By *Timothy C. Posar*

11/2/2001
Date

TREASURER

Title