

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT 1 2001

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

A. P. O'Horo Company	:	<u>Director's Final Findings</u>
3130 Belmont Avenue	:	<u>and Orders</u>
Youngstown, Ohio 44505	:	
	:	
RESPONDENT	:	

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to 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 its assigns and successors in interest.

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 the owner and operator of a demolition business with principal place of business located at 3130 Belmont Avenue, Youngstown, Ohio.
2. In accordance with Ohio Administrative Code ("OAC") 3745-20-03(A), each owner or operator of a demolition operation at a facility must provide the Director of Ohio EPA with written notice of intent to demolish. The notice must be postmarked or delivered to the appropriate Ohio EPA District Office or local air agency at least 10 days prior to beginning the demolition operation if the amount of friable asbestos material in a facility

being demolished is at least 260 linear feet on pipes or at least 160 square feet on other facility components, or at least 20 days prior to beginning the demolition operation if the amount of friable asbestos material 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 which contain no friable asbestos material. In addition, R.C. 3704.05(G) states that no person shall violate any order, rule or determination of the Director issued, adopted, or made under this chapter.

Incident #1

3. On January 14, 1994, an inspector from the Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA"), Ohio EPA's contractual representative in Mahoning County, observed the demolition in progress of a commercial building by Respondent. Approximately 10 to 20 percent of the building was demolished by the time it was observed by the inspector. The building was located at 533 Lincoln Avenue, Youngstown, Ohio. The above structure constituted a "facility" as defined by OAC Rule 3745-20-01(B)(12). During the inspection, no suspected friable asbestos materials were observed in the remains of the building and debris; therefore, no samples were collected for testing. After further investigation, it was determined that the Respondent failed to submit a completed Ohio EPA notification of demolition form to M-TAPCA at least 20 days prior to beginning the demolition, in violation of OAC Rule 3745-20-03(A) and R.C. 3704.05(G). Furthermore, no completed notification of demolition form was submitted by Respondent during the demolition of the remaining building or thereafter.

4. On January 18, 1994, M-TAPCA sent a warning letter to the Respondent and the owner of the facility (i.e., Holy Trinity Ukranian Catholic Church of 526 W. Rayen Avenue, Youngstown, Ohio). The letters included a copy of the Ohio EPA notification form for future demolition projects and a jurisdictional map that identified the local air agencies and Ohio EPA District Offices that accept these notifications for the other counties in Ohio. In addition, the letters included a copy of the Ohio Asbestos Emission Control Standards and the asbestos subpart of the National Emission Standards for Hazardous Air Pollutants ("NESHAP").

Incident #2

5. In September and October 1995, Respondent demolished a toll plaza at Interchange 14 of the Ohio Turnpike in Trumbull County. The structure constituted a "facility" as defined by OAC Rule 3745-20-01(B)(12). The demolition occurred without first submitting a completed notification of demolition to M-TAPCA, in violation of OAC Rule 3745-20-03(A) and R.C. 3704.05(G). The building was owned by Ohio Turnpike Commission ("OTC"). According to a December 23, 1986 report titled "Report of the Industrial Hygiene Survey for Asbestos-Containing Materials at the Ohio Turnpike Commission Eastern Region Toll Plaza and Maintenance Buildings" ("Report") by American

Analytical Laboratories, Inc. ("AAL") of Akron, Ohio, the amount of friable asbestos material in this toll plaza was 557 linear feet on pipes. This material was reportedly removed in 1987 by AAL. Due to the failure to submit a notification pursuant to OAC Rule 3745-20-03(A), M-TAPCA could not inspect the facility prior to demolition for friable asbestos-containing materials.

6. On October 29, 1996, Respondent submitted an Ohio EPA notification of demolition form to M-TAPCA for the completed demolition of the toll plaza at Interchange 14 in 1995.

7. On October 30, 1996, M-TAPCA returned the Respondent's notification, because it was incomplete, and the \$50.00 check for the asbestos abatement fee. Copies of the following documents were included with the letter: NESHAP for asbestos and OAC Chapter 3745-20. The Respondent was requested to resubmit the completed notification within 3 days of receipt of the letter. Respondent never resubmitted the notification.

8. On November 13, 1997, Respondent faxed a hand written letter stating that it was not a demolition contractor, but some times is asked to demolish a building as a part of larger project. Respondent indicated that it wanted to make sure that it was in compliance with all of the regulations regarding demolitions, in particular the asbestos regulations. In addition, Respondent stated that it understood that at least 10 days of notification is required to the appropriate Ohio EPA District Office or local air agency.

The Respondent requested copies of the documents to meet the notification requirements for demolition. Respondent also requested a list of the agencies to be contact in Northeast Ohio for any demolition or renovation project in or around a 70-mile radius of Youngstown.

9. On November 19, 1997, M-TAPCA sent a letter to Respondent, referring to its October 30, 1996 letter, describing the procedure and what the rule states, and again enclosing copies of the NESHAP, OAC Chapter 3745-20, a notification form, instructions, and a map of other offices with jurisdiction in the Northeast Ohio area.

Incident #3

10. On October 3, 1996, Akron Regional Air Quality Management District ("ARAQMD"), Ohio EPA's contractual representative for Portage County, received a complaint about dust from construction material being dumped in Shalersville Township, Portage County from Ohio Turnpike construction activities. After further investigation, it was discovered that the toll plaza at Interchange #12 in Boston Heights, Ohio, was demolished without first submitting a completed notification of demolition to ARAQMD, in violation of OAC Rule 3745-20-03(A) and R.C. 3704.05(G). The toll plaza constituted a "facility" as defined by OAC Rule 3745-20-01(B)(12). According to a December 23, 1986

Report by AAL of Akron, Ohio, the amount of friable asbestos material was 358 linear feet on pipes. This material was reportedly removed in 1987 by AAL. Due to the failure to submit a notification pursuant to OAC Rule 3745-20-03(A), ARAQMD could not inspect the facility prior to demolition for friable asbestos-containing materials.

11. On October 4, 1996, ARAQMD contacted a representative of the OTC via telephone and notified the representative of the violation for the failure to notify.

12. On October 30, 1996, Respondent submitted an incomplete notification of demolition to ARAQMD, which was returned to the Respondent as an incomplete notification.

13. On November 12, 1996, Respondent resubmitted a completed notification of demolition. The notification listed the demolition dates as September 26 through October 1, 1996. In addition, Respondent submitted a copy of the abatement project paperwork which was conducted by AAL, 100 Lincoln Street, Akron, Ohio.

14. On March 26, 1997, ARAQMD sent a notice of violation (NOV) to the Respondent and the OTC.

15. On April 4, 1997, OTC sent a letter, dated March 26, 1997, in response to the NOV from ARAQMD, in which OTC alleged that all of the friable asbestos material was abated prior to the demolition of the building. The OTC stated that the oversight by its General Contractor to initially provide the proper notification was unexcusable and additional precautions had been taken to ensure a similar situation did not occur in the future.

16. On April 10, 1997, Respondent sent a letter, dated March 26, 1997, in response to the NOV from ARAQMD, in which Respondent alleged that all of the friable asbestos material was abated prior to the demolition of the building. In addition, Respondent stated that it was now fully aware of the notification process prior to demolition of any structure even if the asbestos in the structure had been removed. Respondent had implemented a corrective plan to ensure that this type of problem did not happen again. Respondent apologized for the failure to submit to Ohio EPA a notification for demolition.

Incident #4

17. On June 20, 2000, Lake County General Health District ("LCGHD"), Ohio EPA's contractual representative for Lake County, received a list of demolitions from the Lake County Building Department, Demolition Section. Upon comparing the list against the notification for demolition forms received by LCGHD, it was determined that the Respondent demolished another facility without first submitting a notification for demolition, in violation of OAC Rule 3745-20-03(A) and R.C. 3704.05(G). The demolition occurred

from April 28, 2000 through May 1, 2000, and involved two houses located at 8842 Overlook Road and 8855 Kirtland Road, both in Kirtland, Ohio. The houses were demolished as part of the Kirtland Road relocation project; therefore, the houses constituted a "facility" as defined by OAC Rule 3745-20-01(B)(12). The LCGHD inspected the demolition site on June 20, 2000. Since there was no debris at the demolition site, no samples could be collected for asbestos analysis. The amount of asbestos in the building could not be determined, because no asbestos inspection could be conducted by LCGHD prior to demolition.

18. On June 30, 2000, LCGHD sent a NOV to Respondent stating that the Respondent was in violation of OAC rule 3745-20-03.

19. On July 5, 2000, Respondent's project coordinator telephoned LCGHD to determine the next step to be taken by LCGHD. At the time of this conversation, LCGHD explained the enforcement procedure and indicated that an enforcement action was appropriate due to the recalcitrant nature of violation of OAC Rule 3745-20-03 by the Respondent. To this date, LCGHD has not received a completed notification of demolition for the project identified above.

20. 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 Orders:

1. Respondent shall maintain compliance with OAC Chapter 3745-20 in any demolition 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 fourteen (14) 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 Vicki Galilei, 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. 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 any 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.

VIII. 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.

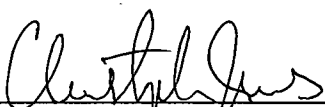
IX. WAIVER

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

9-24-01
Date

IT IS AGREED:

A. P. O'Horo Company



By
Ch of Bd

Title

9/17/01
Date