

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Commisso Paving Company	:	<u>Director's Final Findings</u>
2039 Poland Avenue	:	<u>and Orders</u>
Youngstown, Ohio 44502	:	
	:	

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Commisso Paving 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 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 ORC 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 demolition and paving business located at 2039 Poland Avenue, Youngstown, Ohio.
2. On or about August 14, 2001, Respondent demolished a building addition of 720 square feet in area ("facility") that had been attached to the front of a commercial garage located at 528 Lincoln Avenue, Youngstown, Ohio. The facility was owned by Union Baptist

Church. Respondent was contracted by Union Baptist Church to demolish the addition attached to the garage and pave the area. According to the definition in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12), this project involved the demolition of a "facility." 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)(2) states that 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 a facility containing no friable asbestos materials, only the requirements of OAC Rule 3745-20-03 apply. The above-referenced, planned demolition was subject to the notification requirements of OAC Rule 3745-20-03(A). Furthermore, ORC § 3704.05(G) prohibits the violation of any rule adopted by the Director of Ohio EPA.

4. On August 14, 2001, the Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA"), Ohio EPA's contractual representative for Mahoning County, received a dust complaint in reference to the demolition of the facility.

5. On August 14, 2001, an inspector from M-TAPCA arrived at the site and found 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. The inspector observed water from a one-inch diameter hose being used to wet down demolition material prior to loading into trucks.

6. The suspected dust that the complainant had mentioned was actually being generated from the loading of slag and sweepings from a paved parking area east of the garage and across from the Buckeye Elks building. The parking area was being cleaned and the demolition operation had occurred in preparation for repaving the lots adjacent to the Church. The repaving of the lots was scheduled to begin on August 15 or 16, 2001.

7. Upon inspection by the M-TAPCA inspector, suspect asbestos-containing materials were not observed in the demolition debris at the site. The demolished facility was constructed of concrete block, wood, and an asphalt roof. The Sanborn map indicated the demolished facility was an office attached to a truck service garage. Based on the construction materials observed at the facility, M-TAPCA believes no asbestos-containing materials were located at the demolition site.

8. When Mr. Donald Commisso, owner of the Respondent, arrived at the site, the M-TAPCA inspector advised him that a warning letter would be prepared and sent to Respondent, due to its failure to file a timely notification as required by OAC Rule 3745-20-03(A). Mr. Commisso indicated he did not think a notification was needed since the facility that was demolished was small and not asbestos containing. On August 15, 2001, M-TAPCA

sent a warning letter to Respondent requesting that it submit an Ohio EPA Notification of Demolition and Renovation form for this operation.

9. On August 15, 2001, M-TAPCA also sent a warning letter to Union Baptist Church Board of Trustees. Both warning letters notified the parties of the violation. The letters also informed both parties that M-TAPCA would pursue civil penalties in accordance with USEPA's Air Civil Penalty Policy for the failure to submit a notification for the demolition of the facility.

10. On August 27, 2001, an incomplete Notification of Demolition and Renovation form was received by M-TAPCA in response to the warning letter issued by M-TAPCA on August 15, 2001. The notification did not note any asbestos removal at the facility.

11. Based upon the above findings, Ohio EPA finds that Respondent violated OAC Rule 3745-20-03(A) and ORC § 3704.05(G) by failing to submit a notification at least 20 days prior to the beginning of the demolition operation at this facility.

12. On February 4, 2002, proposed Director's Final Findings and Orders were sent to Respondent, which contained a civil penalty of \$10,000 for the violation. On March 18, 2002 and April 16, 2003, the Respondent submitted financial documents to Ohio EPA to substantiate its claim of an inability to pay the proposed penalty. Based on the review of the documents submitted, Ohio EPA has recognized the Respondent's inability to pay the full penalty amount.

13. 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 Order:

Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of one thousand dollars (\$1,000) 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 official check made payable to "Treasurer, State of Ohio" for one thousand dollars (\$1,000). The official check shall be submitted to Brenda Case, Fiscal Specialist, 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 the facility. A copy of the check shall be sent to James A. Orlemann, Manager, Enforcement Section, or his successor,

at Ohio EPA, Division of Air Pollution Control, 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 Respondent's demolition 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
2nd Floor - Room 25
345 Oak Hill Avenue
Youngstown, Ohio 44502-1454
Attention: Mr. Larry Himes

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

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, 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.

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

Date

IT IS SO AGREED:

Commisso Paving Company

By

Date

Title