

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

C-Z Construction & Development Company :	<u>Director's Final Findings</u>
9495 Harvard Blvd. :	<u>and Orders</u>
Poland, Ohio 44414 :	
:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to C-Z Construction & Development Company ("C-Z") ("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 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 defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03 and 3745.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. C-Z is a construction company located at 9495 Harvard Blvd., Poland, Ohio.

2. On August 3, 2002, a representative from the Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") Ohio EPA's representative observed that a commercial building, Arby's Restaurant, a one-story, 3,331 square foot structure built in 1985 and located at 701 N. Canfield-Niles Road, Austintown Township, Mahoning County, Ohio, had been demolished and the debris had been removed. On August 5, 2002, a M-TAPCA representative visited the facility and found only a sign remaining and a backhoe parked on the south side of the property. Four photographs were taken of the site during the inspection. According to the definition in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12), this project involved the demolition of a "facility." C-Z was hired by Gallagher-Pipino Inc. to demolish the facility formerly located at 701 N. Canfield-Niles Road, Austintown Township, Mahoning County, Ohio. C-Z 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 and work practice requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 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. OAC Rule 3745-20-03(A)(2)(a) states, in part, that 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).

4. OAC Rule 3745-20-02(A)(2) states that the 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 two hundred sixty linear feet on pipes or less than one hundred and sixty square feet on other facility components, including those facilities that contain no friable asbestos. OAC Rule 3745-20-03(A) states, in part, that each owner or operator shall provide the Director of Ohio EPA with written notice of intention to demolish at least 20 days before any demolition operation begins if the operation is as described in OAC Rule 3745-20-02(A)(2).

5. Therefore, pursuant to Findings 4 and 5 any owner or operator of a demolition that is subject to the notification requirements of OAC Rule 3745-20-03(A) is required to submit a notification by at least 10 or 20 days prior to beginning demolition, with the number of days dependent on the amount of friable asbestos materials in the facility.

6. Building permits, faxed to M-TAPCA by the Mahoning County Building Inspection Department, confirmed that the permit to build was issued to Mr. Alan Setz of Gallagher-Pipino Inc. located in Boardman Township, Mahoning County, Ohio. Mr. Jim Pipino verified that C-Z was contracted to demolish **the Arby's building on the site.**

7. On August 6, 2002, M-TAPCA sent a Notice of Violation ("NOV") to Mr. Dan Zarlenga, representative of Respondent. The NOV requested any documents verifying C-Z

as the demolition contractor; documents that indicated that the facility had been inspected for asbestos-containing materials prior to demolition; and a completed Ohio EPA Notification of Demolition and Renovation form for the facility. Acme was asked to submit all requested information within five days after receiving the letter.

8. On August 9, 2002, Mr. Bill Sofranko, project manager for C-Z, hand-delivered the notification and the project proposal to M-TAPCA verifying C-Z as the demolition contractor. Mr. Sofranko stated that he was unaware that a notification must be filed with M-TAPCA. Additionally, he stated that on July 8, 2002, an asbestos evaluation was conducted by Innerscope Technical Services verifying that no friable asbestos-containing material was present in the facility. Mr. Sofranko was asked to submit the evaluation results to M-TAPCA.

9. According to the Notification of Demolition and Renovation form, C-Z was hired to demolish the facility. The notification noted that on July 8, 2002, an asbestos evaluation specialist conducted a survey of the suspected asbestos-containing materials at the facility and did not find any such material. Based on the inspection on August 5, 2002, the M-TAPCA inspector could not verify that any friable asbestos material was present in the facility, since the demolition debris had been removed. M-TAPCA requested C-Z to submit a copy of the asbestos survey completed for the facility; however, the survey report was never submitted to M-TAPCA.

10. Based upon the above findings, Ohio EPA finds that the Respondent violated OAC Rule 3745-20-03(A) and ORC § 3704.05(G) by failing to submit a notification at least 10 or 20 days, whichever was applicable, prior to the beginning of the demolition operation at this facility.

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 Order:

Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of five thousand dollars (\$5,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by official check made payable to "Treasurer, State of Ohio" for \$5,000. 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 site.

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, Enforcement 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. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks 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's demolition operation.

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
Oakhill Renaissance Place
345 Oak Hill Avenue, Room 25
Youngstown, OH 44502
Attn: Larry Himes

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Tom Kalman, Supervisor

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 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 agrees 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 notwithstanding such appeal and intervention unless said 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:

C-Z Construction and Development Company

Signature

Date

Printed or Typed Name