

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

K.H. DiRienzo Construction, Inc. : Director's Final Findings
374 Newton Street, Unit A, Suite 1 : and Orders
Canfield, Ohio 44406 :

PREAMBLE

It is agreed by parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to K.H. DiRienzo Construction, Inc. ("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:

1. Respondent, with office located at 374 Newton Street, Unit A, Suite 1, Canfield, Ohio, was contracted by Hallrich Inc., a property management company, as the general contractor for the demolition of a commercial building, known as the Goodwill Drop-Off Center, at 125 Applegrove Street NW, in North Canton (Stark County), Ohio. Respondent was, therefore, an "operator" as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(20). In turn, Respondent hired A. Zavara Excavating of 2920 Alliance Road, in Palmyra, Ohio to conduct the demolition work. The Goodwill Drop-Off Center was to be demolished for the construction of a Pizza Hut Restaurant. The above-referenced commercial building

was a "facility" as defined by OAC Rule 3745-20-01(B)(12).

2. Pursuant to OAC Rule 3745-20-02(A)(1), the owner or operator of a demolition project must comply with the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 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.

3. Pursuant to OAC Rule 3745-20-02(A)(2), the owner or operator of a demolition project must comply with the notification requirements of OAC Rule 3745-20-03 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 which contain no friable asbestos.

4. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition operation to submit a written notice of intention to demolish ("notification") to Ohio EPA at least 10 days prior to the start of the demolition operation if the demolition operation is described in OAC Rule 3745-20-02(A)(1) or 20 days prior to the start of the demolition operation if the demolition operation is described in OAC Rule 3745-20-02(A)(2).

5. On May 25, 2001, Canton City Health Department ("Canton"), Ohio EPA's contractual representative in Stark County, observed the demolition of the above-referenced facility. Canton estimated that 20% of the facility had been demolished. Canton stopped the work immediately because no notification had been submitted for this project. Further investigation revealed that no asbestos survey had been conducted prior to the start of demolition of this project. Canton requested Respondent to stop the remaining work for ten days, as required by NESHAP, and submit a notification and an asbestos survey for the above-referenced project.

6. On May 31, 2001, Canton issued 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 Canton or Ohio EPA prior to the start of the demolition. In this letter, Canton requested Respondent to submit to Canton a notification within 10 days of receipt of the NOV and an asbestos survey as soon as possible for this project. On the same day, Respondent submitted a notification to Canton; however, this notification was incomplete. The notification did not include a description of the planned demolition work to be performed and the methods to be employed. Further, the notification did not provide a date as to when demolition would re-start and be completed. Also, on the same day, Canton notified Respondent by phone that the notification was incomplete.

7. On June 1, 2001, a laboratory report of an asbestos survey was faxed to Canton by Respondent that contained the analytical results of the suspect friable asbestos material

samples that were collected by American Analytical Labs, Inc. on May 29, 2001. These samples were collected from ceiling tiles and drywall panels. The laboratory report indicated that there was no friable asbestos material present in the above-referenced facility.

8. In follow-up to the original on-site inspection, the project site was visited again by Canton on June 8, 2001. It was discovered that the demolition operation had been completed and construction of the Pizza Hut Restaurant had begun despite the ten-day waiting period that had previously been requested by Canton.

9. Since no notification had been submitted to Ohio EPA or Canton by Respondent at least 10 or 20 days, whichever was applicable, prior to the start of the demolition, Respondent was in violation of OAC Rule 3745-20-03(A).

10. The aforementioned violation of the OAC also constitutes a violation of ORC § 3704.05(G), which prohibits the violation of any rule adopted by the Director of Ohio EPA.

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 their relation to benefits to the people of the State to be derived from such compliance.

V. ORDERS

The Director hereby makes the following Orders:

1. Pursuant to ORC § 3704.06, the Respondent is assessed a civil penalty in the amount of two thousand and eight hundred dollars (\$2,800) 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 two thousand two hundred and forty dollars (\$2,240) of the total penalty amount. Payment shall be made by official check made payable to "Treasurer, State of Ohio." The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and site.

A copy of the official check shall be submitted to James A. Orlemann, Manager, Engineering Section, or his successor, Division of Air Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

In lieu of payment to Ohio EPA of the remaining five hundred and sixty dollars (\$560) of the total penalty amount, the Respondent shall perform the supplemental environmentally beneficial project identified in Order 2.

2. The Respondent shall perform the supplemental environmentally beneficial project consisting of funding urban area tree-planting projects in Ohio. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver a certified check in the amount of five hundred and sixty dollars (\$560) and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for this purpose. 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 the check shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, at the address given in Order 1.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's and the Ohio Department of Natural Resources' receipt of 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 Respondent.

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 the 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

Except as otherwise specified in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Canton City Health Department
Air Pollution Control Division
420 Market Avenue North
Canton, Ohio 44702-1544
Attn: Rick L. Miller

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: Thomas Kalman

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 the 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 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 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 AGREED:

K.H. DiRienzo Construction, Inc.

Signature

Date

Printed or Typed Name

Title