

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Glo-Mar Masonry, Inc.	:	<u>Director's Final Findings</u>
394 West Prospect Street	:	<u>and Orders</u>
Painesville, Ohio 44077	:	
RESPONDENT	:	

PREAMBLE

It is agreed by parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Glo-Mar Masonry, 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. Myron Miecznikowski was the owner of the Erie Shore Bait building located at 35608 Lakeshore, Eastlake (Lake County), Ohio. The Erie Shore Bait building was a "facility" as defined in OAC Rule 3745-20-01(B)(12). Myron Miecznikowski hired the Respondent to demolish the facility. Respondent's business is located at 394 West Prospect Street, Painesville, Ohio.

2. OAC Rule 3745-20-01(B)(20) defines, in part, the "owner or operator" of a facility as any person who owns, leases, operates, controls, or supervises a demolition operation. Respondent was an operator of the demolition operation at the Erie Shore Bait building.

3. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition operation to provide Ohio EPA with written notice of intention to demolish prior to the start of any demolition operation. If the facility being demolished contains amounts of

friable asbestos materials 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, the notification must be received at least twenty (20) days before any demolition operation begins. If the facility being demolished contains amounts of friable asbestos materials of at least 260 linear feet on pipes or at least 160 square feet on other facility components, the notification must be received at least ten (10) days before any demolition operation begins.

4. ORC § 3704.05(G) prohibits any person from violating any order, rule or determination of the Director of Ohio EPA issued, adopted, or made under ORC Chapter 3704.

5. On January 24, 2001, the Lake County General Health District ("LCGHD"), Ohio EPA's contractual representative in Lake County, visited the facility. LCGHD discovered that the facility had been demolished and the debris had been removed by the Respondent without the submittal of the required written notice prior to the start of demolition, in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G). Respondent and the facility owner informed LCGHD that they were unaware of the requirements of OAC Chapter 3745-20. Additionally, LCGHD was unable to determine if the facility contained any regulated friable asbestos material and, if so, whether the work practice requirements of OAC Chapter 3745-20 were applicable to protect public health.

6. A Notice of Violation ("NOV") of OAC Rule 3745-20-03 was mailed to Respondent and the owner of the facility on January 31, 2001. The NOV informed both Respondent and the facility owner of the requirements of OAC Chapter 3745-20.

7. 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. Pursuant to ORC § 3704.06, the Respondent is assessed a civil penalty in the amount of eight thousand five hundred dollars (\$8,500) in settlement of Ohio EPA's claim for civil penalties. Of this amount, Respondent shall pay to Ohio EPA the amount of six thousand eight hundred dollars (\$6,800) in accordance with the following payment schedule:

<u>Amount Due</u>	<u>Payment Deadline</u>
\$ 500	within 30 days after the effective date of these Orders
\$2,100	within 120 days after the effective date of these Orders
\$2,100	within 180 days after the effective date of these Orders
\$2,100	within 365 days after the effective date of these Orders

Payments shall be made by official checks made payable to "Treasurer, State of Ohio." Each 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 each 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 one thousand seven hundred dollars (\$1,700) 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 an official check in the amount of one thousand seven hundred dollars (\$1,700) 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 above-stated address.

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 of this facility.

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 provided in these Orders, all documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Ohio EPA, Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attention: Dennis Bush

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
Attention: 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 SO AGREED:

Glo-Mar Masonry, Inc.

Signature

Date

Printed or Typed Name

Title