

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Bruce Sikora	:	
d.b.a. Bruce Sikora Excavating	:	<u>Director's Final Findings</u>
4442 US Route 422	:	<u>and Orders</u>
Pulaski, PA 16143	:	
	:	
and	:	
	:	
Wayne R. King	:	
6965 McCartney Road	:	
Lowellville, Ohio 44436	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Bruce Sikora, d.b.a. Bruce Sikora Excavating ("Respondent Sikora") and Wayne R. King ("Respondent King"), [referred to herein as "Respondents" when reference is made to both parties] 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 Respondents and successors in interest liable under Ohio law. No change in ownership of the Respondents' businesses shall in any way alter Respondents' 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 Sikora owns and operates a building construction and demolition company located at 4442 US Route 422, Pulaski, Pennsylvania.

2. Respondent King was owner of the fire-damaged Bull's Eye Restaurant formerly located at 6965 McCartney Road, Lowellville, Ohio, which was demolished by Respondent Sikora in or about March 2004.

3. OAC Chapter 3745-20 contains the asbestos emission control standards, which specify, in part, the notification and work practice requirements for the demolition and renovation of buildings and other structures.

4. **OAC Rule 3745-20-01(B)(38) defines, in part, the "owner or operator" as any person who owns, leases, operates, controls, or supervises the facility being demolished; or any person who owns leases, operates, controls or supervises the demolition of the facility, or both. Respondents owned, operated, controlled or supervised this demolition project and otherwise retained responsibility for the compliance with the applicable requirements specified in OAC Chapter 3745-20.**

5. **OAC Rule 3745-20-02(A) states, in part, that each owner or operator of any demolition or renovation operation shall have the affected facility where a demolition or renovation will occur thoroughly inspected prior to the commencement of the demolition or renovation for the presence of asbestos.**

6. **OAC Rule 3745-20-02(B)(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 regulated asbestos-containing material 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) 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(B)(1).**

7. **OAC Rule 3745-20-02(B)(2) states, in part, that the notification requirements of OAC Rule 3745-20-03 apply to each owner or operator of a demolition operation if the amount of regulated asbestos-containing material in a facility being demolished is less than 260 linear feet on pipes or less than 160 square feet on other facility components. 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 10 days before any demolition operation begins if the operation is as described in OAC Rule 3745-20-02(B)(2).**

8. Therefore, pursuant to Findings 6 and 7, any owner or operator of a demolition operation that is subject to the notification requirements of OAC Rule 3745-20-03(A) is required to submit a notification by at least 10 days prior to beginning demolition. The above-referenced, planned demolition was subject to the notification requirements of OAC Rule 3745-20-03(A).

9. The Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA"), Ohio EPA's contractual **representative in Mahoning County for administrating the Ohio asbestos emission control standards of OAC Chapter 3745-20**, had not received any notification about the Respondents' intent to demolish the fire-damaged Bull's Eye Restaurant building nor a building inspection report for asbestos prior to starting demolition, in violation of OAC Rules 3745-20-02(A) and 3745-20-03(A), and ORC §3704.05(G).

10. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director pursuant to ORC Chapter 3704.

11. On March 9, 2004, an inspector from M-TAPCA arrived at the site and found Respondent Sikora in the process of removing the concrete debris from the demolition of the facility. The facility had been completely demolished by the time the inspector arrived at the site. The inspector did not observe water being used to wet down demolition material prior to loading into trucks.

12. At the time of the investigation on March 9, 2004, the M-TAPCA inspector could not collect samples since only the concrete foundation was remaining on the site. All other debris was **already hauled away from** the site.

13. During the investigation, the M-TAPCA representative interviewed Respondent Sikora, who stated he was not aware of any requirements for an asbestos inspection or a demolition notification. Additionally, Respondent Sikora stated that, on January 29, 2004, a fire took place at the Bull's Eye Restaurant building formerly located at 6965 McCartney Road, Lowellville, Ohio. The fire destroyed most of the building materials.

14. On March 10, 2004, M-TAPCA sent a Notice of Violation ("NOV") to the Respondents. The NOV informed the Respondents of their failure to file a timely notification as required by OAC Rule 3745-20-03(A).

15. On March 16, 2004, Respondents arrived at M-TAPCA to discuss the NOV dated March 10, 2004. Respondent Sikora stated he was not aware of the notification of demolition requirements since he does not conduct demolitions on a regular basis. He conducted the demolition as a favor to Respondent King. Additionally, on March 16, 2004, Respondent Sikora submitted a notification to demolish the Bull's Eye Restaurant facility.

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16. Based upon the above findings, Ohio EPA finds that Respondents violated OAC Rules 3745-20-03(A) and 3745-20-02(A), and ORC § 3704.05(G), by failing to have the building inspected for asbestos prior to the demolition and failing to submit a notification at least 10 days prior to the beginning of the demolition operation at this facility.

17. 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, Respondents shall pay Ohio EPA the amount of four thousand dollars (\$4,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payments shall be made by official check(s) made payable to "Treasurer, State of Ohio" for \$4,000. The official check(s) 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 Respondents and the site.

A copy of the check(s) 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

Respondents' 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 Respondents' 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 Respondents.

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 Respondents pursuant to these Orders shall be addressed to:

Mahoning-Trumbull Air Pollution Control Agency
345 Oak Hill Avenue
Youngstown, Ohio 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 Respondents 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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondents hereby waive any and all rights Respondents may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention 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 this document.

IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date

IT IS SO AGREED:

Bruce Sikora, d.b.a. Sikora Excavating

Signature

Date

Wayne R. King

Signature

Date