

OHIO E.P.A

NOV 22 2004

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Ronald E. Montz
d.b.a. Montz Excavating
4299 Lane Road
Perry, Ohio 44081

Director's Final Findings
and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Ronald E. Montz, d.b.a. Montz Excavating ("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's business 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 owns and operates a building construction and demolition company located at 4299 Lane Road, Perry, Ohio.

I certify this to be a true and correct copy of the official document as filed in the records of the Ohio Environmental Protection Agency.

[Handwritten Signature] 11-22-04

2. Carrols Corporation ("Carrols") was owner of a vacant Burger King formerly located at 31305 Vine Street, Willowick, Ohio, which was demolished by Respondent on or about September 2002.

3. All Ohio Administrative Code ("OAC") rules cited in these Orders refer to the rules that existed in OAC Chapter 3745-20 at the time of the project identified in Finding 2.

4. 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.

5. According to the definition in OAC Rule 3745-20-01(B)(12), this project involved the demolition of a "facility." Also, Respondent was an "operator" and Carrols was an "owner," as defined in OAC Rule 3745-20-01(B)(20), of this demolition operation.

6. OAC Rule 3745-20-02(A)(1) states 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) 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).

7. OAC Rule 3745-20-02(A)(2) states that the notification 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 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 20 days before any demolition operation begins if the operation is as described in OAC Rule 3745-20-02(A)(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 or 20 days prior to beginning demolition, with the number of days dependent on the amount of friable asbestos materials in the facility. The above-referenced, planned demolition was subject to the notification requirements of OAC Rule 3745-20-03(A).

9. The Lake County General Health District ("LCGHD"), Ohio EPA's contractual representative in Lake County for administrating the Ohio asbestos emission control standards of OAC Chapter 3745-20, had not received any notification about the Respondent's intent to demolish the vacant Burger King building prior to starting demolition, in violation of OAC Rule 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 September 25, 2002, an inspector from LCGHD arrived at the site and found Respondent 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 September 25, 2002, the LCGHD inspector could not collect samples since only concrete slab debris was remaining on the site. All other debris was already hauled away from the site.

13. On September 26, 2002, the LCGHD representative contacted Mr. Storie of Carrols, who stated he has not dealt with these rules before, even though he had remodeled and demolished numerous buildings.

14. On September 27, 2002, LCGHD received a completed Ohio EPA Notification of Demolition and Renovation form on behalf of Respondent for the demolition at 31305 Vine Street, Willowick, Ohio. The notification form did not address any suspected asbestos-containing materials at the facility. Based on the inspection on September 25, 2002, the LCGHD inspector could not determine the amount of friable asbestos materials in the facility.

15. On October 1, 2001, B&B had an asbestos survey conducted at the facility. The ceiling tile, drywall, and drywall joint material tested negative for asbestos. The survey did not include sampling of the roof shingles, instead the roof materials were assumed to be Category I asbestos-containing materials.

16. On October 9, 2001, B&B Wrecking ("B&B") had submitted a notification to demolish the Burger King facility. On October 4, 2002, B&B faxed a request to LCGHD to cancel the notification since the project was on hold and the notification had expired.

17. On October 14, 2002, LCGHD sent a Notice of Violation ("NOV") to the Respondent. The NOV informed the Respondent of his failure to file a timely notification as required by OAC Rule 3745-20-03(A).

18. 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 10 or 20 days, whichever was applicable, prior to the beginning of the demolition operation at this facility.

19. Respondent specifically denies all violations cited herein by Ohio EPA.

20. 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, Compliance and Enforcement, 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 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's operations.

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:

Lake County General Health District
Division of Air Pollution Control
33 Mill Street
Painesville, Ohio 44077
Attn: Bert Mechenbier

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, Manager, Enforcement Section

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 conditions, 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 appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated, or modified.

XIII. EFFECTIVE DATE

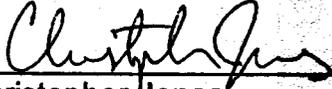
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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



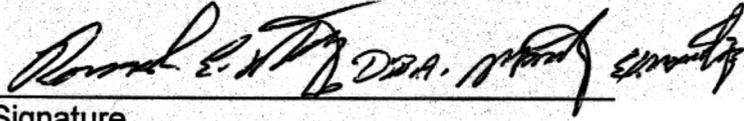
Christopher Jones
Director

11-19-04

Date

IT IS SO AGREED:

Ronald E. Montz, d.b.a. Montz Excavating



Signature

11-5-04

Date