

**BEFORE THE**  
**OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Joseph Longo	:	<u>Director's Final Findings</u>
2731 Hubbard Road	:	<u>and Orders</u>
Madison, Ohio 44057	:	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Joseph Longo ("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 heirs and successors in interest liable under Ohio law. No change in ownership of 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 of 2731 Hubbard Road, Madison, Ohio, was the owner of two commercial buildings located at 2717 and 2725 Hubbard Road in Madison Township (Lake County), Ohio. Respondent had completely demolished the building at 2717 Hubbard Road and partially demolished the building at 2725 Hubbard Road sometime prior to September 10, 2003. According to the Lake County General Health District ("LCGHD"), a contractual representative of Ohio EPA in Lake County, the buildings at 2717 and 2725 Hubbard Road had been formerly used as a bank and a restaurant, respectively. Therefore, these buildings are each considered as a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18). Therefore, the above-referenced demolition project was subject to at least the notification requirements of OAC Chapter 3745-20.

2. Respondent is not a licensed asbestos removal contractor in the State of Ohio.

3. Pursuant to OAC Rule 3745-20-02(B)(2), the owner or operator of a demolition operation must comply with the notification requirements of OAC Rule 3745-20-03 if the combined amount of regulated asbestos-containing material, as defined in OAC Rule 3745-20-01(B)(41), is less than 260 linear feet on pipes and less than 160 square feet on other facility components, and less than 35 cubic feet off facility components where the length or area could not be measured previously, or if there is no asbestos-containing material in a facility being demolished.

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 ten working days prior to the start of the demolition if the operation is as described in OAC Rule 3745-20-02(B)(2).

5. OAC Rule 3745-20-02(A) requires, in part, the owner or operator of a demolition operation to conduct a thorough inspection for asbestos-containing materials prior to commencement of the demolition, in order to determine which requirements of OAC Rules 3745-20-02, 3745-20-03 and 3745-20-04 apply to the demolition operation.

6. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA. The rules in OAC Chapter 3745-20 were adopted by the Director of Ohio EPA.

7. On September 10, 2003, LCGHD learned of the demolition of the two above-referenced buildings. On this date, LCGHD visited the demolition site. Upon arrival, a representative of LCGHD discovered that the building at 2717 Hubbard Road had been completely demolished and all debris from this building had been hauled away. LCGHD also documented that the other building at 2725 Hubbard Road had been partially demolished and the associated debris also had been removed. The representative of LCGHD spoke with Respondent and learned that no Notification had been submitted to Ohio EPA for this demolition operation and that an asbestos survey had been conducted for each building. Respondent gave LCGHD a copy of the asbestos survey. The asbestos survey indicated that there were asbestos in the floor tile and roofing materials in each of the buildings; however, the exact amounts were not listed.

8. On October 9, 2003, LCGHD issued a Notice of Violation ("NOV") to Respondent for the Notification violation at the above-referenced demolition operation. In this letter, LCGHD cited Respondent for his failure to submit a Notification as required by OAC Rule 3745-20-03(A). In this NOV, LCGHD did not request a response from Respondent.

9. Therefore, the Director finds that Respondent violated OAC Rules 3745-20-02(A), by not conducting thorough inspections of the buildings for asbestos-containing materials, and 3745-20-03(A), by not submitting the required Notification, and ORC § 3704.05(G), as a result of this demolition operation.

10. 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. Respondent shall pay the amount of ten thousand dollars (\$10,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704.06. Within fourteen (14) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for eight thousand dollars (\$8,000) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining two thousand dollars (\$2,000) of civil penalty to Ohio EPA, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$2,000 to Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for \$2,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD, to the above-stated address.

3. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe in Order 2, Respondent shall immediately pay to Ohio EPA \$2,000 of the civil penalty in accordance with the procedures in Order 1.

#### **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 of 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 operations of 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 Respondent.

#### **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:

Lake County General Health District  
33 Mill Street  
Painesville, Ohio 44077  
Attn: Bert Mechenbier

and to:

Ohio Environmental Protection Agency  
Division of Air Pollution Control  
Lazarus Government Center  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Thomas Kalman

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specially 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 these Orders.

**IT IS SO ORDERED AND AGREED:**

Ohio Environmental Protection Agency

\_\_\_\_\_  
Joseph P. Koncelik  
Director

\_\_\_\_\_  
Date

**IT IS SO AGREED:**

Joseph Longo

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date