

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.
DEC 27 2006

In the Matter of:

Garland & Sons Excavating Company :
5023 Shanks Phalanx Road NW :
Newton Falls, Ohio 44444 :

Director's Final Findings
and Orders

ENTERED DIRECTOR'S JOURNAL

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

PREAMBLE

It is agreed by the parties hereto as follows:

By: Timothy Jackson Date: 12-27-06

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Garland & Sons Excavating Company ("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 of 5023 Shanks Phalanx Road NW, Newton Falls, Ohio, was hired by the owner of the Ohio Commerce Center to demolish a concrete block furnace room [i.e., approximately 20 feet by 40 feet (800 square feet)] and a chimney at the Ohio Commerce Center located at 5232 Tod Avenue in Lordstown Township of Trumbull County, Ohio. The Ohio Commerce Center was formerly a military installation and was converted to an industrial park. Respondent performed the demolition of the above-referenced concrete block furnace room and chimney on or about December 2004. The above-referenced cement block furnace room and chimney constituted a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18). Respondent was an "operator" as defined by OAC Rule 3745-20-01(B)(38).

2. Pursuant to OAC Rule 3745-20-02(A), the owner or operator of any demolition or renovation operation shall have the affected facility or part of the facility where a demolition or renovation operation will occur thoroughly inspected prior to the commencement of the demolition or renovation for the presence of asbestos, including Category I and Category II nonfriable asbestos-containing material as defined in OAC Rules 3745-20-01(B)(9) and 3745-20-01(B)(10).

3. Pursuant to OAC Rule 3745-20-02(B)(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 combined 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, or at least 35 cubic feet off facility components where the length or area could not be measured previously. Regulated asbestos-containing material ("RACM") is as defined in OAC Rule 3745-20-01(B)(41).

4. Pursuant to OAC Rule 3745-20-02(B)(2), the owner or operator of a demolition project must comply with the notification requirements of OAC Rule 3745-20-03 if the combined amount of RACM, 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.

5. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition project to submit a written notice of intention to demolish ("Notification") to Ohio EPA at least ten days prior to the start of the demolition if the project is as described in OAC Rules 3745-20-02(B)(1) and (B)(2).

6. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA.

7. On December 21, 2004, the Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA"), a contractual representative of Ohio EPA in Trumbull County, learned of the demolition of the concrete building and a chimney at the Ohio Commerce Center in Lordstown Township, Ohio. On the same day, M-TAPCA contacted the facility manager of the Ohio Commerce Center and was informed that a demolition operation was in progress at the facility.

8. On December 22, 2004, a representative of M-TAPCA conducted an on-site inspection at the above-referenced building. Upon arrival, the M-TAPCA representative determined that there had been no Notification submitted by Respondent for this demolition project. At the time of inspection, M-TAPCA could not obtain samples because the demolition had been completed and that demolition debris had already been hauled off site. While on-site, M-TAPCA representative met and questioned Respondent about the

possible existence of asbestos-containing material ("ACM") in the building. Respondent informed M-TAPCA that it did not need to submit a Notification because there was no ACM in the building. M-TAPCA representative also learned that Respondent had not conducted a thorough inspection for asbestos prior to demolition, in violation of OAC Rule 3745-20-02(A) and ORC § 3704.05(G). Also, since there was no Notification submitted to Ohio EPA or M-TAPCA prior to the start of the demolition project, Respondent was in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G).

9. On December 24, 2004, M-TAPCA issued a notice of violation ("NOV") to Respondent for the violations that were identified during its December 22, 2004 inspection. In this NOV, M-TAPCA requested Respondent, within five (5) days of receipt of the NOV, to submit: (1) documents identifying Respondent as the demolition contractor, (2) the dump receipts for the demolition debris generated from the operation, (3) any documents relating to the presence of asbestos in the building, and (4) a Notification of the above-referenced demolition project.

10. On December 30, 2004, in response to the M-TAPCA's December 24, 2004 NOV, Respondent submitted: (1) an incomplete Ohio EPA Notification, (2) a copy of an undated general report prepared by another party concerning the Ohio Commerce Center, (3) a letter dated December 28, 2004 indicating that the demolition debris was hauled to property owned by Respondent, and (4) the copy of an estimate from Respondent dated September 22, 2004 for demolition, hauling and siding replacement at the Ohio Commerce Center.

11. On July 17, 2006, the Director issued Proposed Final Findings and Orders related to the aforescribed activities.

12. On July 21, 2006, Respondent answered the Director's Proposed Final Findings and Orders and requested a conference with representatives of the Ohio EPA for purposes of presenting additional factual material to dispute and/or mitigate against the alleged findings and/or penalties.

13. On August 30, 2006, Respondent and its counsel met with representatives of the Ohio EPA and its counsel and presented oral explanations and written materials to dispute and/or mitigate against the alleged violations as set forth in the proposed findings.

14. On September 25, 2006, Respondent via counsel provided counsel for the Ohio EPA with additional written materials which disputed and/or mitigated against the alleged violations and/or findings.

15. 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 five thousand and five hundred dollars (\$5,500) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 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 four thousand and four hundred dollars (\$4,400) 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 one thousand and one hundred dollars (\$1,100) of civil penalty to Ohio EPA, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$1,100 to the Ohio EPA's Clean Diesel School Bus Program 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 \$1,100. 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 \$1,100 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 operation of Respondent's facility.

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 hereto. 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:

Mahoning-Trumbull Air Pollution Control Agency
2nd Floor - Room 25
345 Oak Hill Avenue
Youngstown, Ohio 44502-1454
Attention: Larry Himes

and to:

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

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

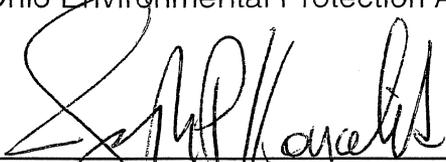
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

12/21/06
Date

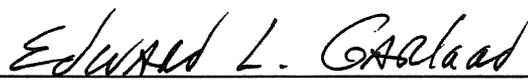
IT IS SO AGREED:

Garland & Sons Excavating Company



Signature

12/11/06
Date



Printed or Typed Name



Title