

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

OCT 25 2006

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Ohio Soil Services, Inc.
4086 Union Avenue
Homeworth, Ohio 44634

:
:
:
:
:
:

Director's Final Findings
and Orders

RESPONDENT

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Ohio Services, 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 heirs and successors in interest liable under Ohio law. No change in ownership of the Respondent's property 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. Adapt Oil & Marketing, Inc. of 8182 Maryland Avenue, St. Louis, Missouri, was the owner of a commercial building previously located at 3560 Main Street, Mineral Ridge, Trumbull County, Ohio. The building was formerly a gasoline dispensing station and was a "facility" as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18) and was subject to the applicable requirements specified in OAC Chapter 3745-20 ("Asbestos Emission Control Standards").

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.

By: Ronald Wauters Date: 25 Oct 2006

2. The owner contracted with Respondent, whose principal place of business is located at 4086 Union Avenue, Homeworth, Ohio, to demolish the facility. Respondent is therefore an "operator" as defined in OAC Rule 3745-20-01(B)(38).

3. 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. Respondent operated, controlled, and supervised the facility during the demolition; therefore, Respondent retained responsibility for the discovery, presence, handling, removal and disposal of all asbestos-containing material.

4. OAC Rule 3745-20-02(A) requires, in part, the owner and operator of a demolition operation to have the facility thoroughly inspected prior to commencement of demolition for the presence of asbestos.

5. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition operation, subject to the provisions of OAC Rule 3745-20-02, to provide Ohio EPA with a written notice of intention to demolish at least 10 days prior to starting any demolition work. OAC Rule 3745-20-02(B) states, in part, that a facility being demolished is subject to the requirements (i.e., to submit a demolition notification) of OAC Rule 3745-20-03 even if the facility does not contain any asbestos-containing material.

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

7. On March 9, 2005, the facility was demolished and the debris was removed. Mahoning-Trumbull Air Pollution Control Agency ("MTAPCA"), a contractual representative of Ohio EPA for Trumbull County, was able to identify Respondent as the demolition contractor from a demolition permit obtained from Weathersfield Township Zoning office.

8. On March 11, 2005, MTAPCA observed that the facility had been demolished without the required notice of intention to demolish being submitted, in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G). Respondent told MTAPCA that it had contacted the Trumbull County Engineer's office in regards to the agencies that needed to be contacted about the demolition but was never informed of the need to notify Ohio EPA.

9. On March 14, 2005, MTAPCA sent a Notice of Violation ("NOV") to Respondent for the violation of OAC Chapter 3745-20 and ORC § 3704.05(G). The NOV required Respondent to submit the delinquent notification of intention to demolish along with information about the date when the demolition began and documentation indicating that the facility was inspected for asbestos-containing materials.

10. On March 16, 2005, Respondent's owner, Mr. Coblenz, left a telephone message for MTAPCA stating that he was on vacation and would not be returning until the end of March. Mr. Coblenz left a cellular telephone number where he could be contacted and again stated that Trumbull County had not told him about the notification requirements.

11. On March 17, 2005, MTAPCA contacted Respondent via telephone. During this conversation Respondent asked and was told what information was needed for the notification. Additionally, Respondent stated that no asbestos survey was conducted.

12. On April 7, 2005, Mr. Coblenz left a message for MTAPCA stating that he had returned from vacation and the time had lapsed for the picking up of the NOV. Further, Respondent stated that he would come to MTAPCA's office to get the notification packet during the week of April 11, 2005.

13. On April 15, 2005, a representative of Respondent picked up a Notification of Demolition packet from MTAPCA. As to this date, Respondent has not submitted the requested notice of demolition.

14. On July 21, 2006, Ohio EPA received documentation from Respondent indicating that it was unlikely that the facility contained any regulated asbestos-containing material as defined in OAC Rule 3745-20-01(B)(41).

15. Respondent is the "operator" of the facility as defined in OAC Rule 3734-20-01(B)(38). Therefore, Respondent was responsible for submitting an accurate written notice of intention to demolish and for assuring that the facility was thoroughly inspected to determine the presence and amounts of asbestos-containing materials prior to the start of demolition. Respondent failed to comply with these requirements, in violation of OAC Rules 3745-20-02(A) and 3745-20-03(A) and ORC § 3704.05(G).

16. 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 Ohio EPA the amount of four thousand dollars (\$4,000) in two payments of two thousand dollars (\$2,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC § 3704.06. The first payment

shall be due within fourteen (14) days after the effective date of these Orders, and the second payment shall be due within forty-five (45) days after the effective date of these Orders. Payments shall be made by official checks made payable to "Treasurer, State of Ohio" in the amount of \$2,000. The official checks shall be submitted to Brenda Case, 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 facility.

2. A copy of each official check shall be submitted to James A. Orlemann, Assistant Chief, Compliance and Enforcement, or his successor, at Division of Air Pollution Control, Ohio EPA, 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 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 this 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.

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
Oakhill Renaissance Place
2nd Floor - Room 25
345 Oak Hill Avenue
Youngstown, Ohio 44502-1454
Attn: Larry Himes

and to:

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

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 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.

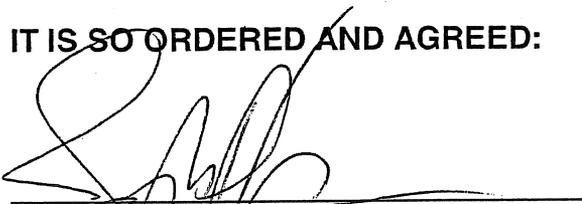
XIII. EFFECTIVE DATE

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 these Orders.

IT IS SO ORDERED AND AGREED:



Joseph P. Koncelik
Director

10/19/06
Date

IT IS SO AGREED:

Ohio Soil Services, Inc.



Signature

9-30-06
Date

Philip Coblenz

Printed or Typed Name

President

Title