

OHIO E.P.A.

JUN 22 2006

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY ENTERED DIRECTOR'S JOURNAL

In the Matter of:

The Village of Lisbon	)	<u>Director's Final Findings</u>
24 Nelson Avenue	)	<u>and Orders</u>
Lisbon, Ohio 44432	)	

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to The Village of Lisbon ("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 facilities as hereinafter identified) 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. Lisbon Exempted Village School District ("LEVSD") owned the residential structures located at 246 and 250 W. Pine Street, 239 and 245 W. High Street; 409, 417, 427 and 437 E. Chestnut Street, Lisbon, Columbiana County, Ohio. Each of these structures was located in a "restricted area" as defined in Ohio Administrative Code ("OAC") Rule 3745-19-01(I) and constituted a "facility" as defined by OAC Rule 3745-20-01(B)(18).

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

*Donna Jackman* 6-22-06

2. "Facility" as defined by OAC Rule 3745-20-01(B)(18) means any institutional, commercial, public, industrial or residential structure, installation, or building including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units. Any structure, installation, or building that contains a loft used as dwelling is not considered a residential structure, installation or building. Any structure, installation or building that was previously subject to this rule due its prior use or function is not excluded, regardless of its current use or function.

3. The structures at 246 and 250 W. Pine Street along with the other facilities were marked for demolition by LEVSD.

4. "Friable asbestos material" as defined by OAC Rule 3745-20-01(B)(20) means, in part, any material containing more than one percent asbestos by area that hand pressure can crumble, pulverize or reduce to powder when dry.

5. "Nonfriable asbestos material" as defined by OAC Rule 3745-20-01(B)(34) means, in part, any material containing more than one percent asbestos by area that cannot be crumbled, pulverized or reduced to powder by hand pressure.

6. "Owner or operator" as defined by OAC Rule 3745-20-01(B)(38) means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation or both.

7. "Demolition" as defined by OAC Rule 3745-20-01(B)(13) means, in part, the wrecking, or taking out any load-supporting structural member of a facility together with any related handling operations.

8. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-20 was adopted by Ohio EPA pursuant to ORC Chapter 3704.

9. "Restricted area" as defined by OAC Rule 3745-19-01(I)(1) means, in part, the area within the boundary of any municipal corporation established in accordance with Title 7 of the Revised Code.

10. OAC Rule 3745-19-03(A) prohibits any person or property owner from open burning in a restricted area except as provided in OAC Rule 3745-19-03(B) to (D) and in ORC § 3704.11. OAC Rule 3745-19-03(D)(2), however, in part, allows such burning for the purpose of fire training or research upon receipt of written permission from Ohio EPA.

11. OAC Rule 3745-20-02(A) states, in part, that each owner or operator of any demolition operation shall have the affected facility where a demolition operation will occur thoroughly inspected, prior to commencement of the demolition for the presence of asbestos, including Category I and Category II nonfriable asbestos-containing material ("ACM").

12. OAC Rule 3745-20-03(A)(3), states, in part, that each owner or operator of a subject demolition operation shall provide the Director of Ohio EPA with a written notice of intention to demolish by not later than 10 days prior to beginning demolition.

13. On June 3, 2003, LEVSD contacted Respondent's Lisbon Fire Department ("LFD") to burn the structures at 246 and 250 W. Pine Street in Lisbon, Ohio for fire training purposes.

14. On June 8, 2003, Respondent's LFD open burned the structures for fire training without first applying for and obtaining permission from Ohio EPA pursuant to OAC Rule 3745-19-05, in violation of OAC Rule 3745-19-03(A).

15. On April 20, 2004, Ohio EPA, Northeast District Office ("NEDO") received complete notification forms from LEVSD for the demolition of the structures at 246 and 250 W. Pine Street along with other residential structures at 239 and 245 W. High Street; and 409, 417, 427 and 437 E. Chestnut Street, Lisbon. The notification did not indicate the presence of any ACM in the structures but stated that the demolition would start on May 5, 2004 and be completed on May 14, 2004.

16. Since the open burning of the structures at 246 and 250 W. Pine Street constituted a "demolition," as defined in OAC Rule 3745-20-01(B)(13) and met the applicability provisions of OAC Rule 3745-20-02, this demolition was subject to the inspection and notification requirements of OAC Rules 3745-20-02(A) and 3745-20-03(A), respectively.

17. On May 12, 2004, a NEDO representative inspected the facility and noted that the Pine Street structures had been previously demolished by open burning. The representative determined that the open burning was conducted as part of a fire training exercise by Respondent's LFD on June 8, 2003 (i.e., ten months before the initial notice from Lisbon Exempted was received). Respondent did not submit a notification of demolition ("notification") form to NEDO and did not submit an open burning application form and obtain written permission from Ohio EPA to conduct fire training prior to demolishing the structures by burning. Also, Respondent did not perform an asbestos inspection prior to demolishing the structures by open burning. Also, during this inspection, the NEDO representative collected four samples of suspect ACM from the burnt debris and sent the samples to EA Group in Mentor, Ohio for asbestos content analysis.

18. Respondent was an "operator," as defined in OAC Rule 3745-20-01(B)(38)(a). Because Respondent did not provide the Director of Ohio EPA with a written notice of intention to demolish and there was no pre-demolition asbestos inspection performed at that time, proper removal and disposal of regulated ACM, if any, from 246 and 250 W. Pine Street could not be confirmed.

19. Respondent's failure to submit a complete notification form to Ohio EPA prior to demolishing the Pine Street structures by burning, and failure to perform an asbestos inspection prior to the demolition, constituted violations of OAC Rules 3745-20-03(A) and 3745-20-02(A), respectively. Also, Respondent's failure to submit an application and obtain permission for LFD to conduct fire training at the facility prior to the demolition by burning, constituted a violation of OAC Rule 3745-19-03(A). These violations also constituted violations of ORC § 3704.05(G).

20. On May 18, 2004, NEDO sent a notice of violation ("NOV") letter to Respondent's LFD and LEVSD. The NOV, in part, cited LFD for the violations of OAC Rule 3745-20-03(A) for failure to submit a notification, OAC Rule 3745-20-02(A) for failure to perform an asbestos inspection prior to the demolition and OAC Rule 3745-19-03 for conducting prohibited open burning in restricted area. The NOV, in part, requested Respondent's LFD to submit to NEDO, the following information within five days of receipt of the letter: the name, address, phone number and contact persons of all involved in the fire training and contractors involved in the waste disposal; location of landfill; the type and amount of ACM; a notification; an open burning application; and, if a prior inspection was not conducted, plans for an inspection of the debris and inspection procedures.

21. On May 20, 2004, NEDO received the test results from EA Group of the samples sent to it for asbestos content analysis. The report indicated there was no ACM in the samples.

22. On June 2, 2004, NEDO received by fax from Mr. Frank Carelli of Daniel A. Terreri & Sons, Inc., a general contracting company, the laboratory analytical results of the debris samples his company collected. The samples were analyzed by McCall & Spero Environmental, Inc. and the results indicated there was no ACM in the samples.

23. On June 7, 2004, NEDO acknowledged the receipt of Mr. Frank Carelli's June 2, 2004 letter. Based on the test results, NEDO authorized Mr. Carelli's company to proceed with the disposal of debris.

24. In a letter dated June 10, 2004, LEVSD provided the information requested in the May 18, 2004 NOV.

25. 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 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 six thousand dollars (\$6,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. 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 eight hundred dollars (\$4,800). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying 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 two hundred dollars (\$1,200) of the civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$1,200 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$1,200. 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 set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$1,200 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 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 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 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:

Ohio Environmental Protection Agency  
Northeast District Office  
Division of Air Pollution Control  
2110 East Aurora Road  
Twinsburg, Ohio 44087-1969  
Attn: Jim Veres, DAPC;

and to:

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

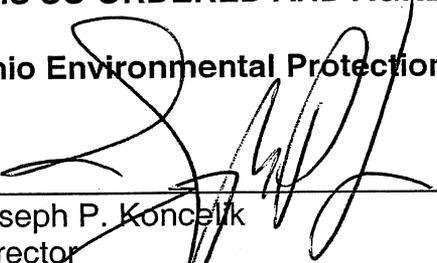
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**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:**

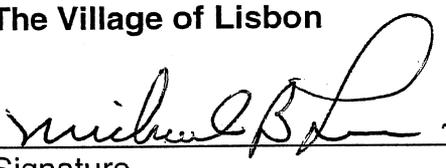
**Ohio Environmental Protection Agency**

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

\_\_\_\_\_  
Date 6/19/06

**IT IS SO AGREED:**

**The Village of Lisbon**

  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date 6/12/06

\_\_\_\_\_  
Michael B. Lewis  
Printed or Typed Name

\_\_\_\_\_  
Mayor  
Title