

OHIO E.P.A.

SEP -2 2010

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Michael A. Kernan
1273 Redtail Hawk Ct.
Boardman, Ohio 44512

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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 Michael A. Kernan ("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 property (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 makes the following findings:

1. Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(39) defines, in part, the "owner or operator" as any person who owns, leases, operates, controls, or supervises a facility being demolished; or any person who owns leases, operates, controls or supervises the demolition of a facility; or both.

2. " Facility" as defined by OAC Rule 3745-20-01(B)(18) means any institution, commercial, public, industrial or residential structure, installation, or building including any structure, installation, or building containing condominiums or individual dwelling units

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: [Signature] Date: 9-2-10

Director's Final Findings and Orders

Michael A. Kernan

Page 2 of 6

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. OAC Rule 3745-20-02(A) requires that each owner or operator of a demolition or renovation operation must, prior to the commencement of such operations, have the affected facility or portion of a facility thoroughly inspected for the presence of asbestos-containing material, including Category I and Category II non-friable asbestos-containing materials as defined in OAC Rule 3745-20-01(B)(9) and (B)(10).

4. 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.

5. ORC § 3704.05(G) prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. OAC Chapter 3745-20 was adopted by the Director pursuant to ORC Chapter 3704.

6. Respondent is the owner of the property located at 1001 Bears Den Road, Youngstown, Mahoning County, Ohio. A commercial structure of 1,440 square feet in area was on the property.

7. Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") is a contractual agent for Ohio EPA responsible for administering the provisions of the asbestos emission control standards in OAC Chapter 3745-20 in Mahoning County.

8. On February 5, 2009, an inspector from M-TAPCA spoke with Salvatore Sorice. Mr. Sorice stated that the roof and siding of the structure were to be removed and no demolition of any load supporting walls was to take place. Mr. Sorice was informed that if the plan changes and any load supporting walls are to be removed, an asbestos survey would need to be conducted and an Ohio EPA Notification of Demolition and Renovation form would need to be submitted to M-TAPCA prior to any demolition taking place.

9. On February 15, 2009, Mr. Sorice demolished the commercial structure located at 1001 Bears Den Road ("the facility").

10. On February 18, 2009, an inspector from M-TAPCA observed that the commercial building located at 1001 Bears Road had been demolished; only wood, concrete, roofing and steel siding could be observed in the debris. Mr. Sorice was on site at that time, and he stated that no asbestos survey was performed and no notification was

submitted to M-TAPCA. The inspector inspected the site and did not find any suspect asbestos-containing material to sample.

11. Respondent is the owner and Mr. Sorice is the operator, as those terms are defined in OAC Rule 3745-20-01(B)(39), of the facility.

12. Respondent and Mr. Sorice violated OAC Rule 3745-20-02(A) and ORC § 3704.05(G) by not inspecting the building for the presence of asbestos-containing material prior to the commencement of the demolition operation.

13. Respondent and Mr. Sorice did not provide Ohio EPA with a written notice of intent to demolish at least 10 days prior to starting the demolition work, in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G).

14. On March 13, 2009, M-TAPCA sent notice of violation ("NOV") letters to Respondent and Mr. Sorice. The NOV letters cited Respondent and Mr. Sorice for the above-mentioned violations and requested additional information, including the dates when demolition began and ended, identification of the demolition contractor, and any documentation of inspection if the building was inspected prior to demolition.

15. On March 19, 2009, M-TAPCA received a notification of demolition and renovation form from Mr. Sorice. Demolition was checked as the type of operation. Respondent was listed as the owner, and Mr. Sorice as the demolition operator. The scheduled dates of demolition were from February 15, 2009 to February 16, 2009. The notification form did not provide any information on the amount of asbestos-containing material in the structure. The quantity of asbestos cannot be determined for this commercial facility due to the lack of a complete and thorough survey prior to demolition.

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 be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Respondent shall pay the amount of four thousand dollars (\$4,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. The payment shall be made in eight equal installments of five hundred dollars (\$500) each. The first installment shall be submitted within thirty (30) days after the effective date of these Orders, and the seven subsequent installments shall be submitted

within 60, 90, 120, 150, 180, 210, and 240 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". The official checks shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondents, to:

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

2. 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

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, operations by 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:

Mahoning-Trumbull Air Pollution Control Agency
Oakhill Renaissance Place
2nd Floor – Room 25
345 Oak Hill Avenue
Youngstown, Ohio 44502
Attn: Tara Cioffi

and to:

Ohio Environmental Protection Agency
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 agree 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.

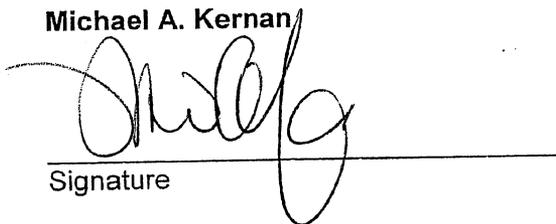
ORDERED AND AGREED:

Ohio Environmental Protection Agency


Chris Korleski
Director

8/25/10
Date

AGREED:

Michael A. Kernan

Signature

8/10/10
Date