

OHIO E.P.A.

MAR -6 2012

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Robert A. Stocker
3625 Layer Road
Warren, Ohio 44481

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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 Robert A. Stocker ("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 defined) 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. Respondent is the owner of the commercial property located at 3405 Mahoning Ave. NW, Warren Township, Trumbull County, Ohio ("the Property"), which included a former building.

2. Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") is Ohio EPA's contractual representative in Mahoning County for the administration of Ohio Administrative Code ("OAC") Chapter 3745-20 ("Asbestos Emission Control Standards").

3. On July 1, 2009, the building on the Property was damaged by fire. The building was a "facility" as defined by OAC Rule 3745-20-01(B)(18).

4. On July 1, 2009, Warren Township Fire Department verbally ordered Respondent to pull down the roof and walls of the building in order to assist in extinguishing the fire. Respondent, the owner of the Property, subsequently had Stocker Excavating, LLC remove the roof and pull down portions of the walls.

5. As the owner of the Property, as the term is defined in OAC Rule 3745-20-01(B)(39)(a), Respondent's demolition activities were subject to the requirements detailed in OAC Chapter 3745-20.

6. OAC Rule 3745-20-03(A) states, in part, that each owner or operator of a demolition operation subject to this rule shall provide the Director of Ohio EPA with written notice of intention to demolish within 10 working days prior to beginning demolition operations.

7. 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"), as defined in OAC Rules 3745-20-01(B)(9) and 3745-20-01(B)(10), in order to determine the applicability of OAC Rules 3745-20-03 and 3745-20-04.

8. Respondent failed to deliver notice to M-TAPCA within 10 working days prior to beginning demolition at the facility, in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G).

9. Respondent failed to have an inspection performed for the presence of asbestos prior to beginning demolition operations at the facility, in violation of OAC Rule 3745-20-02(A) and ORC § 3704.05(G).

10. On August 11, 2009, M-TAPCA issued a Notice of Violation ("NOV") letter to Respondent for the violations of the asbestos rules discovered at the Property. The NOV required Respondent to provide M-TAPCA with documentation regarding the demolition operations at the Property and documentation regarding whether an inspection was performed to determine if asbestos was present at the Property prior to

demolition. As of the date of these Orders, Respondent has not provided M-TAPCA or Ohio EPA with an inspection report detailing whether asbestos was present in the structure at the Property.

11. On August 30, 2009, in response to a call from Trumbull County Building Inspection Department, an official from M-TAPCA inspected the facility and confirmed that a fire-damaged commercial structure had been demolished and did not find any suspect regulated asbestos-containing material to sample from one truck load of demolition debris that remained on the property.

12. The Director has given consideration to, and based his determination on, evidence relating on technical feasibility and economic reasonableness of complying with the following Orders and their relation to benefits to people of the State to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of one thousand dollars (\$1,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for one thousand dollars (\$1,000). The official check shall be submitted to Akia Smith, 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. A copy of the above check shall be sent to Thomas Kalman, Acting Assistant Chief, SIP Development and Enforcement, or his successor, at the following

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 check 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 Respondent's activities at the Property.

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:

M-TAPCA
Oak Hill Renaissance Place, Suite 200
345 Oak Hill Avenue
Youngstown, OH 44502
Attn: Tara Cioffi

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 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

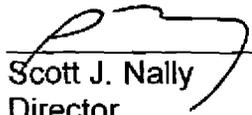
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

ORDERED:

Ohio Environmental Protection Agency



Scott J. Nally
Director

3/1/12

Date

AGREED:

Robert A. Stocker



Signature

1-30-12

Date