

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

John Ingram, d.b.a  
J.P. Construction Company  
579 West Main Street  
Conneaut, Ohio 44030

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Director's Final  
Findings and Orders

OHIO E.P.A.  
OCT 26 2004  
ENTERED DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to John Ingram, d.b.a. J.P. Construction Company ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.04 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 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 is the owner of a construction and demolition company located at 579 West Main Street, Conneaut, Ohio. Respondent was contracted by Robert Marcy, owner of Marcy Funeral Home, located at 208 Liberty Street, Conneaut, Ohio, to demolish the former Code-Way building located at 209 Main Street, Conneaut, Ohio.

2. The demolition of the structure began on March 14, 2003, and was reported in The Star Beacon on March 17, 2003. Prior to the publication of this article, Ohio Environmental Protection Agency, Northeast District Office ("NEDO") had no indication of

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 Jackson* 10-26-04

Respondent's intent to demolish the Code-Way building.

3. On March 20, 2003, a representative from NEDO inspected the site and met with Respondent. Two small piles of demolition debris remained at the site, samples of which were taken for analysis for the presence of asbestos. The representative from NEDO also took photographs of the site at this time.
4. During the March 20, 2003 inspection, Respondent indicated that an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" ("Notification") form and survey had been submitted to NEDO. However, the Notification and survey that was submitted on March 18, 2003 was for the adjacent property located at 201 Main Street, Conneaut.
5. NEDO spoke with the Asbestos Hazard Evaluation Specialist that had allegedly conducted the survey of the 201 Main Street building, and he stated that no survey was conducted in the Code-Way building.
6. Demolition of the structure at the 209 Main Street was subject to the notification requirements of Ohio Administrative Code ("OAC") Rule 3745-20-03(A).
7. The March 14, 2003 demolition of the Code-Way building was in violation of OAC Rule 3745-20-02(A), which states, in part, that "each owner or operator of a demolition or renovation operation, shall have the affected facility....thoroughly inspected prior to commencement of demolition or renovation for the presence of asbestos." No such inspection was conducted at Code-Way building.
8. The March 14, 2003 demolition of the Code-Way building was also in violation of OAC Rule 3745-20-03(A), which states, in part, that each owner or operator of a demolition operation submit to Ohio EPA a written notice of intention to demolish at least 10 days before any demolition operation begins at a facility as described in OAC Rule 3745-20-02(A)(1).
9. Results of the analysis of the two demolition debris samples that were collected on March 20, 2003, indicated that one of the samples contained over 1% chrysotile asbestos (3% and 7% in 2 separate analyses) in floor tile and mastic. The other samples tested did not test positive for asbestos.
10. By letter dated May 1, 2003, NEDO issued a Notice of Violation ("NOV") to Respondent for the violations of OAC Rules 3745-20-02 and 3745-20-03 discovered during the March 20, 2003 inspection. The NOV requested submittal of a Notification for the demolition of the Code-Way building within 10 days of receipt of the NOV. Additionally, the NOV requested submittal of any asbestos survey that may have been conducted for the Code-Way building prior to the demolition.

11. By letter dated May 6, 2003, Respondent replied to the May 1, 2003 NOV. Respondent claimed that he was unaware that he was required to submit a Notification for the demolition of the Code-Way building. Previously, by letter dated February 27, 1996, Respondent was issued an NOV for violations of OAC Rules 3745-20-02, 3745-20-03, and 3745-20-04 in regard to demolition of a property located at 353 Madison Street, Conneaut. The NOV was followed by a warning letter that explained Respondent's obligations pertaining to notification under OAC Rule 3745-20-02. Respondent failed to submit any notification, or conduct any asbestos survey for the Code-Way building, prior to its demolition.

12. The violation of any OAC rule is also a violation of ORC § 3704.05(G).

13. Based on information obtained from Respondent during a meeting with Ohio EPA on June 28, 2004 concerning the proposed Orders issued on May 18, 2004, in income tax returns from Respondent, and in Respondent's letter dated September 29, 2004 to Ohio EPA, Ohio EPA found Respondent to have an economic hardship in paying the full amount of the civil penalty.

14. 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 Order:

Pursuant to R.C. 3704.06, Respondent is assessed a civil penalty in the amount of five thousand seven hundred dollars (\$ 5,700) in settlement of Ohio EPA's claim for civil penalties. Respondent shall pay to Ohio EPA the amount of five thousand seven hundred dollars (\$ 5,700) in six consecutive monthly payments of nine hundred fifty dollars (\$950), with the first payment due within thirty (30) days after the effective date of these Orders. Each payment shall be made by official check made payable to "Treasurer, State of Ohio" for \$950. The official checks shall be submitted to Brenda Case at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.

A copy of each check shall be sent to Jim Orlemann at the following address:

Division of Air Pollution Control  
Ohio Environmental Protection Agency  
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, 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. 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 EPA  
Northeast District Office  
2110 E. Aurora Road  
Twinsburg, Ohio 44087  
Attn: Dennis Bush

and to:

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

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**

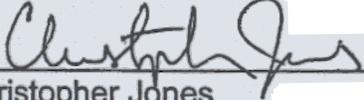
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

#### **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:**

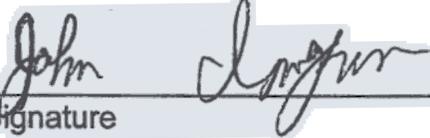
**Ohio Environmental Protection Agency**

  
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Christopher Jones  
Director

10-20-04  
Date

**IT IS SO AGREED:**

**John Ingram, d.b.a. J.P. Construction Company**

  
\_\_\_\_\_  
Signature

10/6/04  
Date

John Ingram  
Printed or Typed Name