

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of:

Board of Trumbull Township Trustees :
2730 Mechanicsville Road :
Rock Creek, Ohio 44084 :

Director's Final Findings
and Orders

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By: [Signature] Date: 12/19/08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Board of Trumbull Township Trustees ("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 Facility 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 a local government in Ashtabula County, with an office located at 2730 Mechanicsville Road, Rock Creek, Ohio. Respondent owns and operates a fire department for fire protection and rescue service within the Township. This fire department is called Trumbull Township Fire and Rescue ("TTFR").

2. OAC Rule 3745-19-04(A), in part, prohibits any person or property owner from causing or allowing open burning in an unrestricted area except as provided in OAC Rule 3745-19-04(B) to (C) or in ORC § 3704.11. OAC Rule 3745-19-04(C)(2) allows open burning for the purpose of fire-fighting training only upon receipt of written permission from

the Ohio EPA. OAC Rule 3745-19-05(A) requires that an application for permission to conduct open burning pursuant to OAC Rule 3745-19-04(C)(2) be submitted to the local air agency or Ohio EPA District Office at least 10 days prior to the date the fire is proposed to be set.

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 thoroughly inspected for the presence of asbestos-containing materials, 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)(3) states, in part, that each owner or operator of a subject demolition operation, as identified in OAC Rule 3745-20-02(B), 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.

5. OAC Rule 3745-20-04(E) states that if a such facility is to be demolished by intentional burning, all regulated asbestos-containing materials, including Category I and Category II non-friable asbestos-containing materials, must be removed from the facility in accordance with OAC Chapter 3745-20 before burning.

6. On May 26, 2007, TTFD conducted open burning for fire-fighting training purposes on a vacant residential garage located at 3451 S.R. 534 in Trumbull Township of Ashtabula County and owned by William Valis.

7. On June 11, 2007, Ohio EPA Northeast District Office ("NEDO") inspected the 3451 S.R. 534 site to verify the information received about the open burning conducted on the site. At the time of inspection, no structure was present. Property owner, Mr. Valis, confirmed that there had formerly been a residential garage on the property which had been used for fire-fighting training on May 26, 2007.

8. Prior to this open burning, Respondent did not apply for and obtain written permission from Ohio EPA to conduct the burning, in violation of OAC Rules 3745-19-04(A) and 3745-19-05(A), and ORC § 3704.05(G).

9. Prior to the open burning, Respondent failed to submit an asbestos demolition notification to Ohio EPA, in violation of OAC Rule 3745-20-03(A)(3). Respondent was the "operator" as defined in OAC Rule 3745-20-01(B)(39) and ORC § 3704.05(G).

10. On June 14, 2007, NEDO sent a Notice of Violation ("NOV) to TTFD that outlined the violations noted above.

11. In accordance with OAC Rule 3745-20-02(A), the garage structure was

inspected for the presence of asbestos-containing materials on May 17, 2007, prior to the commencement of the demolition operation by open burning. The inspection report, dated May 25, 2007, was included with Respondent's reply to the NOV. It was indicated in the report that three samples of tar paper, a suspect Category I non-friable asbestos-containing material, were collected and analyzed; however, no asbestos was detected.

12. In conclusion, the Director finds Respondent in violation of OAC Rules 3745-19-04(A), 3745-19-05(A) and 3745-20-03(A) based on the above findings. The OAC violations cited in the above findings also constituted violations of ORC § 3704.05(G), which prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA pursuant to OAC Chapter 3704. OAC Chapters 3745-19 and 3745-20 were adopted by the Director pursuant to ORC Chapter 3704.

13. On April 23, 2008, Ohio EPA sent proposed Director's Final Findings and Orders to Respondent that included a civil penalty for the above-mentioned violations. During settlement negotiations, Respondent made an inability-to-pay claim and provided financial documents to support its claim. Ohio EPA's Economic Analysis Unit reviewed the financial documents and determined that Respondent could only pay a portion of the 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 relation to benefits to the people of the State be derived from such compliance.

V. ORDERS

The Director hereby issues the following Orders:

1. Within thirty (30) 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 3704.06. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$1,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and the site of the open burning, and addressed to:

Office of Fiscal Administration
Ohio Environmental Protection Agency
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check shall be sent to James A. Orlemann, Assistant Chief, SIP

Development and Enforcement, or his successor, at the following address:

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

2. Respondent shall maintain compliance with the open burning restrictions in OAC Chapter 3745-19. Respondent shall maintain compliance with the notification and work practice requirements of OAC Chapter 3745-20.

3. Respondent shall comply, where applicable, with OAC Rule 3745-19-05(A) which requires that an application for permission to conduct open burning be submitted to the local air agency or Ohio EPA District Office at least 10 working days prior to the date the fire is proposed to be set for fire-fighting training purposes.

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 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
2110 East Aurora Road
Twinsburg, Ohio 44087-1924
Attn: Richard Kolosionek

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 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



Chris Korleski
Director

12/19/08
Date

IT IS SO AGREED:

Board of Trumbull Township Trustees


Signature *Chairman (per Bd. of
Trumbull Twp. Trustees
Mtg. Resolution 12/18/08)*
RON M. TAMBURRINO
Printed or Typed Name

12/18/08
Date

CHAIRMAN
Title