

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Crick Construction Company	:	<u>Director's Final Findings</u>
13046 Diagonal Road	:	<u>and Orders</u>
Salem, OH 44460	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Crick Construction Company ("Respondent") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency ("Ohio EPA") under Ohio Revised Code ("ORC") §§ 3704.03 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 Respondent shall in any way alter Respondents' 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 owns and operates a construction company located at 13046 Diagonal Road, Salem, Ohio.
2. On June 27, 2002, an inspector from the Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") observed that a commercial building, The Shoe Outlet, a one-story, 5,535 square foot structure built in 1969 and located at 7850 Market Street, Boardman Township, Ohio, had been demolished. A truck full of demolition debris was parked on the east side of the property and a small pile of demolition debris was on site. According to the

definition in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12), this project involved the demolition of a "facility." Respondent was an "operator," as defined in OAC Rule 3745-20-01(B)(20), of this demolition operation.

3. OAC Rule 3745-20-02(A)(1) states that the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to each owner or operator of a demolition operation if the amount of friable asbestos materials in a facility being demolished is at least 260 linear feet on pipes or at least 160 square feet on other facility components. OAC Rule 3745-20-03(A) states, in part, that each owner or operator shall provide the Director of Ohio EPA with written notice of intention to demolish at least 10 days before any demolition operation begins if the operation is as described in OAC Rule 3745-20-02(A)(1).

4. OAC Rule 3745-20-02(A)(2) states that the requirements of OAC Rule 3745-20-03 apply to each owner or operator of a demolition operation if the amount of friable asbestos materials in a facility being demolished is less than two hundred sixty linear feet on pipes or less than one hundred and sixty square feet on other facility components, including those facilities that contain no friable asbestos. OAC Rule 3745-20-03(A) states, in part, that each owner or operator shall provide the Director of Ohio EPA with written notice of intention to demolish at least 20 days before any demolition operation begins if the operation is as described in OAC Rule 3745-20-02(A)(2).

5. Therefore, pursuant to Findings 4 and 5 any demolition that is subject to the notification requirements of OAC Rule 3745-20-03(A) is required to submit a notification by at least 10 or 20 days prior to beginning demolition, with the number of days dependent on the amount of friable asbestos materials in the facility.

6. At the time of the investigation on June 27, 2002, the M-TAPCA inspector collected three samples of suspected friable asbestos materials from the debris pile observed at the site. The samples were submitted to an accredited laboratory for analysis. The sample results indicate that the ceiling tile materials contained chrysotile asbestos and were **above the 1% threshold level and, therefore met the definition of "friable asbestos material" in OAC Rule 3745-20-01(B)(14)**. One ceiling tile sample was also point counted and found to contain 2% chrysotile asbestos.

7. During the investigation, the property owner, Mr. Flor Navarro, arrived on site and informed the M-TAPCA inspector that he demolished the facility to use the property as a part of his car dealership. The M-TAPCA inspector informed Mr. Navarro that samples had been taken from the demolition debris and advised him to keep the remaining material on site until a determination of the asbestos content of the samples was made. Mr. Navarro asked the M-TAPCA inspector to contact Respondent, the contractor for the demolition project.

8. On June 27, 2002, the M-TAPCA inspector left a message for Mr. Roy Crick the Respondent advising him of the inspection at the facility, the samples collected, and the

forthcoming warning letter.

9. On June 28, 2002, Mr. Roy Crick called M-TAPCA in response to the message left by the M-TAPCA inspector. He stated that he was unaware of the regulations he had to follow and he had talked to Boardman Township Zoning and got a demolition permit from Mahoning County offices. He also said that no official at Mahoning County told him he needed another permit. Additionally, his crew had started to work at the facility earlier that day and the remaining debris had been sent to the BFI C&D Landfill in Salem for disposal.

10. Since no Ohio EPA Notification of Demolition and Renovation form had been submitted for 7850 Market Street, M-TAPCA prepared a warning letter to Respondent on June 27, 2002, informing the Respondent of its failure to file a timely notification as required by OAC Rule 3745-20-03(A)(1).

11. On June 28, 2002, Mr. Crick picked up the warning letter from M-TAPCA. The letter informed the Respondent of the violation that occurred during the demolition operation conducted at 7580 Market Street. The letter requested the Respondent to submit dates when demolition began and ended; documents that identified the Respondent as the demolition contractor for the facility; documents that indicated that the facility had been inspected for asbestos-containing materials prior to demolition; and a completed Ohio EPA Notification of Demolition and Renovation form for the facility at 7850 Market Street. Respondent was advised of the suspected asbestos-containing material samples collected for the facility during the inspection on June 27, 2002. Respondent was asked to submit all information requested within five days after receiving the letter.

12. On July 9, 2002, M-TAPCA received an Ohio EPA Notification of Demolition and Renovation form from Respondent for the demolition at 7850 Market Street. The letter containing the form was postmarked July 5, 2002. The notification form did not address any suspected asbestos-containing materials at the facility. Based on the inspection on June 27, 2002, the M-TAPCA inspector could not determine the amount of suspected friable asbestos materials at the facility.

13. Respondent met with Ohio EPA and M-TAPCA representatives on December 9, 2002. At that time, and in a written submission thereafter, Respondent presented evidence indicating that, if any asbestos was present in the ceiling tile of the building, it would have been confined to the restroom area. Pictorial evidence presented by Respondent showed that the main portion of the building demolished contained no materials indicating asbestos, i.e., the ceiling was wooden and open; the walls were block and brick; the smaller ceiling was drywall; the pipes were bare copper; the heating and ventilation system were tin without wrappings or tape on duct work; the floors were carpeted and had some ceramic tile. Respondent also presented a drawing indicating the size of the men's and women's restrooms. The size of the restrooms in the drawing presented was less than 160 square feet, which is below the threshold level for applicability of the work practice standards of OAC Chapter 3745-20. However, Ohio EPA did not find this evidence conclusive as to the actual amount of asbestos present.

14. Based upon the above findings, Ohio EPA finds that Respondent violated OAC Rule 3745-20-03(A) and ORC § 3704.05(G) by failing to submit a notification at least 10 or 20 days, whichever was applicable, prior to the beginning of the demolition operation at this facility.

15. 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 the 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 \$10,000 in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the amount of \$8,000 **of the total penalty amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$8,000. The official check shall be submitted to Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent and the facility.**

The remaining \$2,000 shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Respondent shall deliver an official check in this amount and made payable to the Ohio Department of Natural Resources, Division of Forestry, State Forest Fund for the purpose of funding urban area tree-planting projects in Ohio. This check shall specify that such monies are to be deposited into Fund No. 509. The check shall be sent to John Dorka, Deputy Chief, or his successor, at the following address:

Division of Forestry
Ohio Department of Natural Resources
1855 Fountain Square Court, H-1
Columbus, Ohio 43224-1327

A copy of both checks shall be sent to James A. Orlemann, Manager, Engineering Section, or his successor, 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 and Ohio Department of Natural Resources' 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 Respondent's demolition operation.

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's demolition operation.

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:

Mahoning-Trumbull Air Pollution Control Agency
Oakhill Renaissance Palace
345 Oak Hill Avenue, Room 25
Youngstown, OH 44502
Attn: Larry Himes

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
122 South Front Street, P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Tom Kalman, Supervisor

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, Respondent agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's civil liability for the specific violations cited herein. Respondent hereby waives the right to appeal the issuance, terms, and service of these Orders and hereby waives any and all rights it might 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 an appeal. In such event, Respondent shall continue to comply with these Orders 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

Christopher Jones
Director

Date

IT IS SO AGREED:

Crick Construction Company

Signature

Date

Printed or Typed Name

Title