BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Dr. Dharam Batish, M.D.	**:**	**Director's Final Findings**
1100 Pennsylvania Avenue	**:**	**and Orders**
East Liverpool, Ohio 43920	**:**	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Dr. Dharam Batish, M.D. ("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 is the owner of the former building located at 1102 Pennsylvania Avenue in East Liverpool, Columbiana County, Ohio. Respondent's business office is located at 1100 Pennsylvania Avenue in East Liverpool, Columbiana County, Ohio. Respondent hired Virgil Boggess, a demolition contractor whose business address is 464 First Avenue in East Liverpool, Columbiana County, Ohio, to perform the demolition work on the former building located at 1102 Pennsylvania Avenue in East Liverpool, Columbiana County, Ohio. The former building constituted a "facility," as defined in OAC Rule 3745-20-01(B) as any institutional, Commercial, or public structure, and its demolition was, therefore

subject tot he requremoents of OAC Chapter 3745-20.

2. On April 20, 1999, representatives from the Ohio EPA's Northeast District Office ("NEDO") inspected the site and found the building to be partially demolished. NEDO representatives talked with the demolition contractor on site who informed them that the structure was a museum on the first floor and an apartment on the second floor, and was being demolished to provide additional parking space for the doctor's office located adjacent to the structure. Ohio EPA had no prior knowledge of the demolition since no notification of demolition was submitted to NEDO. 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, the number of days is dependent on the amount of friable asbestos materials in the facility.

6. On April 21, 1999, NEDO staff again visited the site and took three samples to test for asbestos-containing material. The test results indicated that no asbestos was present in the samples. However, samples were taken on the first floor only, and not on the second floor, or the basement, since the building was unsafe. NEDO informed a representative of the owner that the demolition must cease until a completed Notification of Demolition and Renovation form ("Notification") was submitted to NEDO. A Notification form and a copy of the asbestos rules were left with the owner. On April 22, 1999, Notice

of Violation ("NOV") letters were sent overnight to Respondent and the demolition contractor citing the violation of OAC Rule 3745-20-03(A) and the requirements of OAC Chapter 3745-20 and requesting a completed Notification and an asbestos building evaluation report.

7. On April 23, 1999, NEDO spoke with the demolition contractor, who stated he was ordered by the City of East Liverpool to finish the demolition since the building was no longer safe. NEDO informed him that the debris could not be disposed of until the proper notification was received, and he assured NEDO that the pickup of the debris would be canceled for that day. NEDO also spoke with the Respondent's consultant, Mr. Craig Bartlett, who stated that the building was residential and not commercial and would send documentation showing proof of the facility's use.

8. Documentation was submitted on April 26, 1999 by the consultant to NEDO, as a response to the NOV, in an attempt to show that the facility was residential and did not require a Notification. The documentation showed that the facility was residential or vacant in the past, and unverifiable for 1998 and 1999. The Respondent stated he bought the structure four years ago. He allowed a group of African Americans to use the structure to conduct prayer meetings, and for others to store rummage sale materials in it. He stated nothing was ever in the structure for viewing as a Black History Museum, and no profit-taking occurred. A friend of the Respondent stated he thought the structure was once a store. Ohio EPA tends to believe the structure should be considered commercial since it might have been used as a store, was used for prayer meetings, was once technically a museum (a sign outside on the structure read "Black History Museum") and the property will now act as a parking lot for a commercial operation (the Doctor's office). Under USEPA's determinations of applicability through site specific examples, USEPA stated that any structure, installation, or building that was previously subject to the Asbestos NESHAP is not excluded, regardless of its current use or function. A facility is subject to NESHAP requirements if it is a church, monastery, convent, rectory, or a museum.

9. Based on the facility's "use," Ohio EPA has concluded that the former building constituted a facility, as defined in OAC Rule 3745-20-01(B) as any institutional, commercial, or public structure, and its demolition was therefore subject to the requirements of OAC Chapter 3745-20.

10. The remaining structure was demolished and the demolition waste was placed in the appropriate roll-offs for storage until the status of the waste could be determined. No Notification and additional required information were submitted to NEDO for the emergency demolition of the remaining structure, in violation of OAC Rule 3745-20-03(A) and (C).

11. 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.

12. 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 $2,000 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 $1,600 of the total penalty amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for $1,600. 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 $400 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:

Ohio EPA, Northeast District Office
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Richard Kolosionek

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 Date
Director

IT IS SO AGREED:

Dr. Dharam Batish

_____ _____
Signature Date

_____
Printed or Typed Name

_____
Title