

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Richard M. Osborne, Jr.,	:	<u>Director's Final Findings</u>
D.B.A.	:	<u>and Orders</u>
	:	
Midway Campus, Ltd.	:	
8500 Station Street, Suite 113	:	
Mentor, Ohio 44060	:	
	:	
and	:	
	:	
Madison Route 20 LLC	:	
8500 Center Street, Suite 113	:	
Mentor, Ohio 44060	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Richard M. Osborne, Jr., D.B.A. Midway Campus, Ltd. and Madison Route 20 LLC. ("Respondents") 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 Respondents and successors in interest liable under Ohio law. No change in ownership of the Respondents 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. Respondents own and operate a development business located at 8500 Station Street, Suite 113, Mentor, Ohio.
2. Respondents owned the former Lake County salt storage dome and garage located at the intersection of Lost Nation Road and State Route 2 in Willoughby, Ohio. In or about April, 2002, Respondent Richard M. Osborne, Jr. contracted with Gallion Trucking of 900 Richmond Road, Painesville, Ohio to demolish the salt structure and Tasco Roofing of 38335 Apollo Parkway, Willoughby, Ohio to demolish the garage. Respondent Madison Route 20 LLC is listed by the Lake County Auditor as an owner of the property at the intersection of Lost Nation Road and State Route 2 in Willoughby, Ohio. According to the definition in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12), this project involved the demolition of a "facility." The Respondents are an "owner," as defined in OAC Rule 3745-20-01(B)(20), of this facility.
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 3745-20-02(A)(2)~~ states that if the amount of friable asbestos materials in a facility being demolished is less than 260 linear feet on pipes or less than 160 square feet on other facility components, including a facility containing no friable asbestos materials, only the requirements of OAC Rule 3745-20-03 apply. The above-referenced, planned demolition was subject to at least the notification requirements of OAC Rule 3745-20-03(A). Furthermore, ORC § 3704.05(G) prohibits the violation of any rule adopted by the Director of Ohio EPA.
4. On April 29, 2002, the Lake County General Health District ("LCGHD"), Ohio EPA's contractual representative for Lake County, received a dust complaint in reference to the demolition of the facility.
5. On April 29, 2002, an inspector from LCGHD arrived at the site and found Tasco Roofing was in the process of demolishing the garage located at the facility. The salt storage building was demolished and removed from the facility before the LCGHD inspector arrived at the site.
6. Once the LCGHD inspector arrived on the site, work stopped on the garage demolition. The LCGHD inspector advised Tasco roofing to have a certified hazard

evaluation specialist check the remaining structure for suspected asbestos-containing materials ("ACM"). Only a small office and restroom area of the garage were available for sampling. The remaining debris was already hauled off-site. According to the results provided by EA Group Laboratories of Mentor, Ohio, only a trace of asbestos was found in the light gray drywall of the garage structure. The amount of suspect ACM in the structures was unknown.

7. The LCGHD inspector questioned the contractors if any notification was obtained for the demolition project. Both contractors stated that the Respondents was responsible for all permits and notifications.

8. LCGHD has had previous contact with the Respondents in reference to the demolition requirements for another project in the area. Between January and August of 2001, three letters stating an assessment must be conducted and proper notifications must be filed prior to any facility demolition were sent to Respondents. On May 3, 2002, the LCGHD inspector advised the owner that a warning letter would be prepared, due to its failure to file a timely notification as required by OAC Rule 3745-20-03(A). Both contractors indicated the owner of the facility was responsible for all permits and notifications for this demolition.

9. On May 6, 2002, LCGHD sent a notice of violation (NOV) to Respondent Midway Campus, Ltd. and warning letters to the contractors in reference to the notification requirement for demolition of a "facility." The NOV and warning letters notified all three parties of the violation. The letters also informed the parties that LCGHD would pursue civil penalties in accordance with USEPA's Air Civil Penalty Policy for the failure to submit a notification for the demolition of the facility.

10. On May 8, 2002, the Respondent Richard M. Osborne, Jr. submitted a Notification of Demolition and Renovation form to LCGHD in response to the warning letter issued by LCGHD on May 3, 2001.

11. Based upon the above findings, Ohio EPA finds that Respondents 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, Respondents are assessed a civil penalty in the amount of \$5,000 in settlement of Ohio EPA's claim for civil penalties. Within fourteen (14) days after the effective date of these Orders, Respondents shall pay to Ohio EPA the amount of **\$4,000 of the total penalty amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$4,000. 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 Respondents and the facility.**

The remaining \$1,000 shall be paid to fund a supplemental environmentally beneficial project. Specifically, within thirty (30) days after the effective date of these Orders, Respondents 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

Respondents' 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 Respondents' former facility.

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 Respondents' facility.

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 Respondents pursuant to these Orders shall be addressed to:

Ohio Environmental Protection Agency
Lake County General Health District
Division of Air Pollution Control
33 Mill Street
Painesville, Ohio 44077
Attn: Mr. Bert Mechenbier, Supervisor

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: Mr. Tom Kalman, Supervisor

XI. RESERVATION OF RIGHTS

Ohio EPA and Respondents each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

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XII. WAIVER

In order to resolve disputed claims, without admission of fact, violation or liability, Respondents agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' civil liability for the specific violations cited herein. Respondents hereby waive the right to appeal the issuance, terms, and service of these Orders and hereby waives any and all rights they might have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain 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:

Richard M. Osborne, Jr.

Signature

Date

Madison Route 20 LLC

Signature

Date