

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

NorthCoast Construction	:	<u>Director's Final Findings</u>
Division of Ingram Group, Ltd.	:	<u>and Orders</u>
P.O. Box 216	:	
Conneaut, Ohio 44030-0216	:	
	:	
and	:	
	:	
Conneaut Area City Schools	:	
263 Liberty Street	:	
Conneaut, Ohio 44030	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to NorthCoast Construction, a Division of Ingram Group, Ltd. ("Respondent NorthCoast") and Conneaut Area City Schools ("Respondent Conneaut") 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 their successors in interest liable under Ohio law. No change in ownership of Respondents' business or operation 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 NorthCoast Construction, with mailing address at P.O. Box 216, Conneaut, Ohio, was hired by Respondent Conneaut as a demolition contractor for a

demolition project at a two-story frame house, which was used at one time by Respondent Conneaut as an office for special education. The building was located at 397 Mill Street, Conneaut (Ashtabula County), Ohio. Based on its usage, the above-referenced building was a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12).

2. Pursuant to OAC Rule 3745-20-02(A)(2), the owner or operator of a demolition project must comply with the notification requirements of OAC Rule 3745-20-03 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 those facilities which contain no friable asbestos.

3. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a demolition project to submit a written notice of intention to demolish ("Notification") to Ohio EPA at least twenty days prior to the start of the demolition if the project is as described in OAC Rule 3745-20-02(A)(2).

4. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA.

5. On June 6, 2002, Ohio EPA, Northeast District Office ("NEDO") received an open burning application for the above-referenced facility from the Conneaut Fire Department.

6. On July 8, 2002, NEDO informed the Conneaut Fire Department in writing that the open burning application was denied because a thorough asbestos survey had not been conducted to determine if there was no friable asbestos materials, or that all friable asbestos materials would be removed prior to burning in accordance with 40 CFR, Part 61, Subpart M, "National Emission Standards for Asbestos."

7. On July 23, 2002, NEDO observed that the above-referenced building had been completely demolished. Since no Notification was submitted to Ohio EPA at least twenty days prior to the start of demolition, Respondents were in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G). Based on the Respondent Conneaut's management plan, there was approximately 91 square feet of friable asbestos material on non-pipe components and 22 linear feet of friable asbestos material on pipes in functional areas of the above-referenced facility.

8. On July 25 and 29, 2002, NEDO sent Respondent NorthCoast a notice of violation ("NOV") and an amended NOV, respectively. In these NOVs, NEDO cited Respondent NorthCoast with violations of OAC Chapter 3745-20 and requested from Respondent NorthCoast, within three working days after receiving the amended NOV, the submission in writing of: (1) a copy of the evaluation report on the building; (2) a completed Ohio EPA Notification for the demolition; (3) the name and location of the debris disposal site; and (4) waste shipment records from the disposal site.

9. On July 25 and 29, 2002, NEDO also sent Respondent Conneaut copies of the NOV and amended NOV, respectively. In these NOVs, NEDO requested from Respondent Conneaut, within three working days after receiving the amended NOV, the submission in writing of general information concerning the demolition at the above-referenced facility.

10. On July 26, 2002, Respondent NorthCoast provided in writing all the items that were requested in NEDO's July 25 and July 29, 2002 NOVs.

11. On August 1, 2002, Respondent Conneaut provided in writing all the items that were requested in NEDO's July 25 and July 29, 2002 NOVs.

12. Information obtained from Respondent NorthCoast and Respondent Conneaut indicated that the demolition of the above-referenced facility was begun on July 20 and completed on July 22, 2002.

13. All violations were pursuant to OAC rules enforced at the time of violation.

14. On June 4, 2003, Ohio EPA issued the Director's Proposed Final Findings and Orders to Respondent NorthCoast.

15. On June 13, 2003, Respondent NorthCoast sent a letter to Ohio EPA in response to the Director's Proposed Final Findings and Orders. Information obtained from Respondent NorthCoast's letter, a letter from the City of Conneaut Law Director's Office and subsequent phone conversations with both indicated that Respondent NorthCoast was incorrectly informed by Respondent Conneaut that the above-referenced facility was a vacant residential house rather than a facility as defined in OAC Rule 3745-20-01(B)(12).

16. Based upon Respondent NorthCoast's reliance on statements from Respondent Conneaut, Respondent NorthCoast applied for a demolition permit from the Conneaut Housing and Zoning Department. Respondent NorthCoast informed the Conneaut Housing and Zoning Department what Respondent NorthCoast was told by Respondent Conneaut.

17. Respondent NorthCoast was issued a demolition permit to demolish the above-mentioned facility. Based upon the information obtained from Respondent Conneaut, neither Respondent NorthCoast nor the Conneaut Housing and Zoning Department believed that notification to Ohio EPA was necessary.

18. 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 to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Order:

Any demolition or renovation operation performed by, or on behalf of, Respondents in the State of Ohio shall be conducted in compliance with OAC Chapter 3745-20. Within fourteen (14) days after the effective date of these Order, Respondents shall submit in writing a certified statement to this effect.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents each certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify each Respondent of any obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that I will not perform or be involved in a renovation or demolition operation without a proper notification as required by OAC Chapter 3745-20."

The certification shall be submitted by each Respondent to Ohio EPA and shall be signed by a responsible official of each Respondent. For purposes of these Orders, responsible officials are a school official of Respondent Conneaut, and a corporate officer who is in charge of a principle business function of Respondent NorthCoast.

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 operation of Respondents.

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.

IX. MODIFICATIONS

These Orders may be modified by agreement of the parties herto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

X. NOTICE

Except as otherwise specified in these Orders, all documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

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

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
Lazarus Government Center
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

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.

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, Respondents consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondents' liability for the violations specifically cited herein.

Respondents hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders and Respondents hereby waive any and all rights Respondents may 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 appeal. In such an event, Respondents shall continue to comply with these Orders notwithstanding such appeal and intervention unless said 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:

North Coast Construction
Division of Ingram Group, Ltd.

Signature

Date

Printed or Typed Name

Title

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Conneaut Area City School

Signature

Date

Printed or Typed Name

Title