

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

William Pizzuto and Company	:	<u>Director's Final Findings</u>
4626 Canfield Road	:	<u>and Orders</u>
Canfield, Ohio 44406	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to William Pizzuto and 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 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 regulations promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent owns and operates a general contracting company with offices located at 4626 Canfield Road, Canfield, Mahoning County, Ohio.
2. The Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") is Ohio EPA's contractual representative in Mahoning County for the administration of Ohio Administrative Code ("OAC") Chapter 3745-20 ("Asbestos Emission Control Standards").
3. OAC Rule 3745-20-02(A) establishes whether an owner or operator of a demolition operation is required to provide the Director of Ohio EPA with written notice of the intent to demolish pursuant to OAC Rule 3745-20-03 or if the work practice requirements of

OAC Rules 3745-20-04 and 3745-20-05 also apply to the demolition operation. Specifically, OAC Rule 3745-20-02(A)(1) states that if the amount of friable asbestos materials in a facility, as defined in OAC Rule 3745-20-01(B)(12), to be demolished is at least two hundred sixty linear feet on pipes or at least one hundred sixty square feet on other facility components, all the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to the owner or operator of the demolition operation. Furthermore, OAC Rule 3745-20-02(A)(2) states that 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 sixty square feet on other facility components, including those facilities which contain no friable asbestos, only the requirements of OAC Rule 3745-20-03 apply to the owner or operator of the demolition operation.

4. OAC Rule 3745-20-03(A)(1) states that each owner or operator of a demolition operation to whom this rule applies shall provide the Director of Ohio EPA with written notice of the intent to demolish. OAC Rule 3745-20-03(A)(2)(a) states that, for demolition operations described in OAC Rule 3745-20-02(A)(1), each owner or operator shall provide the written notice at least ten days before any demolition operation begins at the facility. OAC Rule 3745-20-03(A)(2)(b) states that, for demolition operations described in OAC Rule 3745-20-02(A)(2), each owner or operator shall provide the written notice at least twenty days before any demolition operation begins at the facility.

5. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704.

6. The 2,000 square foot commercial carport attached to the Armies' Electronics building located at 316 Federal Plaza West in Youngstown, Ohio, in Mahoning County, was part of a "facility," as defined in OAC Rule 3745-20-01(B)(12).

7. On September 26, 2002, the City of Youngstown Division of Building Inspection issued to Respondent a Building Permit (Occupancy number 34270) to demolish the 2,000 square foot commercial carport located at 316 Federal Plaza West.

8. On or about September 26, 2002, Respondent proceeded to demolish the 2,000 square foot commercial carport located at 316 Federal Plaza West. Respondent was an "operator" of the demolition operation, as defined in OAC Rule 3745-01(B)(20).

9. On September 30, 2002, an inspector from M-TAPCA visited the 316 Federal Plaza West site. At that time, all demolition work had been completed and the debris from the structure had been removed. Respondent's equipment was observed to be on site. M-TAPCA reviewed its files and determined that an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form had not been submitted to Ohio EPA or M-TAPCA at least ten or twenty days, whichever was applicable, prior to the start of the demolition operation. M-TAPCA also found that a warning letter regarding the late submission of a completed notification form for another demolition operation had previously been sent to Respondent on October 15, 2001.

10. On October 1, 2002, M-TAPCA sent a Notice of Violation ("NOV") to Respondent via United States Postal Service ("USPS") certified and regular mail. The NOV informed the firm of its violation of OAC Rule 3745-20-03(A) for failing to provide either Ohio EPA or M-TAPCA with written notice of intention to demolish at least ten or twenty days, whichever was applicable, prior to the start of the demolition operation at the facility. M-TAPCA also requested Respondent submit further information regarding the demolition operation and a completed notification form within five days. The USPS attempted to deliver the certified letter to Respondent on October 2, October 7, and October 17, 2002. The Respondent did not claim the certified letter and it was returned to M-TAPCA on October 21, 2002. To date, M-TAPCA has not received the information that was requested in the NOV, or a completed notification form.

11. During the course of settlement negotiations with Ohio EPA to resolve the violation cited in these Orders, Respondent indicated an inability to pay a substantial civil payment due to recent events affecting Respondent's business position.

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 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:

Respondent shall pay the amount of two thousand dollars (\$2,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay to Ohio EPA the total amount. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" and shall be submitted to Brenda Case, or her successor, with a letter identifying the Respondent and the site of the demolition operation, to:

Ohio EPA, Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

A copy of the check 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 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 Respondent's conduct of the demolition operation specified in these Orders.

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 the Respondent.

IX. MODIFICATIONS

These Orders may be modified by mutual 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 by these Orders, unless otherwise specified in writing, shall be addressed to :

Mahoning-Trumbull Air Pollution Control Agency
Oakhill Renaissance Place
2nd Floor, Room 25
345 Oak Hill Avenue
Youngstown, Ohio 44502
Attn: Larry Himes, Asbestos Coordinator

and to:

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

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 the 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 the 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 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:

William Pizzuto and Company

Signature

Date

Printed or Typed Name

Title