

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Bloomfield Township Trustees	:	<u>Director's Final Findings</u>
1038 Kinsman Road NW	:	<u>and Orders</u>
North Bloomfield, Ohio 44450	:	

PREAMBLE

It is hereby agreed that:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to the Bloomfield Township Trustees ("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.

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 operates a volunteer fire department ("Bloomfield VFD") which is operated from a station located at 8870 Park Drive, North Bloomfield (Trumbull County), Ohio. North Bloomfield is an unincorporated municipality that is located in Bloomfield Township.

2. Ohio Administrative Code ("OAC") Rules 3745-19-03(D)(2) (i.e., open burning in restricted areas) and 3745-19-04(C)(2) (i.e., open burning in unrestricted areas) state that open burning shall be allowed for the purpose of instruction in methods of fire fighting or for research in the control of fire upon receipt of written permission from Ohio EPA, in

accordance with OAC Rule 3745-19-05(A), which requires that an application for permission to open burn be submitted to Ohio EPA at least ten days before the fire is to be set. The application is required to contain all of the applicable information listed in OAC Rule 3745-19-05(A).

3. OAC Rule 3745-20-02(A) requires that each owner or operator of a demolition or renovation operation must, prior to the commencement of such operations, have the affected facility or portion of a facility structure thoroughly inspected for the presence of asbestos-containing materials, including category I and category II non-friable asbestos-containing materials.

4. OAC Rule 3745-20-03(A) requires that any owner or operator of a demolition or renovation operation provide Ohio EPA with written notice of intention to demolish or renovate at least ten working days prior to the commencement of such operations, unless otherwise specified in the rule.

5. OAC Rule 3745-20-04(E) states that if a facility is to be demolished by intentional burning, all regulated asbestos-containing materials, including category I and category II non-friable asbestos-containing materials, must be removed in accordance with OAC Chapter 3745-20 before burning.

6. 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.

7. The Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") is Ohio EPA's contractual representative in Mahoning County for the administration of OAC Chapter 3745-20.

8. On September 16, 2003, M-TAPCA received a complaint from a local resident regarding the burning of a structure located at 2692 Bloomfield-Kinsman Road, North Bloomfield, in Trumbull County. The complainant stated that on September 15, 2003, at approximately 7:00 p.m., Bloomfield VFD had burned the above structure, originally a house trailer that had been subsequently converted into a permanent, residential building. The complainant further stated that the burning of the structure, which was adjacent to his property, impacted his residence due to smoke, odor, and ash generated by the fire.

9. M-TAPCA investigated the above complaint on September 16, 2003, and observed the still-smoldering debris from the burning of the structure. The inspector observed that no apparent attempt was made to remove tires and paint cans from the structure prior to setting it on fire. Ash from the fire was also observed on a neighboring property. The M-TAPCA inspector photographed the site and collected four samples of building materials suspected to contain asbestos from the debris pile. The debris pile has since been removed from the property for disposal.

10. M-TAPCA identified the owners of the property through the Trumbull County

Auditor's property records as Jerry J. Weaver and Esther Weaver, with a mailing address of 4108 Kinsman Road, North Bloomfield, Ohio. Per the Trumbull County Auditor's records, the property was purchased by them on June 23, 2003. M-TAPCA identified Bloomfield VFD as the fire department that had conducted the open burning operation. M-TAPCA was unable to contact either party during its investigation. Further, M-TAPCA found that no application for permission to conduct a fire training exercise at the 2692 Bloomfield-Kinsman Road site had been submitted by Bloomfield VFD, nor had a notification of intent to conduct a demolition or renovation operation form been submitted for the demolition by intentional burning conducted at the site.

11. M-TAPCA sent a warning letter to Bloomfield VFD by certified mail on September 18, 2003. Respondent was copied on the letter. Per the certified mail receipt, the letter was received by Chief Matthew Baker of the Bloomfield VFD on September 22, 2003. In this letter, M-TAPCA informed the Bloomfield VFD of its apparent violations of OAC Chapters 3745-19 and 3745-20 concerning the demolition by intentional burning of the structure located at 2692 Bloomfield-Kinsman Road, North Bloomfield. M-TAPCA went on to describe the actions and steps necessary to obtain approval for any future fire training activities involving the intentional burning of a house or other structure. Copies of the applicable rules as well as guidance documents were enclosed with the warning letter.

12. Subsequent laboratory analyses of the samples collected by M-TAPCA on September 16, 2003 showed that asbestos-containing material was present in two of the four samples. Specifically, EA Group Laboratories reported on September 24, 2003, that a trace of chrysotile asbestos was found in samples of shingles collected from the debris and that 2% chrysotile asbestos was found in the sample of black bituminous paper (i.e., tar paper). Additionally, 5% possible heat damaged asbestos was identified in the two samples of gray cementitious material (possibly transite) collected near the southwest corner of the foundation of the structure where a chimney had been located.

13. The Bloomfield VFD did not reply to M-TAPCA's September 18, 2003, warning letter. On January 30, 2004, M-TAPCA contacted Chief Baker to discuss the incident and requested an explanation for the demolition. Chief Baker telephoned M-TAPCA on February 2, 2004 and left a voice-mail message in response. In this message, Chief Baker agreed that OAC rules had been violated when the fire department burned the structure without permits. He further stated that an inspection of the structure was conducted prior to the burning by fire department personnel but no asbestos was visible. Chief Baker committed to contact M-TAPCA in the future if any other controlled burns were planned by the Bloomfield VFD.

14. Based on the above Findings, the Director of Ohio EPA finds that Respondent, as operator of the Bloomfield VFD, violated the following ORC laws and OAC rules:

- a. ORC § 3704.05(G), for violating rules the Director adopted under ORC Chapter 3704;

- b. OAC Rule 3745-20-02(A), for failing to have the structure located at 2692 Bloomfield-Kinsman Road, North Bloomfield thoroughly inspected for the presence of asbestos-containing materials prior to beginning demolition by intentional burning operations;
- c. OAC Rule 3745-20-04(E), for failing to have all regulated asbestos-containing materials, including category I and category II non-friable asbestos-containing material, properly removed prior to burning the structure;
- d. OAC Rule 3745-20-03(A), as the operator of the demolition operation, for failing to provide Ohio EPA with written notice of intention to demolish the structure at least ten working days prior to the commencement of operations; and
- e. OAC Rule 3745-19-04(C)(2), for open burning in an unrestricted area for the purpose of instruction in methods of fire fighting without first obtaining permission from Ohio EPA by submitting an application for permission to open burn to Ohio EPA at least ten days before the fire was set.

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 their relation to benefits to the people of the State be derived from such compliance.

V. ORDERS

The Director hereby issues the following Order:

Within thirty (30) days of the effective date of these Orders, Respondent shall sign and submit a written commitment to Ohio EPA to comply with all applicable rules in OAC Chapters 3745-19 and 3745-20 when conducting any future open burning activities for the purpose of instruction in methods of fire fighting, including the demolition by intentional burning of any structure.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has 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 Respondent of the obligations that have not been performed, in which case Respondent 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 the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-35-02(B)(4) for a municipal, state, or other public facility.

VII. 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.

VIII. 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 Place
2nd Floor, Room 25
345 Oak Hill Avenue
Youngstown, Ohio 44502
Attention: 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

IX. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein

shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

X. EFFECTIVE DATE

The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

IT IS SO ORDERED:

Ohio Environmental Protection Agency

Christopher Jones
Director

Date