

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Scott F. Kistler,
d.b.a. L. Lynn Maintenance
3746 County Line Road
Southington, Ohio 44470

Director's Final Findings
and Orders

OHIO E.P.A.
MAY 13 2004
DIRECTOR'S JOURNAL

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Scott F. Kistler, d.b.a. L. Lynn Maintenance ("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 Respondent's business 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 rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent of 3746 County Line Road, Southington, Ohio, was hired by the Champion Presbyterian Church as a demolition contractor for a demolition project at a building known as "Hair Razors" located at 4973-4977 Mahoning Avenue NW, Warren (Trumbull County), Ohio. The "Hair Razors" building consisted of two dwelling units (the first and second floor apartments) and two retail stores. The above-referenced building was a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(12).

I certify this to be a true and accurate copy of the
official document as filed in the records of the Ohio
Environmental Protection Agency.

By: _____ Date: _____

2. According to the Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA"), a contractual representative of Ohio EPA in Trumbull County, Respondent had participated in many past demolition projects as a subcontractor or equipment operator. Respondent, therefore, should have been aware of notification and work practice requirements of OAC Chapter 3745-20.

3. 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.

4. 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).

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

6. On March 27, 2002, MTAPCA received a tip from an anonymous caller that Respondent had started demolition of the above-referenced commercial facility since at least March 25, 2002, but had been off site for several days.

7. M-TAPCA checked the Trumbull County property records and determined that the above-referenced facility was a commercial building.

8. On March 28, 2002, a representative of M-TAPCA conducted a site inspection. Upon his arrival, M-TAPCA's representative observed Respondent had completely demolished the above-referenced building and was in the process of loading demolition debris into a truck. Respondent confirmed to the M-TAPCA representative that he was contracted with Champion Presbyterian Church as the demolition contractor to demolish the above-referenced building. Respondent then proceeded to tell the M-TAPCA representative that he was allowed to conduct the demolition because he thought that the building was considered a small residential building and that he had called M-TAPCA twice to verify that demolition of this type of building could proceed. At that point, M-TAPCA's representative informed Respondent that based on the information he had obtained from the Trumbull County property records, the above-referenced building was a commercial building, and a Notification needed to be submitted to M-TAPCA prior to beginning any demolition of this type of building. Since no Notification had been submitted to Ohio EPA or M-TAPCA by Respondent at the time of M-TAPCA's initial inspection, Respondent was in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G).

9. At the March 28, 2002 inspection, the representative of M-TAPCA examined the demolition site carefully and collected nine (9) samples from the building debris from different areas of the building for laboratory analysis. M-TAPCA's representative ordered Respondent not to conduct further work, keep the site wet and not conduct any additional activities there until the sample results were available.

10. On March 28, 2002, M-TAPCA issued a notice of violation ("NOV") to Respondent. In this NOV, ARAQMD cited Respondent for his failure to submit a Notification for the above-referenced demolition operation. The M-TAPCA also requested from Respondent, within three working days after receiving the letter, the submission in writing of: (1) the exact date when demolition began and the number of days Respondent had worked up to March 28, 2002; (2) a copy of any local or county demolition permits issued for this facility; (3) any documents showing that the building had been inspected by a certified asbestos hazard evaluation specialist prior to demolition; (4) a copy of contract between Respondent and the facility owner; and (5) a completed Ohio EPA Notification for the demolition.

11. Samples obtained from the March 28, 2002 inspection were submitted to EA Group Laboratories ("EAG Lab") on April 1, 2002.

12. On April 5, 2002, EAG Lab submitted the sample results to M-TAPCA. The laboratory analysis of the samples revealed that none of the samples contained asbestos except for two of the samples that came from transite panels for the 7 feet by 7 feet overhang above a rear entrance to the building. These two samples contained 20% chrysotile asbestos. Based on test results and evidence available at the time of inspection, M-TAPCA determined that the total amount of asbestos in the building, which came from the transite panels, was less than 160 square feet. Therefore, M-TAPCA determined that the transite panels did not have to be removed prior to demolition and that no work practices of OAC Chapter 3745-20 were required for the demolition of above-referenced commercial building.

13. On April 5, 2002, Respondent provided M-TAPCA all the items that were requested in M-TAPCA's March 28, 2002 NOV. Also, on the same day, after the lab report was received, M-TAPCA advised Respondent to proceed with the demolition project.

14. 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:

Pursuant to ORC § 3704.06, the Respondent is assessed a civil penalty in the amount of five hundred dollars (\$500) 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 five hundred dollars (\$500) of the total penalty amount. Payment shall be made by official check made payable to "Treasurer, State of Ohio." The official check shall be submitted to Brenda Case, Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying Respondent and site.

A copy of the official check shall be submitted to James A. Orlemann, Manager, Engineering Section, or his successor, Division of Air Pollution Control, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of 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 of 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 Respondent.

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 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

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

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

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 Respondent each reserve all rights, privileges and causes of action, except as specially 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 Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms 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 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 notwithstanding such appeal and intervention unless said Orders are stayed, vacated, or modified.

XIII. EFFECTIVE DATE

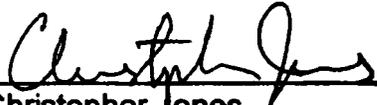
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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

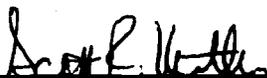


Christopher Jones
Director

Date 5-10-04

IT IS SO AGREED:

Scott F. Kistler



Signature

4-28-04
Date