BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

NOV 27 2006

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

K&R Realty and Insurance Agency, Ltd. :
6097 Mahoning Avenue NW :
Warren, Ohio 44481 :

Director's Final Findings and Orders

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to K&R Realty and Insurance Agency, Ltd. ("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 rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent, of 6097 Mahoning Avenue NW, Champion Township, Trumbull County, Ohio, owned a commercial building located at 6263 Mahoning Avenue NW, Champion Township, Trumbull County, Ohio. The above-referenced building was previously used in operation of a dairy farm and located in "unrestricted area," as defined in OAC Rule 3745-19-01(J) concerning open burning. The above-referenced building also constituted a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18). Respondent was an "owner" as defined by OAC Rule 3745-20-01(B)(38).

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

By: _____ **Date:** 11/27/06

2. Pursuant to OAC Rule 3745-20-02(A), the owner or operator of any demolition or renovation operation shall have the affected facility or part of the facility where a demolition or renovation operation will occur thoroughly inspected prior to the commencement of the demolition or renovation for the presence of asbestos, including Category I and Category II nonfriable asbestos-containing material as defined in OAC Rules 3745-20-01(B)(9) and 3745–20-01(B)(10).

3. Pursuant to OAC Rule 3745-20-02(B)(1), the owner or operator of a demolition project must comply with the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05 if the combined amount of regulated asbestos-containing material in a facility being demolished is at least 260 linear feet on pipes or at least 160 square feet on other facility components, or at least 35 cubic feet off facility components where the length or area could not be measured previously. Regulated asbestos-containing material ("RACM") is as defined in OAC Rule 3745-20-01(B)(41).

4. Pursuant to OAC Rule 3745-20-02(B)(2), the owner or operator of a demolition project must comply with the notification requirements of OAC Rule 3745-20-03 if the combined amount of RACM, as defined in OAC Rule 3745-20-01(B)(41), is less than 260 linear feet on pipes and less than 160 square feet on other facility components, and less than 35 cubic feet off facility components where the length or area could not be measured previously, or if there is no asbestos-containing material in a facility being demolished.

5. 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 ten days prior to the start of the demolition if the project is as described in OAC Rules 3745-20-02(B)(1) and (B)(2).

6. OAC Rule 3745-19-04(A) prohibits any person or property owner from open burning in an unrestricted area except as provided in OAC Rule 3745-19-04(B) and (C) or in ORC § 3704.11. These exceptions to the open burning prohibition do not include the open burning of wood structure or construction debris.

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

8. On February 16, 2005, the Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA"), a contractual representative of Ohio EPA in Trumbull County, conducted an investigation based on a complaint of an open burning that happened on February 14, 2005 at 6263 Mahoning Avenue NW in Champion Township, Trumbull County, Ohio. Upon arrival, a representative of M-TAPCA observed that a demolition operation had recently taken place. At the time of investigation, M-TAPCA representative observed the debris was covered by snow and consisted mainly of concrete block, slabs and miscellaneous steel. M-TAPCA representative took seven (7) pictures of the debris and

equipment still on site. No one was available at the site for questioning. After leaving the site, M-TAPCA stopped at the Champion Township Fire Department and obtained the incident report from the above-referenced open burning on February 14, 2005. Information from the report indicated that Respondent conducted an open burning of construction debris within an area of 50 feet by 50 feet. The Champion Township Fire Department responded and extinguished the fire upon arrival because of calls it received from area residents complaining about the smoke from the fire. Since open burning of construction debris was conducted in an unrestricted area, Respondent was in violation of OAC Rule 3745-19-04(A) and ORC § 3704.05(G).

9. After further investigation, M-TAPCA learned from the Trumbull County Auditor's Office that Respondent had demolished a large former dairy barn and several silos on or about September 1, 2004 and January 2, 2005. M-TAPCA also learned that Respondent had not conducted a thorough inspection for asbestos prior to demolition, in violation of OAC Rule 3745-20-02(A) and ORC § 3704.05(G). Also, since there was no Notification submitted to Ohio EPA or M-TAPCA prior to the start of the demolition project, Respondent was in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G).

10. On February 17, 2005, M-TAPCA issued Respondent a notice of violation ("NOV") regarding the demolition and subsequent burning of the debris. In this NOV, M-TAPCA requested Respondent, within five (5) days of receipt of the NOV, to submit: (1) information about the date when the demolition of the facility began; (2) any documentation indicating that the facility had been inspected for asbestos-containing material ("ACM"); and (3) a Notification.

11. On February 22, 2005, Respondent contacted M-TAPCA via phone and indicated that it performed the demolition and that some of the debris had been hauled to Total Waste Logistics LAS LLC of 1025 Bundy Road, Youngstown, Ohio. Regarding the open burning on February 14, 2005, Respondent stated that he started a small fire of scrap wood that accidentally spread to the debris pile and ignited.

12. On March 3, 2005, M-TAPCA received a request from Letson, Griffith, Woodall, Lavell & Rosenburg Co. L.P.A. ("LGWLR"), a law firm that represented Respondent, to seek an extension of time through March 28, 2005 to respond to M-TAPCA's February 17, 2005 NOV. Subsequently, M-TAPCA granted LGWLR the extension of time it requested.

13. On March 28, 2005, M-TAPCA received the results of an asbestos survey performed by Burgess & Niple ("B&N") who was retained by Respondent to perform the survey. The results of the asbestos survey performed by B&N on the construction debris that remained at the site indicated there was no ACM; however, this survey contained no information on the amount of ACM in the above-reference structure. B&N also submitted a Notification and the waste receipts from Total Waste Logistics LAS LLC.

14. On October 18, 2006, M-TAPCA discovered that the two silos that were on the property in March 2005 had been demolished. Since there was no Notification submitted to Ohio EPA or M-TAPCA prior to the start of the demolition of the silos, Respondent was in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G). Also, Respondent failed to perform a thorough inspection for asbestos prior to demolition, in violation of OAC Rule 3745-20-02(A) and ORC § 3704.05(G).

15. At the settlement meeting with Ohio EPA staff and M-TAPCA on November 17, 2006, Respondent provided pictorial information confirming that there was no ACM in the above-referenced dairy barn and silos.

16. 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 Orders:

1. Respondent shall pay the amount of nine thousand dollars ($9,000) in settlement of Ohio EPA's claim for civil penalties, which may be assessed pursuant to ORC § 3704.06. Within sixty (60) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for seven thousand and two hundred dollars ($7,200) of the total amount. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to:

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

2. In lieu of paying the remaining one thousand and eight hundred dollars ($1,800) of civil penalty to Ohio EPA, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $1,800 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD). Respondent shall make payment on or within thirty (30) days after the effective date of these Orders by tendering an official check made payable to "Treasurer, State of Ohio" for $1,800. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD, to the above-stated address.

3. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe in Order 2, Respondent shall immediately pay to Ohio EPA $1,800 of the civil penalty in accordance with the procedures in Order 1.

VI. TERMINATION

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

IX. MODIFICATIONS

These Orders may be modified by 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 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 44502-1454
Attention: Larry Himes

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, Manager, Enforcement Section

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

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 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 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 appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention 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

Joseph P. Koncelik
Director

11/21/06
Date

IT IS SO AGREED:

K&R Realty and Insurance Agency, Ltd.

Signature

11/17/06
Date

RUSSELL D. BANKS, PRESIDENT
Printed or Typed Name

PRESIDENT, K&R REALTY
Title