

OHIO E.P.A.

JUN 20 2006

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY INDEXED DIRECTOR'S JOURNAL

In the Matter of

Tom Sipes, d.b.a.
Tom Sipes' Demolition
114 Bauer Road
Monaca, Pennsylvania 15061

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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 Tom Sipes, d.b.a. Tom Sipes' Demolition ("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 his heirs 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. Penny Hutchison is the owner of a property located at 532 Mulberry Street, East Liverpool, Ohio. The property previously housed a business, known as Woody's Appliance Repair. Respondent, a demolition contractor located at 114 Bauer Road, Monaca, Pennsylvania, was hired by Penny Hutchison to perform demolition of the 532 Mulberry Street building.

2. On August 6, 2004, an inspector for Ohio EPA, Northeast District Office ("NEDO") observed that a lot on Mulberry Street, that had previously housed a business,

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

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was vacant. Prior to this observation by the inspector from NEDO, there was no indication by Penny Hutchison of her intent to demolish the building.

3. On August 30, 2004, an inspector from NEDO spoke with Penny Hutchison by telephone, regarding the demolition of the building at 532 Mulberry Street. At that time the inspector from NEDO explained Ohio EPA's notification requirements for demolition projects. Penny Hutchison informed NEDO that she intended to have another property that she owned demolished, but that she would comply with all the notification and asbestos removal requirements.

4. The structure at 532 Mulberry Street was a "facility" as defined in OAC Rule 3745-20-01(B)(18). Demolition of the structure at 532 Mulberry Street was subject to the notification requirements of Ohio Administrative Code ("OAC") Rule 3745-20-03(A) and the asbestos inspection requirements of OAC Rule 3745-20-02(A).

5. Respondent was an "operator" of a demolition operation, as defined in OAC Rule 3745-20-01(B)(38).

6. The demolition of the structure at 532 Mulberry Street was performed by Respondent on or prior to August 6, 2004, in violation of OAC Rule 3745-20-02(A), which states, in part, that "each owner or operator of a demolition or renovation operation, shall have the affected facility . . . thoroughly inspected prior to the commencement of the demolition or renovation for the presence of asbestos." No such inspection was conducted at the building at 532 Mulberry Street.

7. The demolition of the structure at 532 Mulberry Street on or prior to August 6, 2004, was also in violation of OAC Rule 3745-20-03(A), which requires, in part, that each owner or operator of a demolition operation submit to Ohio EPA a written notice of intention to demolish at least 10 working days before any demolition operation begins at a facility as described in OAC Rules 3745-20-02(B)(1) and 3745-20-02(B)(2).

8. By letter dated September 1, 2004, NEDO issued a Notice of Violation ("NOV") to Penny Hutchison by certified mail for the violations of OAC Rules 3745-20-02 and 3745-20-03 discovered during the August 6, 2004 inspection. The NOV requested submittal of an "Ohio Environmental Protection Agency Notification of Demolition and Renovation" form to Ohio EPA for the structure formerly located at 532 Mulberry Street; copies of any asbestos surveys that were conducted inside the structure prior to demolition; and copies of any waste shipment records indicating where the demolition debris was taken. No reply was received.

9. The violation of any OAC rule is a violation of ORC § 3704.05(G).

10. During a conference call with Ohio EPA on May 31, 2006, Respondent

accepted liability for the violations and made a monetary penalty offer to resolve the violations.

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

V. ORDERS

The Director hereby issues the following Orders:

1. Within fourteen (14) days after the effective date of these Orders, Respondent shall pay Ohio EPA the amount of four thousand dollars (\$4,000) in settlement of Ohio EPA's claims for civil penalties which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by an official check made payable to "Treasurer, State of Ohio" for \$4,000. 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. A copy of the above check 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

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,

operations by 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.

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:

Ohio EPA
Northeast District Office
2110 E. Aurora Road
Twinsburg, Ohio 44087
Attn: Dennis Bush

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Paul Cree

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 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 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



6/19/06

Joseph P. Koncelik
Director

Date

IT IS SO AGREED:

Tom Sipes, d.b.a. Tom Sipes' Demolition

Tom Sipes
Signature

06-10-06
Date