

DEC 31 2007

BEFORE THE

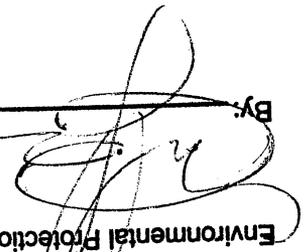
OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Frenchs' Inc.
204 E. Main St.
Andover, Ohio 44003-1267

: Director's Final Findings
: and Orders
:

By: 
Date: 12/31/07

PREAMBLE

It is agreed by the parties hereto as follows:

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.

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Frenchs' Inc. ("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, or of the property owned by 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. On June 5, 2006, Ohio EPA, Northeast District Office ("NEDO") received two odor complaints about a large fire that was set on an empty tract of land located at 226 N. Main Street in Andover, Ohio, which was owned by Respondent. Respondent's administrative office is located at 204 E. Main Street in Andover, Ohio.

2. One of the two former structures on the property, i.e., the Old American Legion building, also called "Antiques Store," was demolished by the Andover Voluntary Fire Department, Inc. ("AVFD") as a fire-fighting training on June 26, 2005. The second

structure on the property was called the brown brick building.

3. On May 18, 2005, and pursuant to Ohio Administrative Code ("OAC") Rules 3745-20-03(A) and 3745-20-02(A), NEDO received a "Notification of Demolition and Renovation" form and a copy of an inspection report of the asbestos hazard evaluation from AVFD as part of the application for permission to conduct open burning of the Antiques Store located at 226 N. Main Street for the stated purpose of cleaning the site for development, since the open burning constituted "demolition" of the structure. The notification was only to demolish the Antiques Store; however, the inspection report of the asbestos hazard evaluation, dated June 8, 2004, was for both structures.

4. On the report of the asbestos hazard evaluation specialist, it was indicated that the upper floor of both structures contained 9 x 9 inch floor tiles and those tiles should be assumed to be asbestos-containing material and would have to be removed prior to any fire training by AVFD.

5. The notification form failed to identify the estimated amount of regulated asbestos-containing material to be removed or the approximate amount of category I and category II nonfriable asbestos-containing material that will not be removed from the structure before demolition. Respondent was the "owner" as defined in OAC Rule 3745-20-01(B)(38) of the demolition operation.

6. Clifford C. Ward was hired by Respondent's President, David C. French, to demolish the second structure, the brown brick building, located on the same property, at a later date between June 26, 2005 and June 2, 2006. Mr. Ward separated and piled the wood so that it could be burned by AVFD, and the piles remained there till June 2006.

7. Demolition of the brown brick building located at 226 N. Main Street was subject to the notification requirements of OAC Rule 3745-20-03(A). Respondent failed to submit a notification to NEDO at least 10 days prior to commencing the demolition operation, in violation of OAC Rule 3745-20-03(A).

8. The report of the asbestos hazard evaluation specialist, dated June 8, 2004, indicated that the upper floor of the brown brick building contained 9 x 9 inch floor tiles. The asbestos hazard evaluation specialist indicated that the tiles should be assumed to be asbestos-containing material and should be removed prior to any fire training by AVFD. The report failed to classify and estimate the amount of asbestos-containing material in the building.

9. Between June 26, 2005 and June 2, 2006, Respondent's President purchased a residential property located at 450 E. Main Street. The house located on the property at 450 E. Main Street was demolished by Mr. Ward and the debris from the

house was transported to the site at 226 N. Main Street in Andover. A large amount of trees, wood, tires, dirt, rocks and steel were added to the piles already there.

10. On June 2, 2006, AVFD lit one pile of the waste stored at the N. Main Street property for fire-fighting training. AVFD extinguished the fire on the same day, but that pile was still smoldering.

11. On June 3, 2006, Mr. Ward was hired by Respondent's President to use his front-end loader to spread the fire to other debris piles.

12. On June 5, 2006, the Mayor of the Village of Andover ordered AVFD to extinguish the fires. AVFD complied and dumped several truck loads of water.

13. A representative from NEDO inspected the site on June 6, 2006, and several piles of debris were found to be smoldering. The piles contained trees, construction debris, tires, and other miscellaneous waste items.

14. On Tuesday evening of June 6, 2006, the piles were again smoldering and the burning appeared to be increasing in intensity. AVFD was again ordered by the Andover Police Department to extinguish the fires. AVFD responded and dumped 9,000 gallons of water on the piles.

15. AVFD advised the Andover Police Department that the contractor (Mr. Ward) would need to come back to separate the piles with his front-end loader in order to put the fires out entirely.

16. On June 20, 2006, the open burning that was initiated almost three weeks ago and extinguished several times by AVFD, was again smoldering and AVFD dumped 3,000 gallons of water on the piles to extinguish the burning.

17. On August 10, 2006, the Ashtabula County Health Department sent a warning letter to Respondent's President regarding the improper disposal of a large amount of construction and demolition debris present at his property located on N. Main Street. Respondent was ordered to:

- a. Remove and properly dispose of all solid waste and construction and demolition debris at a licensed landfill by September 9, 2006.
- b. Remove and dispose of all scrap tires at a licensed disposal facility.
- c. Provide a copy of written receipts from a licensed landfill to confirm proper disposal of all construction and demolition debris and solid waste.

18. On February 21, 2007, Respondent's N. Main Street property was inspected by a representative from the Ashtabula County Health Department. It was graded and cleared, but piles of dirt, block, brick and some tree stumps were observed on an adjacent property owned by Respondent. Written receipts from a licensed landfill have not been received from Respondent to confirm proper disposal.

19. Respondent's open burning on June 2 through 6, and 20, 2006, of demolition waste and debris from different properties at the N. Main Street property was in violation of OAC Rule 3745-19-03(A), which states, in part, that no person or property owner shall cause or allow open burning in a restricted area, except as permitted by rule or law. Such burning was not permitted by any rule or law.

20. The OAC violations cited in the above findings also constitute violations of ORC § 3704.05(G), which states, in part, that no person shall violate any order, rule, or determination of the Director, issued, adopted, or made under ORC Chapter 3704. OAC Chapters 3745-19 and 3745-20 were adopted by the Director pursuant to ORC Chapter 3704.

21. 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 Orders:

1. Respondent shall pay the amount of ten thousand dollars (\$10,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) 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 eight thousand dollars (\$8,000) 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 two thousand dollars (\$2,000) of civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a

Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$2,000 to the Ohio EPA's Clean Diesel School Bus Program Fund ("Fund 5C0"). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$2,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5C0, 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 time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$2,000 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 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 Environmental Protection Agency
Northeast District Office
Division of Air Pollution Control
2110 East Aurora Road
Twinsburg, Ohio 44087-1924
Attn: Richard Kolosionek

and to:

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

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


Chris Korleski
Director

12/31/07
Date

IT IS SO AGREED:

Frenchs' Inc.


Signature

12-27-07
Date

DAVID C. FRENCH
Printed or Typed Name

PRESIDENT
Title