

OHIO E.P.A.

JUL 31 2007

BEFORE THE

ENTERED DIRECTOR'S JOURNAL

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

John Fetchet,
d.b.a. J & L Construction
15711 Station Road
Columbia Station, Ohio 44028

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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 John Fetchet, d.b.a. J & L Construction ("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 heirs and successors in interest liable under Ohio law. No change in ownership of the Respondent's assets 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:

- Respondent owns and operates a one man business (J & L Construction), which is engaged in buying and renovating/demolishing of structures, with an office located at 15711 Station Road, Columbia Station, Lorain County, Ohio. J & L Construction is not incorporated as a business with the Ohio Secretary of State.

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: John Fetchet Date: 7-31-07

2. "Facility" as defined by OAC Rule 3745-20-01(B)(18) means, in part, any institutional, commercial, public, industrial or residential structure, installation, or building, excluding residential structures having four or fewer dwelling units.

3. "Friable asbestos material" as defined by OAC Rule 3745-20-01(B)(20) means, in part, any material containing more than one percent asbestos by area that hand pressure can crumble, pulverize or reduce to powder when dry.

4. "Nonfriable asbestos material" as defined by OAC Rule 3745-20-01(B)(34) means, in part, any material containing more than one percent asbestos by area that cannot be crumbled, pulverized or reduced to powder by hand pressure.

5. "Regulated asbestos-containing material" as defined by OAC Rule 3745-20-01(B)(41) means, in part, any friable asbestos material and any Category I or Category II asbestos-containing material ("ACM") that has or will become friable.

6. "Owner or operator" as defined by OAC Rule 3745-20-01(B)(38) means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation or both.

7. "Demolition" as defined by OAC Rule 3745-20-01(B)(13) means, in part, the wrecking, or taking out, of any load-supporting structural member of a facility together with any related handling operations.

8. 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. OAC Chapter 3745-20 was adopted by Ohio EPA pursuant to ORC Chapter 3704.

9. OAC Rule 3745-20-02(A) states, in part, that each owner or operator of any demolition operation shall have the affected facility where a demolition operation will occur thoroughly inspected prior to commencement of the demolition for the presence of asbestos, including Category I and Category II nonfriable ACM.

10. OAC Rule 3745-20-03(A) states, in part, that each owner or operator of a demolition operation shall provide the Director of Ohio EPA with a written notice of intention to demolish by not later than 10 days prior to beginning demolition subject to this rule.

11. On May 3, 2005, at 10:00 a.m., an Ohio EPA, Northeast District Office ("NEDO") inspector, while driving by the vacant former General Casting Company ("facility") located at 1080 Cleveland Street, Grafton, in Lorain County, Ohio, observed that the main building originally located at the facility was demolished. Respondent was at the facility at the time. When asked by the inspector if he submitted a complete Ohio EPA notification

of demolition form to NEDO, and had an asbestos inspection performed before the demolition, Respondent said that he bought the property at a sheriff's auction, and demolished the structure over the past winter. He stated further, that no notification was submitted to NEDO because he believed that an asbestos inspection conducted in the past indicated that no ACM was found. When asked to produce copies of any notification that may have been submitted to NEDO as well as copies of any asbestos survey that may have been conducted inside the structure prior to the demolition, Respondent was unable to produce any. The inspector observed very little debris remaining on site, was unable to determine the possible presence of ACM in the former structure, and took photographs of the site.

12. Since this project constituted a "demolition," as defined in OAC Rule 3745-20-01(B)(13), pursuant to OAC Rule 3745-20-02(B)(1) or (B)(2), this project was at least subject to the inspection and notification requirements of OAC Rules 3745-20-02(A) and 3745-20-03(A), respectively.

13. Respondent was an "operator," as defined in OAC Rule 3745-20-01(B)(38)(a). Because Respondent did not provide NEDO with a written notice of intention to demolish, and there was no pre-demolition asbestos inspection performed, the applicability of the work practice requirements of OAC Rules 3745-20-04 and 3745-20-05 could not be determined.

14. Respondent's failure to submit a complete notification form to Ohio EPA, and failure to perform an asbestos inspection prior to the demolition, constitute violations of OAC Rules 3745-20-03(A) and 3745-20-02(A), respectively.

15. On May 10, 2005, NEDO sent a notice of violation ("NOV") letter to the Respondent. The NOV, in part, cited Respondent for the violations of OAC Rule 3745-20-03(A) for failure to submit a complete Ohio EPA notification form, and OAC Rule 3745-20-02(A) for failure to perform an asbestos inspection prior to the demolition. The NOV, in part, requested Respondent to submit to NEDO, the following information within 10 days of receipt of the letter:

- a. completed Ohio EPA notification form;
- b. copies of any asbestos surveys that have been conducted inside the structure prior to demolition; and
- a. any clarifications, explanations or evidence on his behalf, pertaining to these violations.

16. In response to the May 10, 2005 NOV, Respondent stated in a letter dated June 1, 2005 that he was unaware of the laws pertaining to demolition because he spoke

with the Grafton Fire Department and Police Department regarding any hazardous materials and both departments visited regularly and found no hazardous materials on site. Respondent stated further that the waste disposal company, BFI, that cleared the rubbish from the site was more concerned about the weight of the loads due to foundry sand that was mixed with the loads than the presence of hazardous materials because they already tested samples from the site and found there were no hazardous materials present. Respondent expressed his willingness to cooperate and indicated that he had no plans or money to do more at the site. Respondent also submitted a notification dated May 5, 2005, after the demolition was completed and debris removed and disposed. The notification indicated there was no asbestos in the building.

17. In conclusion regarding the May 3, 2005 inspection, Respondent violated OAC Rules 3745-20-02(A) and 3745-20-03(A) by failing to perform an asbestos inspection prior to the demolition and failing to submit a timely written notification of intent to demolish a facility at least 10 working days prior to beginning the demolition operation, respectively. These violations also constituted violations of ORC § 3704.05(G).

18. On June 30, 2006, Ohio EPA sent Respondent proposed Director's Final Findings and Orders to attempt an administrative settlement of the violations. The proposed Director's Final Findings and Orders contained a civil penalty demand of \$17,000 for the violations, which was calculated using the UAEPA's civil penalty policy for asbestos demolitions and renovations. Based on financial documents and information submitted by Respondent to Ohio EPA, Ohio EPA determined that Respondent had an inability to pay the civil penalty but could pay a nominal penalty. Ohio EPA and Respondent agreed to a nominal penalty of \$1,400 to settle the matter.

19. 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. Respondent shall pay the amount of one thousand four hundred dollars (\$1,400) 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 the said amount (\$1,400). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying 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, the operations 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.

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, NEDO
2110 Aurora Road
Twinsburg, Ohio 44087-1924
Attention: Jim Veres

and to:

Ohio EPA
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: 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 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:

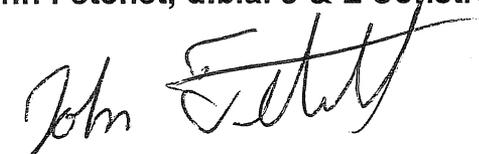
Ohio Environmental Protection Agency

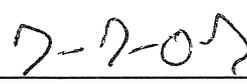

Chris Korleski
Director


Date

IT IS SO AGREED:

John Fetchet, d.b.a. J & L Construction


Signature


Date