

constituted "demolition" of the structure at 226 N. Main Street.

3. On the asbestos hazard evaluation report, it was indicated that the upper floor contained 9 x 9 inch floor tiles and these tiles should be assumed to be asbestos-containing and would have to be removed prior to any fire-fighting training conducted by Respondent.

4. In the notification form, Respondent 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 would not be removed from the structure before demolition, in violation of OAC Rule 3745-20-03(A)(4)(g). Respondent was the "operator" of the demolition operation as defined in OAC Rule 3745-20-01(B)(38).

5. On May 19, 2005, a permission to burn was issued by Ohio EPA pursuant to OAC Rule 3745-19-05 and based on the following conditions:

- a. The open burning was only for fire-fighting training based on OAC Rule 3745-19-03(D)(2).
- b. The open burning was to be held on June 26, 2005 during daylight hours.
- c. The open burning was to be conducted only when the wind would carry air contaminants away from the populated area.
- d. The smoke from the open burning was not to create a visibility problem on roads, railroad tracks or air fields.
- e. No rubber, petroleum or asphalt products were to be burned.
- f. Any asbestos-containing materials were to be removed in accordance with 40 CFR Part 61, Subpart M.

6. On June 26, 2005, Respondent conducted the fire-fighting training and demolished the Antiques Store. Ohio EPA has no information concerning the removal of the asbestos-containing materials as recommended in the report of the certified asbestos hazard evaluation specialist and pursuant to the conditions of the open burning permission.

7. On June 5, 2006, 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. It was also indicated that the fire was lit Friday evening (June 2, 2006) by Respondent.

8. The site was inspected by a representative from NEDO on June 6, 2006, and several piles of burned debris were found to be smoldering. The piles contained trees, construction debris, tires, and other miscellaneous waste items. The representative subsequently spoke with the Village Administrator, Mr. Joseph DiBell, and he indicated the following:

- a. Respondent had lit one pile of waste material on or about June 2, 2006 as a fire-fighting training exercise.
 - b. A second waste pile was later set on fire by an unknown person. (In a report received later from Respondent it was indicated that a contractor hired by the owner of the property used his front-end loader to spread the fire to other piles.)
9. A police report generated on June 6, 2006, indicated the following:
- a. Shortly after the fire training on June 26, 2005, the owner of the property (Mr. Dave French) hired a contractor (Mr. Cliff Ward) to demolish the remaining brown brick building (next to the building used for the fire-fighting training on June 26, 2005). Mr. Ward piled the demolition waste and the piles remained there until the date of the open burning (almost one year).
 - b. At a later date after the fire-fighting training on June 26, 2005, the owner of the property (Mr. Dave French) hired a contractor (Mr. Cliff Ward) to demolish a house located at 450 Main Street and transport the debris to the property at 226 N. Main Street. A large amount of trees, wood, tires, rocks, and steel were added to the piles that were already present.
 - c. The contractor separated the debris and piled the wood as much as possible so that it could be burned by Respondent.
 - d. Respondent lit one pile during the weekend of June 2, 2006. Respondent extinguished the fire on the same day, but that pile continued to smolder.
 - e. On June 3, 2006, someone set fire to the remaining piles, creating smoldering piles.
 - f. On Monday (June 5, 2006), the Mayor of the Village of Andover ordered Respondent to extinguish the fires. Respondent complied and dumped several truck loads of water to extinguish the fires.
 - g. On Tuesday evening (June 6, 2006), the piles at the site were again smoldering and appeared to be increasing in intensity. Respondent was again ordered to extinguish the fires. Respondent responded and dumped 9,000 gallons of water on the piles of material.
10. Respondent generated a report on June 6, 2006 that indicated:
- a. One pile was burned by Respondent on June 2, 2006, and it was extinguished the same day but was smoldering.
 - b. A contractor hired by the owner of the property used his front-end loader to spread the fire to other piles.
 - c. A police officer was advised that the contractor would need to come

back to separate the piles to extinguish them entirely.

11. A report generated by Respondent on June 20, 2006 indicated that Respondent extinguished a smoldering pile at the 226 N. Main Street site.

12. OAC Rule 3745-19-05(A) requires that an application for permission to conduct open burning be submitted to the local air agency or Ohio EPA District Office at least 10 days prior to the date the fire is proposed to be set.

13. The original permission was granted to open burn only on June 26, 2005 under the conditions specified in Finding 5. No permission to open burn was applied for and obtained by Respondent for the open burning conducted on June 2, 2006, in violation of OAC Rule 3745-19-05(A).

14. Accordingly, the open burning conducted on June 2, 2006 by Respondent, and which continued to smolder until June 6, 2006, violated OAC Rule 3745-19-03(A), which prohibits open burning, including open burning for the purpose of fire-fighting training without prior written permission from Ohio EPA.

15. On June 12, 2006, a Notice of Violation ("NOV") letter was sent to Respondent detailing the open burning and asbestos violations observed at the site. In the NOV, Ohio EPA sought information from Respondent, and to date, Respondent has not provided Ohio EPA with the requested information.

16. The OAC violations cited in the above findings also constituted violations of ORC § 3704.05(G), which prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA. OAC Chapters 3745-19 and 3745-20 were adopted by the Director pursuant to ORC Chapter 3704.

17. The Director has the authority, under ORC § 3704.06, to request the Attorney General to initiate legal action to seek penalties of up to twenty-five thousand dollars (\$25,000) for each day of each violation if the violator fails to comply with these Orders.

18. 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 not conduct any open burning in violation of OAC Chapter 3745-19. Respondent also shall maintain compliance with the notification and work practice requirements of OAC Chapter 3745-20.

2. Respondent shall comply, where applicable, with OAC Rule 3745-19-05(A) which requires that an application for permission to conduct open burning be submitted to the local air agency or Ohio EPA District Office at least 10 days prior to the date a fire is proposed to be set for fire-fighting training purposes.

3. Within fourteen (14) days after the effective date of these Orders, Respondent shall provide the following information to Ohio EPA concerning any removal of asbestos-containing material before demolishing the Antiques Store by open burning on June 26, 2005 (as was required by the open burning permission conditions and as recommended in the report of the asbestos hazard evaluation specialist): date of asbestos-containing material removal, the name of the representative authorized and trained in handling asbestos who was present at the time of asbestos-containing material removal, estimate of the amount of asbestos-containing material removed, name and location of the waste disposal site where any asbestos-containing waste material was disposed, copies of any asbestos-containing waste shipment records, and copies of any receipts from the disposal site.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent of the obligations that have not been performed, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For the purposes of these Orders, a responsible official is as defined in OAC Rule 3745-35-02(B)(1) for a corporation.

VII. 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

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.

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

IX. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondent for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondent to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the right of Respondent to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondent. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

X. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency



Chris Korleski
Director

11/7/07
Date