

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY - OHIO E.P.A.**

NOV 18 2008

- FILED DIRECTOR'S JOURNAL

In the Matter of:

Brandybrook, LLC 9701 Brookpark Road Suite 200 Parma, Ohio 44129	: : : :	<u>Director's Final Findings and Orders</u>
---	------------------	--

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.

PREAMBLE

It is agreed by the parties hereto as follows:

By:  Date: 11-18-08

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Brandybrook, LLC ("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

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facility (as hereinafter defined) 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 meanings as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03 and 3704.01 have been made and are outlined below. Nothing in the findings shall be considered to be an admission by respondent of any matter of law or fact. The Director of Ohio EPA has determined the following findings:

1. Respondent owns a commercial building located at 402-412 Northfield Road in Bedford, Cuyahoga County.
2. On March 3, 2008, the Cleveland Division of Air Quality ("CDAQ"), which acts as an agent for the Ohio EPA, Division of Air Pollution, received a complaint that

Respondent was conducting demolition of its Northfield Road facility and that the facility may contain asbestos. The structure was a 23,000 square foot former retail building. The structure was a "facility," as defined in OAC Rule 3745-20-01(B)(18).

3. Upon inspection of the facility on March 3 and March 14, 2008, CDAQ discovered that approximately half of the building had been demolished, including removal of most of the interior features of the building, such as duct work and piping.

4. According to the CDAQ records, no inspection was conducted in the structure prior to demolition, and no notification of demolition form was submitted to CDAQ prior to the commencement of demolition. During the March 3, 2008 inspection, CDAQ instructed Respondent to cease demolition activities until such time that a survey could be completed to determine the presence or absence of asbestos.

5. On March 13, 2008, Respondent contracted with Getco Environmental Consultants to conduct an asbestos survey of the property. The results of the survey indicated that there was no asbestos in the remaining portion of the building.

6. On March 18, 2008, a Notice of Violation ("NOV") letter was sent to Respondent by certified mail.

7. Ohio EPA finds the Respondent in violation of the following rules and law:

a. failure to provide the Director of Ohio EPA with a written notice of intention to demolish a facility at least 10 days before beginning demolition of the facility, in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G); and

b. failure to have the facility thoroughly inspected prior to commencement of demolition for the presence of asbestos, including category I and category II non-friable asbestos-containing materials, in violation of OAC Rule 3745-20-02(A) and ORC § 3704.05(G).

8. 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 four thousand nine hundred dollars (\$4,900) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by official check made payable to "Treasurer, State of Ohio" within 30 days of the effective date of these Orders. 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
50 West Town Street
Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

2. A copy of each 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
50 West Town Street
Suite 700
P.O. Box 1049
Columbus, OH 43216 – 1049

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the valid 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 Respondent's activities at the 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. 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:

City of Cleveland
Division of Air Quality
1925 St. Clair Avenue
Cleveland, Ohio 44114
Attn: Valencia White

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
50 West Town Street
Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: John Paulian

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, 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

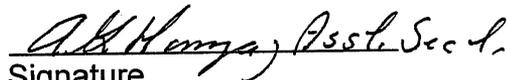


Chris Korleski
Director

Date 11/12/08

IT IS SO AGREED:

Brandybrook, LLC


Signature

Date 10/7/08

AG Homza
Printed or Typed Name