

OHIO E.P.A.

JUL 13 2011

BEFORE THE ENTERED DIRECTOR'S JOURNAL
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Charles J. Arendas)	<u>Director's Final Findings</u>
6700 New Castle Road)	<u>and Orders</u>
Lowellville, Ohio 44436)	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Charles J. Arendas ("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's property (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 meaning as defined in ORC Chapter 3704 and the rules promulgated thereunder.

IV. FINDINGS

All of the findings necessary for the issuance of these Orders pursuant to ORC §§ 3704.03 and 3745.01 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 makes the following findings:

1. Respondent owns the residential properties located at 3307 and 3311 Upland Avenue, in Coitsville Township, Mahoning County, Ohio ("facility"). Respondent demolished the two structures on these properties. These structures constituted a "facility" as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18).

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.

Donna Kassel
by Donna Kassel Date: 7-13-11

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2. Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") is Ohio EPA's contractual representative in Mahoning County for the administration of OAC Chapter 3745-20 ("Asbestos Emission Control Standards").

3. "Owner or operator," as defined by OAC Rule 3745-20-01(B)(39), means any person who owns, leases, operates, controls, or supervises a facility being demolished or renovated or any person who owns, leases, operates, controls or supervises a demolition or renovation or both.

4. "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.

5. 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.

6. 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 asbestos-containing material ("ACM"), as defined in OAC Rules 3745-20-01(B)(9) and 3745-20-01(B)(10), in order to determine the applicability of OAC Rules 3745-20-03 and 3745-20-04.

7. OAC Rule 3745-20-03(A)(3) states, in part, that each owner or operator of a demolition operation, as defined in OAC Rules 3745-20-02(B)(1) and 3745-20-02(B)(2), shall provide the Director of Ohio EPA with a written notice of intention to demolish by not later than 10 working days prior to beginning demolition.

8. In a letter dated November 17, 2008, Coitsville Township Zoning Department informed Respondent of the need to meet the relevant Ohio EPA regulations for any demolition of the two structures.

9. On February 17, 2009, M-TAPCA received a citizen complaint concerning the demolition of Respondent's facility which occurred on February 12, 2009, in Coitsville Township of Mahoning County. On February 17, 2009, an M-TAPCA inspector visited the site and observed that the two structures were completely demolished, the debris had been removed, and the site had been graded. Respondent did not perform an asbestos inspection prior to the demolition and did not submit a notification form to Ohio EPA prior to the demolition. Respondent obtained a permit from the Coitsville Township Zoning Department to raze one of the structures. Respondent claims that due to inadvertent damage to the other structure during the process, it became necessary to demolish the second structure for his safety and the safety of others.

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10. Since this project constituted a "demolition," as defined in OAC Rule 3745-20-01(B)(13), pursuant to OAC Rule 3745-20-02(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.

11. Respondent was an "owner or operator," as defined in OAC Rule 3745-20-01(B)(39)(a) of the demolition operation. Because Respondent did not provide M-TAPCA 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.

12. Respondent's failure to have the facility thoroughly inspected by a certified asbestos hazard evaluation specialist prior to commencement of the demolition and failure to provide M-TAPCA or Ohio EPA with a written notice of intention to demolish the facility by at least 10 working days prior to the commencement of the demolition constituted violations of OAC Rules 3745-20-02(A) and 3745-20-03(A), respectively, and ORC § 3704.05(G).

13. On February 27, 2009, M-TAPCA sent a notice of violation ("NOV") letter to the Respondent. The NOV, in part, cited Respondent for the violations of OAC Rules 3745-20-02(A) and 3745-20-03(A).

14. 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 five thousand dollars (\$5,000) 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 four thousand dollars (\$4,000). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying Respondent, to:

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Ohio EPA
Office of Fiscal Administration
P.O. Box 1049
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining one thousand dollars (\$1,000) of the 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 \$1,000 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$1,000. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of each of the above checks shall be sent to Thomas Kalman, Acting 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 \$1,000 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, the operations of Respondent.

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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:

Mahoning-Trumbull Air Pollution Control Agency
345 Oak Hill Ave., Suit 200
Youngstown, Ohio 44502
Attention: Tara Cioffi

and to:

Ohio Environmental Protection Agency
Lazarus Government Center
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attention: Thomas Kalman, Acting Assistant Chief, SIP
Development and Enforcement

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.

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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.

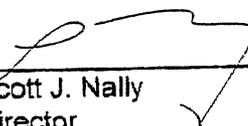
XIV. SIGNATORY AUTHORITY

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.

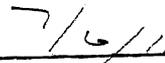
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ORDERED AND AGREED:

Ohio Environmental Protection Agency



Scott J. Nally
Director



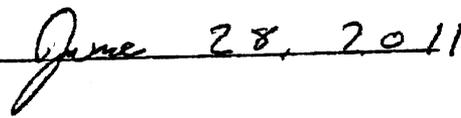
Date

AGREED:

Charles J. Arendas



Signature



Date