



**Environmental
Protection Agency**

John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

November 21, 2011

CERTIFIED MAIL

Mr. James Marshall
President
Marshall Land Company, LLC.
138 12th Street NW
Canton, Ohio 44703

Re: Final Findings and Orders for: Violations
of the Asbestos Emission Control
Standards associated with the demolition
of the former VFW Post 3417 located at
1826 8th Street, Canton, Ohio

Dear Mr. Marshall:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date that is stamped on the first page of the Orders.

Sincerely,

Thomas J. Kalman, P.E.
Acting Assistant Chief, SIP Development and Enforcement
Division of Air Pollution Control

TJK/ef

xc: Thomas Kalman, DAPC
Carol Hester, PIC
Erica Fetty, DAPC
Brenda Case, Fiscal Office (Agency # NA)
Donald L. Vanterpool, Legal Office
Urvi Doshi, DAPC
Ed Fasko, NEDO
Bob Princic, NEDO
Frank Elchesen, NEDO

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

NOV 21 2011

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Marshall Land Company, LLC. : Director's Final Findings
138 12th Street NW : and Orders
Canton, Ohio 44703 :

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Marshall Land Company, 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 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 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 makes the following findings:

1. Respondent owns and operates a building demolition business with office located at 138 12th Street NW in Canton, Ohio.

2. Respondent was hired by the City of Canton ("Canton") to conduct a demolition of the former VFW Post 3417 hall located at 1826 8th Street, Canton, Ohio. The building was abandoned by its owner, the VFW Department of Ohio with office located at 33 East Chestnut Street, #411, Columbus, Ohio, and became dilapidated, forcing Canton to provide for its demolition.

3. Respondent was the "operator," as defined in OAC Rule 3745-20-01(B)(39)(a), of the demolition of the building located at 1826 8th Street, Canton, Ohio. This building was a "facility" as defined in OAC Rule 3745-20-01(B)(18).

4. Canton commissioned an asbestos survey of the facility by Environmental Support Network ("ESN"), pursuant to the requirements of OAC Rule 3745-20-02(A), prior to having the facility demolished. On July 26, 2009, ESN conducted an asbestos inspection of the facility and prepared a report dated August 4, 2009. The ESN report identified wall plaster in the facility as containing greater than one percent asbestos and in excess of 160 square feet of asbestos-containing material. The report indicated that the wall plaster had to be removed by a licensed contractor prior to demolition. Therefore, the demolition was subject to the work practice requirements of OAC Rules 3745-20-04 and 3745-20-05.

5. On September 9, 2009, a Canton APCD representative took a total of three samples from the facility, one of which from the wall plaster in the manager's office indicated asbestos in excess of the one percent threshold.

6. In a letter from the Canton APCD dated October 13, 2009, to the Canton Building Department, and based on its own limited sampling, the Canton APCD indicated that the quantities of regulated asbestos-containing material ("RACM"), as defined in OAC Rule 3745-20-01(B)(42), in the facility do not meet the threshold levels specified in OAC Rule 3745-20-02(B) and that the work practice requirements of OAC Chapter 3745-20 are not applicable.

7. On November 13, 2009, Respondent commenced demolition of the building and began taking demolition debris to the Stark County Landfill, a CD&D landfill prohibited from accepting asbestos-containing waste material ("ACWM"). After accepting several loads of debris, the landfill refused to take any additional loads after observing air cell insulation in the loads. The unaccepted debris was taken back to the demolition site and stored there.

8. On November 16, 2009, Ohio EPA's Division of Air Pollution Control ("DAPC") received a complaint stating that the Respondent had demolished the facility on or about November 13, 2009, without having conducted asbestos abatement activities by an Ohio Department of Health ("ODH") certified asbestos abatement contractor.

9. On November 18, 2009, representatives of Ohio EPA, ODH, Canton APCD, and Canton Building Department met with the Respondent to investigate the complaint. Respondent claimed that the demolition debris found onsite was created by them and represented the 4,500-square foot VFW hall formerly located at the site. Respondent was informed that the ESN report was considered the definitive report at the time and that, therefore, abatement of the asbestos-containing material should have occurred prior to

demolition. Also, Respondent was informed that the ACWM onsite needed to be kept wetted during the handling, transport and disposal being performed by a certified abatement contractor.

10. On November 25, 2009, Ohio EPA took additional samples of suspect ACWM at the site and documented by analysis that it was RACM.

Failure to Notify of Change in Demolition Start Date in Original Written Notice:

11. OAC Rule 3745-20-03(A)(3)(d)(i) specifies, in part, that when any demolition operation will begin after the date contained in the original notification, the owner or operator must notify the Ohio EPA field office of the new start date by telephone as soon as possible before the original start date and must postmark or deliver to the Ohio EPA field office a written notice of the new start date as soon as possible before, and no later than, the original start date.

12. Respondent's original written notification of September 15, 2009 indicated a demolition start date of October 19, 2009. On November 13, 2009, Respondent commenced demolition of the facility. Respondent failed to notify the Canton APCD of the change in start date by telephone as soon as possible before the original start date in the notification and failed to deliver or postmark a revised written notification to the Canton APCD prior to the original start date, in violation of OAC Rule 3745-20-03(A)(3)(d)(i).

Failure to Provide Required Information in a Written Notification of Demolition Subject to Work Practice Requirements:

13. OAC Rule 3745-20-03(A)(4)(g) through (p) specify part of the information required to be included in the written notice of intention to demolish a facility that is subject to the work practice requirements of OAC Rules 3745-20-04 and 3745-20-05.

14. Respondent's demolition of the facility was subject to the work practice requirements based on the ESN asbestos survey report. For demolition operations subject to the work practice requirements, the owner or operator must provide the information contained in OAC Rule 3745-20-03(A)(4)(g) through (p).

15. Respondent's written notification of September 15, 2009 failed to provide all of the required information, in violation of OAC Rule 3745-20-03(A)(4)(g) through (p).

Failure to Follow Certification in Notice by Providing Inaccurate Written Notification:

16. OAC Rule 3745-20-05(E) specifies that the certification required in OAC Rule 3745-20-03(A)(4)(p) shall acknowledge the existence of laws prohibiting the submission of false or misleading statements and shall certify that the facts contained in the notice are true, accurate and complete.

17. The notice submitted by Respondent to the Canton APCD on September 15, 2009 certified that the facts contained in the notice were true, accurate and complete, yet failed to identify the results of the asbestos survey performed by ESN of which it was aware, on July 26, 2009, and contained in a report dated August 4, 2009, in violation of the OAC Rule 3745-20-03(E).

Failure to Remove all Asbestos-Containing Material from the Facility Prior to Conducting Demolition:

18. OAC Rule 3745-20-04(A)(1), in part, requires that all RACM be removed from a facility prior to conducting demolition activities.

19. Respondent failed to remove all RACM prior to commencing demolition of the facility on November 13, 2009, in violation of OAC Rule 3745-20-04(A)(1).

Failure to Have a Trained Authorized Representative Present at the Location of the Demolition Operation:

20. OAC Rule 3745-20-04(B)(1), in part, prohibits any RACM from being stripped, removed, or otherwise handled or disturbed at a facility regulated by OAC Chapter 3745-20 unless at least one authorized representative, trained in the provisions of OAC Chapter 3745-20 and the means of complying with them, is present at the location of operations.

21. Respondent failed to have an authorized representative, trained in the asbestos regulations and means of complying with them, present on site during the demolition operation, in violation of OAC Rule 3745-20-04(B)(1).

Failure to Deposit all Asbestos-Containing Waste Material as Soon as is Practical by the Waste Generator at an Approved Disposal Facility:

22. OAC Rule 3745-20-05(A), in part, requires that all asbestos-containing waste material from an affected facility be deposited as soon as is practical by the waste generator at (a) a waste disposal site in Ohio operated in accordance with the provisions of OAC Rule 3745-20-06, or (b) a waste disposal site not in Ohio operated in accordance with the provisions of 40 CFR 61.154, or (c) a site that converts RACM and ACWM into non-asbestos material in accordance with the provisions of OAC Rule 3745-20-13.

23. On at least November 13, 2009, Respondent disposed of 24 loads of ACWM at the Stark C&D Landfill in Ohio, which is not a waste disposal site operated in accordance with the provisions of OAC Rule 3745-20-06, in violation of OAC Rule 3745-20-05(A).

Failure to Adequately Wet Asbestos-Containing Waste Material at the Facility During and After Demolition and During Handling, Loading, Transport and Disposal at an Active Waste Disposal Site:

24. OAC Rule 3745-20-05(B)(2), in part, requires the owner or operator of a demolition operation subject to this rule, for situations where ACWM was not removed prior to demolition, to keep ACWM adequately wet at all times during and after demolition, and during handling, transport and disposal, and either seal such waste in leak-tight bags or containers.

25. On at least November 13, 2009 and continuing until December 20, 2009, Respondent failed to keep ACWM adequately wet and sealed in durable leak-tight bags or containers at all times during and after demolition, and handling, transport, and disposal at an active waste disposal site, in violation of OAC Rule 3745-20-05(B).

Failure to Comply with State Law by Violating the Rules of OAC Chapter 3745-20:

26. ORC § 3704.05(G) states, in part, that no person shall violate any rule adopted by the Director of Ohio EPA, pursuant to ORC § 3704.03. OAC Chapter 3745-20 was adopted by the Director pursuant to ORC § 3704.03.

27. Respondent violated ORC § 3704.05(G) by violating the OAC rules identified in the above findings.

28. On December 20, 2009, Ohio EPA received a response letter from Respondent providing information of its efforts to rectify the situation and the trucking company used for the cleanup of the demolition debris. The debris was treated as ACWM by a certified contractor and taken to an asbestos landfill.

29. The penalties for economic benefit and work practice violations have been mitigated by 100% due to the Canton's approval letter dated October 13, 2009.

30. 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 six thousand dollars (\$6,000) 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" for four thousand eight hundred dollars (\$4,800) of the total amount within thirty (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. In lieu of paying the remaining one thousand two hundred dollars (\$1,200) of the civil penalty, Respondent shall fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$1,200 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tend an official check in the amount of \$1,200 due within thirty (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 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 Environmental Protection Agency
Division of Air Pollution Control
50 West Town Street
Suite 700
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$1,200 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
2110 East Aurora Road
Twinsburg, Ohio 44087
Attn: Frank Elchesen

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

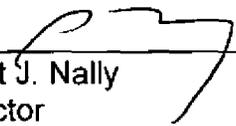
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

ORDERED AND AGREED:

Ohio Environmental Protection Agency



Scott J. Nally
Director

11/17/11

Date

AGREED:

Marshall Land Company, LLC.



Signature

10/1/11

Date

JAMES MARSHALL

Printed or Typed Name

President

Title