



State of Ohio Environmental Protection Agency

Northeast District Office

2110 East Aurora Rd.
Twinsburg, Ohio 44087

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www.epa.state.oh.us

Ted Strickland, Governor
Lee Fisher, Lieutenant Governor
Chris Korleski, Director

November 13, 2007

RE: NOTICE OF VIOLATION
FORMER BUILDERS SQUARE
2230 FAIRLESS AVENUE
LORAIN, OHIO

CERTIFIED MAIL

Mr. Lorne J. Elbert, Jr.
Elbert Building Co.
155 Yorkshire Ct.
Elyria, Ohio 44035

Dear Mr. Elbert:

The purpose of this letter is to inform you of state and federal asbestos violations that were observed during the former Builders Square demolition project which took place at 2230 Fairless Avenue in Lorain, Ohio.

Specifically, on July 23, 2007, our office received an original Ohio Environmental Protection Agency Notification of Demolition and Renovation form from you stating, in part, that Construction & Renovation, an asbestos abatement contracting company, was going to remove 800 square feet of Regulated Asbestos Containing Material (RACM) and 512 square feet of asbestos transite paneling from the abandoned Builders Square structure beginning on July 30, 2007 and ending on August 7, 2007. As a result of inspections conducted on August 14, 2007, August 15, 2007, and August 17, 2007, I found that asbestos notification and work practice violations had occurred at this demolition project site.

Below is a description of the specific inspections and violations, as well as a request that you submit any additional information within ten (10) days of receipt of this letter.

AUGUST 14, 2007, INSPECTION

After being informed by phone on August 7, 2007, that activity was taking place in the abandoned Builders Square structure, an inspection was conducted on August 14, 2007. I observed a bobcat scraping up debris from the inside of the main building and loading it into a roll off at the front of the structure. I spoke with Mr. Greg Diederich, Laborer, and Mr. William Davidson, Operator, and asked them if the asbestos in the structure had been removed. They told me yes and that the removal was finished. Mr.

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Davidson also stated that you told them not to do anything at the site until the asbestos removal was complete.

Mr. Davidson led me to the mechanical/boiler room at the rear of the building and I observed the following:

- A portion of the concrete wall at the rear of the room was knocked out and appeared to be used as the entrance from the outside.
- A room approximately 15' x 20' in size, with numerous patches of dry asbestos containing thermal system insulation (TSI), was still remaining on the boiler breaching, stack and heater tank. Much of the TSI was also loose, on top of the breaching and throughout the floor. All of the material was dry.
- Four (4) fifty-five gallon sealed metal drums that I was told contained the RACM that had been removed.
- Pieces of TSI were observed in the driveway outside the back of the building at the area where the entrance was made in the concrete wall to the boiler room. The material was dry.

The Ohio Administrative Code (OAC) Rule 3745-20-04(A)(6)(a) states to adequately wet friable asbestos materials that have been removed or stripped to ensure that the materials remain adequately wet until collected for disposal. Similarly, the National Emission Standard for Hazardous Air Pollutants (NESHAP) in 40 CFR Part 61, Subpart M, Section 61.145(c)(6)(i) states that all asbestos-containing materials, including those that have been removed or stripped, must be adequately wet to ensure that they will remain wet until they are collected and contained or treated in preparation for disposal.

While noting my observations at the rear of the building, Mr. George Diederich, Elbert Excavating Estimator/Project Coordinator, and you arrived at the site. I showed you the pieces of TSI on the outside of the building and the sloppiness of the abatement inside the room. I also told you I saw on your notification that Construction & Renovation was to have done the removal and that I would have to call them about the problems I found. At that point you informed me it was your employees that did the removal and not Construction & Renovation. You stated removal was done on August 7 and 8, 2007. You also said you couldn't remember the names of the employees that did the work. You told me they were not licensed asbestos abatement employees, and there was no licensed person trained in the asbestos rule requirements supervising the asbestos removal.

I informed you we did not receive an amended notification indicating that the removal contractor (operator) had been changed, and that we still would need that notification. (The amended notice indicating the change in asbestos removal operator(s) was received on August 15, 2007.)

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Specifically, OAC Rule 3745-20-03(D)(3) states that any change in the owner or operator of a demolition or renovation asbestos abatement project shall require an amended written notification be submitted as soon as possible, but not later than one working day following the discovery of the change. It is the responsibility of the abatement contractor, general contractor and/or owner to submit and assure that appropriate notifications are submitted in accordance with the notification standards.

Also, OAC Rule 3745-20-04(B)(1) through (4), and the federal NESHAP in 40 CFR Part 61, Subpart M, Section 61.145(c)(8) states that at least one authorized representative trained in the provisions of the asbestos rules (and evidence of the training posted at the site) must be present at the site during stripping, removing or otherwise handling or disturbing RACM.

I told you that nothing is to be disturbed in any areas of the building until the remaining RACM is properly removed and the area cleaned.

Photos were taken and five (5) samples collected during this inspection. Analysis results of the samples that were obtained showed that four (4) of the five (5) samples contained greater than one percent (1%) asbestos.

AUGUST 15, 2007, INSPECTION

I conducted a follow-up inspection and met with Mr. Russel DeWitt, Onsite Supervisor and Equipment Operator. He said he knew some things about asbestos removal, but didn't know who did this particular removal. He accompanied me to the boiler room and agreed the removal had been done very poorly. I opened the bungs on each of the four (4) drums, found they were full of suspect RACM, and that the contents of two (2) of the drums were dry.

This is a violation of OAC Rule 3745-20-05(B)(1)(c), which requires that after wetting, all asbestos-containing waste material be sealed while wet in durable leak-tight containers or wrapping.

Photos were taken and samples were collected from two (2) of the drums. Analysis results of the samples that were obtained showed that one (1) sample contained greater than one percent (1%) asbestos.

AUGUST 16, 2007, INSPECTION

I met with Mr. Allan Richards, Ohio Department of Health Inspector, at the site. I showed Mr. Richards the areas of concern. He also obtained samples and took photographs. During this inspection, you arrived onsite. Mr. Richards asked who conducted the original removal, and you again stated your employees. When asked their names, you stated you couldn't remember. You also indicated that you had contracted Construction & Renovation to clean up the remaining RACM before you proceeded with demolition.

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On this date, our office also received a faxed amended notification from your company indicating that Elbert Building Co. did the initial asbestos removal in the building.

Finally, we received an original Ohio Environmental Protection Agency Notification of Demolition and Renovation form from Construction & Renovation stating, in part, that they were going to conduct an emergency clean-up of the remaining asbestos at the site beginning on August 27, 2007. At that time, I was informed that the four (4) drums of asbestos-containing material had been removed. After further investigation, I found that you had the drums removed through Penn Ohio Corporation and taken to American Landfill, Inc. in Waynesburg, Ohio. Please be aware that we never received an amended notification stating that this transporter was going to remove the asbestos waste and that the waste was going to American Landfill.

Be advised that this is a violation of OAC Rule 3745-20-03(D)(4), which states that any change in the name and location of the selected waste disposal site at an asbestos abatement project requires an amended written notification to be submitted as soon as possible but not later than one working day following the discovery of the change.

Also be advised that the asbestos abatement conducted at this site was subject to compliance with the Clean Air Act and regulations promulgated hereunder, setting forth a National Emission Standard for Asbestos in 40 CFR, Part 61, Subpart M, Section 61.140, *et seq.* (NESHAP Asbestos Standard). This type of operation is also subject to OAC Chapter 3745-20, "Ohio Asbestos Emission Control Rules." Pursuant to 40 CFR 61.04(b)(KK), the authority to implement and enforce the NESHAP has been delegated to the State of Ohio Division of Air Pollution Control. Parallel enforcement authority is retained by the administrator of the U.S. EPA for any violations which Ohio is unable to initiate a required enforcement action.

In accordance with 40 CFR Part 61, Subpart M, Section 61.145 (a), all facilities must be inspected for the presence of asbestos prior to commencement of a demolition or renovation. Paragraphs (b), "Notification Requirements," and (c), "Procedures for Asbestos Emission Control" of this section apply if friable asbestos materials were found and stripped from facility components in amounts exceeding 160 square feet, or 260 linear feet from pipes. Section 61.150, "Standard for Waste Disposal," would also apply. Similarly, in accordance with OAC Rule 3745-20-02, "Standard for Demolition and Renovation Applicability," all of the requirements of OAC Rule 3745-20-03, "Standard for Notification," OAC Rule 3745-20-04, "Demolition and Renovation Procedures for Asbestos Emission Control," and OAC 3745-20-05, "Standard for Asbestos Waste Handling," apply if friable asbestos materials were found and stripped from facility components in amounts exceeding 160 square feet or 260 linear feet from pipes. Finally, pursuant to 40 CFR 61.141 and OAC Rule 3745-20-01 (B) (38), "owner or operator" means any person who owns, leases, operates, controls or supervises a facility or demolition or renovation operation.

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SUMMARY OF VIOLATIONS

In view of the above facts, you are hereby notified that the asbestos abatement conducted during the vacant Builders Square demolition project at 2230 Fairless Avenue in Lorain, Ohio under the operation, control or supervision of Elbert Building Company, was at some time after August 6, 2007, and before August 27, 2007, in substantive violation of the following asbestos rules:

- OAC Rule 3745-20-03(D)(3), "Standard for Notification Prior to Demolition or Renovation," because no amended notification was submitted to our office informing us of the change in operator of the asbestos abatement activity not later than one working day following the discovery of the change.
- OAC Rule 3745-20-03(D)(4), "Standard for Notification Prior to Demolition or renovation," because no amended notification was submitted to our office informing us that American Landfill was the asbestos disposal site that received the asbestos waste.
- OAC Rule 3745-20-04(A)(6)(a), "Demolition and Renovation Procedures for Asbestos Emission Control," and the Federal NESHAP in 40 CFR Part 61, Subpart M, Section 61.145(c)(6)(i), "Procedures for Asbestos Emission Control," because after RACM was removed or stripped it wasn't ensured that the all material remained adequately wet until it was collected for disposal.
- OAC Rule 3745-20-05(B)(1)(c), "Standard for Asbestos Waste Handling," because asbestos-containing waste material was not adequately wet after it was sealed in durable leak-tight containers or wrapping.
- OAC Rule 3745-20-04(B)(1) through (4), "Demolition and renovation Procedures for Asbestos Emission Control," and the Federal NESHAP in 40 CFR Part 61, Subpart M, Section 61.145(c)(8), "Procedures for Asbestos Emission Control," because no authorized representative trained in the provisions of the asbestos rules was present at the site during stripping, removing or otherwise handling or disturbing the RACM.

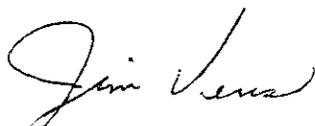
Within ten (10) days after receipt of this letter, please submit to this office any clarifications, explanations or evidence on your behalf, pertaining to these violations.

Note that the acceptance by the Ohio EPA of any requested information does not constitute a waiver of the Ohio EPA's authority to seek civil penalties as provided in Section 3704.06 of the Ohio Revised Code for any past or future violations of applicable requirements. The decision to pursue or decline to pursue such penalties in this matter will be made by the Ohio EPA at a later date.

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If you have any questions regarding this letter, please contact me at (330) 963-1288.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jim Veres".

Jim Veres
District Representative
Division of Air Pollution Control

FV:bo

cc: Dennis Bush; NEDO; DAPC
Jennifer Kurko; NEDO; DAPC
Bob Princic; NEDO; DAPC
Tom Buchan; CO; DAPC
Tom Kalman; CO; DAPC
Lisa Holscher; USEPA; Region V