



State of Ohio Environmental Protection Agency

Northeast District Office

2110 East Aurora Rd.
Twinsburg, Ohio 44087

TELE: (330) 963-1200 FAX: (330) 487-0769
www.epa.state.oh.us

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

December 11, 2009

RE: **NOTICE OF VIOLATION**
DEMOLITION PROJECT
VFW POST 3417
1826 8TH ST. NE
CANTON, OHIO 44704

CERTIFIED MAIL

Ms. Angela Cavanaugh
The City of Canton
424 Market Avenue North
3rd Floor
Canton, OH 44702

Dear Ms. Cavanaugh:

This Notice of Violation (NOV) is in reference to the demolition activity the Marshall Land Company (MLC) conducted on November 13, 2009, at the former VFW site located at 1836 8th Street NE, Canton, Ohio. Please be aware that the demolition activities conducted at this location were in violation of the federal requirements delineated in 40 CFR Part 61, Subpart M, the "Nation Emission Standard for Asbestos." These activities were also in violation of state regulations as delineated in Ohio Administrative Code (OAC) 3745-20, "Ohio Emission Control Rules."

The following are results of our investigation to date.

1. Based upon an asbestos evaluation conducted by Environmental Support Network Inc. (ESNI) on July 26, 2009, regulated asbestos containing material (RACM) from pipes and wall plaster was found to exceed the threshold limits. The survey recommended that asbestos removal and disposal be performed prior to demolition. This survey was supplied to all prospective bidders, including Mr. James Marshall, president of MLC, as a part of the city's bid package.
2. The City of Canton Building Department solicited bids for the asbestos abatement and demolition of the former VFW Hall, located at 1826 8th Street, Canton, Ohio. The successful bidder was MLC, which was awarded the bid on September 22, 2009.

3. On September 8, 2009, MLC contracted with Vadose Environmental Consultants, Inc. (VECI) to conduct supplemental asbestos sampling in the vacant VFW building. An interpretation of the sampling results was made by VECI that the amount of asbestos containing material was below the regulatory threshold limits, and therefore, no asbestos abatement was required prior to demolition.
4. Mr. Marshall had provided the Canton local air agency with a copy of the VECI sampling report with his demolition notice on September 15, 2009.
5. On October 13, 2009, the Canton local air agency informed your office that based on the information provided by Mr. Marshall, his notice was in order and that no abatement was required prior to demolition.
6. On November 13, 2009, MLC demolished the building, and began sending loads of debris to the Stark County Landfill, a licensed construction demolition and debris (CD&D) landfill which is not permitted to accept RACM.
7. On November 17, 2009, the Division of Air Pollution Control (DAPC) of Ohio EPA received a complaint that the hall had been demolished without prior asbestos abatement, and that debris was being sent to the Stark County Landfill.
8. On November 18, 2009, Ohio EPA and Ohio Department of Health (ODH) officials met with representatives of the Canton building department, Mr. Marshall and his consultant, Mr. William Ullom of VECI, at the site.
9. Mr. Marshall stated to Ohio EPA and ODH officials that he did not provide the building department with a copy of the VECI sampling results, nor did he inform them of his intention to demolish the building without abating the asbestos and his plan to dispose of the material in a construction demolition and debris (CD&D) landfill. He acknowledged that MLC had demolished the structure on November 13, 2009, and had disposed of 24 loads of material at the Stark County Landfill before the remainder of the debris was rejected by the landfill.
10. He further acknowledged that the demolition had occurred without prior asbestos abatement, as stated in the city's asbestos survey prepared by Environmental Support Network, Inc. (ESNI), supplied to all other bidders by the city in its bid package.
11. Ohio EPA and ODH informed Mr. Marshall that the agencies characterized the demolished building and the remaining debris as asbestos-contaminated waste material (ACWM), and that it must be disposed of in accordance with the applicable ODH and Ohio EPA regulations.

12. The remainder of the debris remained on-site until December 7, 2009, when MLC secured the services of a licensed asbestos abatement contractor to supervise the handling, transportation and disposal of the remaining ACWM.
13. Per 40 CFR Part 61.141, the city has been determined to be an "owner or operator of a demolition activity," defined as "...any person who owns, leases, operates, controls or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both."

In view of the above facts, we must notify you that the demolition and related handling operations you authorized at the former VFW hall are in violation of the following asbestos standards:

- OAC Rule 3745-20-03 (A)(3)(d)(i)(a) & (A)(3)(d)(i)(b) "Standard for Notification Prior to Demolition or Renovation," because the notification listed a demolition start date of October 19, 2009, with a demolition completion date of October 28, 2009. This notification had expired by the time actual demolition activities had commenced on November 13, 2009. There was no revised or new original notification submitted to the Canton local air agency 10 working days prior to demolition as required.
- OAC Rule 3745-20-03 (A)(4)(g) through (p), because MLC disregarded the ESNI asbestos survey, this required information was either inaccurate or omitted.
- OAC Rule 3745-20-03 (E), because by providing to the local air agency with the VECL report in support of the information contained on the demolition notice, while in possession of the ESNI report which directly contradicted the conclusion of the VECL report, MLC violated the prohibition against submission "...of false or misleading statements..." and falsely certified "...that the facts contained in the notice are true, accurate and complete." In addition, "Marshall Land Co. " was listed as the "other operator" (i.e. contractor) on the September 15, 2009 notice, when in fact MLC was not awarded the contract until one week later (September 22, 2009).
- OAC Rule 3745-20-04, "Demolition and renovation procedures for asbestos emission control," because none of the procedures outlined in this section were carried out prior to the November 13, 2009, demolition of the VFW hall.
- OAC Rule 3745-20-005, "Standard for asbestos waste handling," because none of the activities conducted by MLC during waste handling, transportation or disposal were in compliance with this applicable parts of this section.

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Ohio EPA and ODH have reviewed both the ESNI and VECI reports. The agencies have come to the conclusion that information supplied by VECI does not negate the information contained in the ESNI survey. We have communicated this information to Mr. Marshall in a December 7, 2009, NOV.

We feel strongly that if this information had been supplied to the building department prior to the commencement of demolition, this situation could have been avoided. When Mr. Marshall was asked by Ohio EPA why he did not choose to share his consultant's information with the city building department in an effort to definitely determine the regulatory status of the ACM in the VFW hall prior to demolition, he cited the desire to maintain a competitive advantage over his fellow bidders.

This notice in no way waives the right of the Ohio EPA or U.S. EPA to pursue enforcement action. Further communications may be directed to you regarding this violation or any additional violations that may be found. Clarification, explanation or evidence pertaining to this potential violation should be brought to our immediate attention, in writing, and submitted to our office within fourteen (14) days after receipt of this notice. A similar NOV has been sent to Mr. Marshall, and is being prepared for the Stark County Landfill.

If you have any questions regarding this matter, please contact the undersigned at (330) 963-1200.

Sincerely yours,



Frank Elchesen
District Representative
Division of Air Pollution Control

FE:bo

pc: Bob Prinic; NEDO; DAPC
Tim Fischer; NEDO, DAPC
Gregory Clark; Canton APC
Allan Richards, ODH
Tom Buchan; CO; DAPC
Marcus Glasgow, CO, Legal
Tom Kalman; CO; DAPC
Lisa Holscher; USEPA; Region V
James Marshall, Marshall Land Company