



Environmental
Protection Agency

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

CERTIFIED MAIL # 91 7108 2133 3932 1838 3199

June 8, 2012

Mr. Leon Creamer
Owner
Darby Excavating
535 West Main Street
West Jefferson OH 43162

Re: Notice of Violation – Demolition of a Facility without required survey, notification, and proper disposal

On May 8, 2012, the Ohio EPA, Central District Office, Division of Surface Water received a complaint concerning alleged illegal dumping of demolition materials. Upon investigation of the complaint, the Ohio EPA, Central District Office, Division of Air Pollution Control (CDO) learned that the demolition material in question was from a building at the corner of Walnut and Water streets in West Jefferson Ohio. This building was part of Fisher Cast Steel Products Incorporated. This structure is considered a "Facility" as defined in Ohio Administrative Code (OAC) rule 3745-20-10(B)(18). The demolition of the building was done by Darby Excavating (Darby).

1. Finding

On May 8, 2012, Ohio EPA, Central District Office, Division of Surface Water received a complaint concerning alleged illegal dumping of demolition materials. An investigation revealed that Darby had not performed an asbestos survey prior to beginning a demolition project. An asbestos survey of a Facility is required by OAC rule 3745-20-02(A) which states:

"Notwithstanding any other exclusion of this rule, and to determine which requirements of this rule and of rules 3745-20-03 and 3745-20-04 of the Administrative Code apply, each owner or operator of any demolition or renovation operation shall have the affected facility or part of the facility where a demolition or renovation operation will occur thoroughly inspected by a certified asbestos hazard evaluation specialist, in accordance with paragraph (C) of rule 3701-34-02 of the Administrative Code prior to the commencement of the demolition or renovation for the presence of asbestos, including category I and category II nonfriable asbestos-containing material."

Violation

Failure to perform a thorough survey is considered a violation of OAC rule 3745-20-02(A). Violation of OAC rule 3745-20-02(A) is also considered a violation of Ohio Revised Code (ORC) 3704.05(G) which states:

“No person shall violate any order, rule, or determination of the director issued, adopted, or made under this chapter.”

2. Finding

The May 8, 2012 investigation revealed that Darby had not submitted an OHIO ENVIRONMENTAL PROTECTION AGENCY NOTIFICATION OF DEMOLITION AND RENOVATION form prior to beginning a demolition project. Notification of demolition activity at a Facility is governed by OAC rule 3745-20-03(A), which requires that:

“(A) Each owner or operator to whom this rule applies shall:

- (1) Provide the director of Ohio EPA with written notice of intention to demolish or renovate
- (2) Delivery of the notice shall be by the United States postal service, commercial delivery service, or hand delivery. Update notice, as necessary, including when the amount of asbestos affected changes by at least twenty per cent.
- (3) Postmark or deliver the notice to the Ohio EPA field office having jurisdiction in the county where the demolition or renovation is to occur as follows:
 - (a) At least ten working days before the beginning of any demolition operation, asbestos stripping or removal work, or any other activity including salvage activities and preparations that break up dislodge or similarly disturb asbestos material if the operation is a demolition or renovation operation subject to this rule; or....”

Violation

Failure to submit an OHIO ENVIRONMENTAL PROTECTION AGENCY NOTIFICATION OF DEMOLITION AND RENOVATION form prior to beginning a demolition project, is considered a violation of OAC rule 3745-20-03(A).

Violation of OAC rule 3745-20-03(A) is also considered a violation of ORC 3704.05(G)

3. Finding

The May 8, 2012 investigation revealed that Darby had not required that asbestos containing material be handled in accordance with OAC rule 3745-20-04(A)(1) and (B) and 3745-20-04(C) prior to and after beginning a demolition project. Handling of asbestos containing materials at a Facility is governed by OAC 3754-20-04(A)(1) and (B) and 3745-20-04(C) which require that:

(A) Each owner or operator of a demolition or renovation operation to whom this rule applies shall comply with the following procedures:

(1) Remove all regulated asbestos-containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal...

(B) No regulated asbestos-containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this chapter unless all of the following provisions are met:

(1) At least one authorized representative, trained in the provisions of this chapter and the means of complying with them, is present at the location of operations...

(C) Each owner or operator of any demolition or renovation operation, shall ensure all regulated asbestos-containing materials which have been damaged or made friable by demolition, renovation or adjacent stripping operations are repaired, encapsulated, or removed for disposal in accordance with rule 3745-20-05 of the Administrative Code, prior to the removal of emission controls.

Violation

Failure to comply with the asbestos containing material handling requirements is considered a violation of OAC rules 3745-20-04(A)(1) and (B) and 3745-20-04(C). Violation of OAC 3745-20-04 (A)(1) and (B) and (C) are also considered a violation of ORC 3704.05(G).

4. **Finding**

The May 8, 2012 investigation revealed that Darby had not disposed of asbestos containing materials in accordance with OAC rule 3745-20-05(A). Disposal of asbestos containing materials at a Facility is governed by OAC 3754-20-05(A) which requires:

(A) All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at:

- (1) A waste disposal site in Ohio operated in accordance with the provisions of rule 3745-20-06 of the Administrative Code, or
- (2) A waste disposal site not in Ohio operated in accordance with the provisions of 40 CFR 61.154, or
- (3) A site that converts regulated asbestos-containing material and asbestos containing waste material into non asbestos (asbestos-free) material in accordance with the provisions of rule 3745-20-13 of the Administrative Code.
- (4) The requirements of paragraph (A) of this rule do not apply to category I nonfriable ACM that is not RACM.

Violation

Failure to comply with the asbestos containing waste material disposal requirements is considered a violation of OAC rule 3745-20-05(A). Violation of OAC rule 3745-20-05(A) is considered a violation of ORC 3704.05(G).

Requested Action

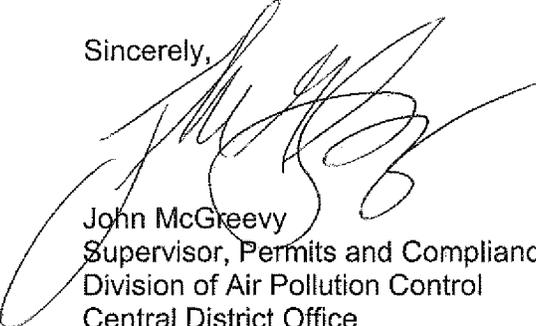
Ohio EPA requests that in the future, Darby comply with all applicable environmental regulations relating to any future demolition or renovation actions which they plan to undertake.

Please be aware that Ohio Environmental Protection Agency has the authority to seek civil penalties as provided in section 3704.06 of the ORC. Violation of Ohio's Asbestos Control Regulations may subject the owner, operator, and removal or renovation, or demolition contractor to civil penalties of up to \$25,000 dollars per day of violation. This letter or information submitted pursuant to this letter does not constitute a waiver of Ohio EPA's authority to seek civil penalties as provided in the ORC. The decision on whether or not to seek such penalties will be made by Ohio Environmental Protection Agency at a later date.

Mr. Leon Creamer
Darby Excavating
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If you have any questions on this matter, please contact Richard Fowler at (614) 995-0671.

Sincerely,



John McGreevy
Supervisor, Permits and Compliance
Division of Air Pollution Control
Central District Office

c: Adam Ward, Assistant Chief, CDO
Richard Fowler, DAPC/CDO
Mark Needham, Asbestos Program Administrator ODH/Asbestos Program
Tom Buchan, DAPC/CO
Phil Farnlacher, DMWM/CDO
ec: John McGreevy, DAPC/CDO

JM/ct NOV Darby Excavating no survey-Notice-Disposal