

OHIO E.P.A.

BEFORE THE

OCT 31 2012

OHIO ENVIRONMENTAL PROTECTION AGENCY

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Mr. Stanley Rosenfelds
333 Joseph Street LLC
2741 Navarre Avenue
Suite 402
Oregon, OH 43616

:

Director's Final Findings
and Orders

:

And

:

Mr. Eric Keith
Recycling Creations LLC
1010 Jamaica Drive
Marion, OH 43302

:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Mr. Stanley Rosenfelds and Mr. Eric Keith ("Respondents") 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 Respondents and heirs and successors in interest liable under Ohio law. No change in ownership of the property (as hereinafter defined) shall in any way alter Respondents' 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. "Facility", as defined by OAC Rule 3745-20-01(B)(18), means any institutional, commercial, public, industrial or residential structure, installation, or building (including any structure, installation, or building containing condominiums or

individual dwelling units operated as a residential cooperative, or any operation involving the renovation/demolition of multiple residential structures identified by an owner or operator within a scheduled period of time; any ship; and any active or inactive waste disposal site. For purposes of this definition, any structure, installation or building that contains a loft used as a dwelling is not considered a residential structure, installation or building. Any structure, installation or building that was previously subject to this rule due to its prior use or function is not excluded, regardless of its current use or function.

2. "Owner or operator", as defined by OAC Rule 3745-20-01(B)(39), means 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 or both.

3. OAC Rule 3745-20-02(A) requires that each owner or operator of a demolition or renovation operation, prior to the commencement of such operations, have the affected facility or portion of a facility thoroughly inspected by a certified asbestos hazard evaluation specialist for the presence of asbestos-containing material, including Category I and Category II non-friable asbestos-containing material as defined in OAC Rule 3745-20-01(B)(9) and (B)(10).

4. Pursuant to OAC Rule 3745-20-02(B)(1), all the requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05 apply to the owner and operator of a facility being demolished if the combined amount of regulated friable asbestos-containing material to be stripped, removed, dislodged, cut, drilled, or similarly disturbed in such facility is at least 260 linear feet on pipes, at least 160 square feet on other facility components, or at least 35 cubic feet off facility components where the length or area could not be measured previously.

5. OAC Rule 3745-20-03(A)(3) states, in part, that each owner or operator of a subject demolition operation shall provide the Director of Ohio EPA with a written notice of intention to demolish a facility by not later than 10 working days prior to beginning demolition.

6. OAC Rule 3745-20-04(A)(1) states, in part, that each owner or operator of a subject demolition operation shall remove all regulated asbestos-containing material from such facility before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal.

7. OAC Rule 3745-20-04(B)(1) requires that no regulated asbestos-containing material be stripped, removed, or otherwise handled or disturbed at a subject facility 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 operation.

8. OAC Rule 3745-20-05(B)(2) requires, in part, each owner or operator of any demolition operation to whom this rule applies and where asbestos was not removed prior to demolition to discharge no visible emissions to the outside air and to keep asbestos-containing waste material adequately wet at all times during and after demolition, and during handling, loading, transporting and disposal at an active waste disposal site.

9. ORC § 3704.05(G) prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. OAC Chapter 3745-20 was adopted by the Director pursuant to ORC Chapter 3704.

10. Mr. Stanley Rosenfelds owns the property located at 333 Joseph Street, in Marion, Ohio (Marion County). Mr. Rosenfelds originally hired a company to complete a partial demolition and asbestos abatement work associated with the commercial building ("the facility") that was present on the property. Mr. Eric Keith is a general contractor and is co-owner of Recycling Creations. Mr. Rosenfelds indicated that Recycling Creations was hired to clean up the 333 Joseph Street property of the demolition debris after the partial demolition and asbestos abatement work on the facility was complete.

11. A notification for a partial demolition and asbestos removal was submitted in 2010 for the facility located at 333 Joseph Street. Per a letter with the notification, the office area of the facility would not be demolished. According to the original asbestos survey conducted for the facility, the office area contained 3,850 square feet of friable asbestos-containing linoleum and another 6,000 to 8000 square feet of non-friable floor tile and mastic.

12. After the timeframe specified in the notification for completing the partial demolition and asbestos abatement work, Ohio EPA was made aware that the entire building had been demolished instead of just part of the building. On inspection, Ohio EPA discovered that the building's office area, that the original notification stated would not be demolished, had in fact been demolished. Based upon the information Ohio EPA has obtained, most of the debris from the original partial demolition and the debris from the demolition of the office area is still on site and has been comingled with the asbestos from the office area.

13. Samples of the demolition debris from the 333 Joseph Street property were collected by Ohio EPA on July 31 and August 2, 2012 to check for asbestos. On August 8, 2012, Ohio EPA received the results from the certified laboratory that

analyzed the samples. The results indicated that some of the samples taken from the demolition debris piles did contain asbestos.

14. Mr. Rosenfelds was notified, in a conference call, that (1) the debris piles did contain asbestos; (2) because the debris piles did contain asbestos, the site would have to be re-surveyed; and (3) until the asbestos-containing materials are properly disposed of, the debris piles and any other asbestos-containing materials would have to be kept wet.

15. On August 14, 2012, Notice of Violation letters were sent to Stanley Rosenfelds of 333 Joseph St. LLC and to Eric Keith of Recycling Creations for the violations of Ohio's asbestos regulations and laws related to the demolition activities that occurred at the 333 Joseph Street property.

16. On August 15, 23, September 5, 7, 11, 14, and 17, 2012, Ohio EPA inspected the 333 Joseph Street property and determined that the demolition debris piles were not adequately wet, in violation of OAC rule 3745-20-05(B)(2).

17. On September 14, 2012, another asbestos survey was conducted on the demolition materials on the property. The survey found friable roofing material as well as the asbestos-containing materials from the first survey throughout the property. As such, all of the demolition materials on the property are being considered as regulated asbestos-containing materials ("RACM").

18. On October 17, 2012, Ohio EPA issued an NOV to Mr. Rosenfelds for failing to keep the asbestos-containing materials at the 333 Joseph Street property adequately wet until they can be disposed of properly. In addition, the NOV requires Mr. Rosenfelds to immediately begin the process of having the RACM removed from the 333 Joseph Street property and to ensure that the RACM are disposed properly.

19. 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 to be derived from such compliance.

V. ORDERS

The Director hereby issues the following Order:

1. Pursuant to ORC § 3704.03(R), Respondents shall immediately begin the process of having the RACM removed from the 333 Joseph Street property. Respondents shall also ensure that public access to the property is precluded during

the RACM removal process through the use of temporary fencing, and that the RACM are disposed of in a properly licensed landfill. All asbestos-related clean-up and removal activities occurring at the facility shall be conducted in full compliance with the applicable asbestos regulations and laws (see OAC Chapter 3745-20 and 40 CFR Part 61, Subpart M). The RACM must be removed from the 333 Joseph Street property and disposed of properly by no later than December 31, 2012.

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by each Respondent to Ohio EPA and shall be signed by Respondent.

VII. 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 Respondents.

VIII. RESERVATION OF RIGHTS

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondents for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondents to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law in the future. Nothing herein shall restrict the rights of Respondents to raise any

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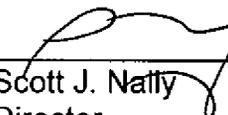
administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

IX. EFFECTIVE DATE

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

IT IS SO ORDERED:

Ohio Environmental Protection Agency



Scott J. Nally
Director

10/20/12

Date