

April 6, 2009

Mr. Ed Kane
Von Vittersan Le Copla USA LLC Delaware Corporation
11350 McCormick Rd., Executive Plaza III, Suite 800
Hunt Valley, MD 21031

RE: Complaint # 09-023

Certified Mail: 7007 2560 0001 3200 4405

Dear Mr. Kane:

On March 17, 2009 Mahoning-Trumbull Air Pollution Control Agency (M-TAPCA) received a complaint concerning the demolition operation conducted at Diversified Resources located at 400 Refractory Drive NW, Warren, Ohio 44483 (Champion Township, Trumbull County).

On March 18, 2009 M-TAPCA visited the site and observed that a portion of the facility had been demolished. The demolition operation conducted at this commercial facility was subject to the National Emission Standards for Hazardous Air Pollutants (NESHAP), 40 CFR, Part 61, Subpart M, Asbestos and Ohio Administrative Code (OAC) 3745-20, Asbestos Emission Control Rules (enclosed).

The Federal and State rules cited above regulate all facility demolitions and certain renovations. A facility is "any institutional, commercial, public, industrial, or residential structure, installation, or building . . . excluding residential buildings having four or fewer dwelling units."

Briefly, the Federal Asbestos NESHAP requires that the affected facility or part of the facility where a demolition or renovation operation is to occur must be thoroughly inspected for asbestos. In Ohio, this inspection must be conducted by an individual certified as an Asbestos Hazard Evaluation Specialist. If the inspection reveals that there is more than 260 linear feet of regulated asbestos containing material (RACM) on pipes, 160 square feet of RACM on facility components, or 35 cubic feet off facility components, then all RACM must be removed from the facility by a licensed abatement contractor prior to demolition or before any activity occurs that would break up RACM or preclude access to it for subsequent removal. Specific work practice, handling, and disposal provisions apply when removing RACM from a facility.

Prior, written notification of the intention to demolish a facility is required whether or not there is any asbestos containing material in the facility. Prior, written notification of the intention to renovate a facility is also required if the trigger levels of RACM will be disturbed in the course of the renovation.

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These Federal and State notification requirements are not met when a local demolition or building permit is issued. Both the facility owner and the demolition contractor share the responsibility for complying with the applicable provisions of the NESHAP and OAC.

Violations of the NESHAP and OAC can result in maximum penalties of up to \$25,000 per day and imprisonment for one year, or both. The US EPA Asbestos Demolition and Renovation Civil Penalty Policy is used to calculate monetary penalties for violations of these rules.

At this point, apparent violations committed in the demolition operation at 400 Refractory Drive :

- 1) Failure to notify of new start date as required in 40 CFR 61.145 (A) (2) and OAC 3745-20-03 (D) (2).

A first time violation of the notification requirement can result in a fine of \$10,000. For substantive violations, depending on the amount of asbestos containing material involved, first time work practice or waste disposal violations can result in fines of \$5,000 to \$15,000 per day.

Please provide the information requested below within five (5) working days after receiving this letter:

- 1) The dates when demolition began and ended for the structure at 400 Refractory Drive.
- 2) Any documents identifying the demolition contractor. These documents may include, but are not limited to, contracts, agreements, purchase orders, letters to proceed, work orders, invoices and permits.
- 3) A completed Ohio EPA Notification of Demolition and Renovation form (enclosed).

Be advised that this Warning Letter does not constitute a waiver of MTAPCA's ability to pursue further enforcement action through Ohio EPA concerning this or other violations or to seek civil penalties as provided in Revised Code Chapter 3704.

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If you have any questions please feel free to contact me at (330) 743-3333 extension 284.

Yours very truly,

William Slanina
Inspector

cc: Lisa Holscher, USEPA
Tom Kalman, OEPA
Jeff Adler, Trumbull County Prosecutor
Kevin Frances, Trumbull County Health Department

copy by regular mail

Enclosures