February 10, 2010

Ohio Mall Co.
The Cafaro Co.
PO Box 422
Florham Park, NJ 07932

RE: Complaint #10-013

Certified Mail: 7009 1680 7329 2988

Dear Mr. Cafaro:

On January 26, 2010 an inspector from the Mahoning-Trumbull Air Pollution Control Agency (M-TAPCA) observed demolition activities at a commercial building located at Ross Industrial Park, in the 800 Block of Albert Street, Youngstown, Ohio 44502 (Mahoning County). At the time of inspection this writer observed David Riley and John Bracaglia, an employee of Riley, removing load supporting steel I-Beams from the above referenced building.

This demolition operation 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.

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 of RACM 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, waste 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 more than the trigger levels of RACM will be disturbed in the course of a renovation.

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.

At this point, apparent violations committed in the demolition operation at the Ross Industrial Park include:

1) Failure to conduct a thorough inspection prior to demolition as required by 40 CFR 61.145 (a) OAC 3745-20-02 (A).

2) Failure to submit prior, written notification of the intention to demolish as required by 40 CFR 61.145 (b) (1), OAC 3745-20-02 (B) (2), and OAC 3745-20-03 (A) (1) and postmark or deliver this notification at least 10 working days before demolition began pursuant to 40 CFR 61.145 (b) (3) (i) and OAC 3745-20-03 (A) (3) (a).

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 violations can result in fines of $5,000 to $15,000 per day.

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.

Be advised that this Warning Letter does not constitute a waiver of M-TAPCA'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.

If you have any questions please feel free to contact me at (330) 743-3333 extension 283.

Sincerely,

Tara Cioffi, RS
Registered Sanitarian

cc: Lisa Holscher, USEPA
Tom Kalman, OEPA
Jeanne Shaffer, Youngstown Housing & Demolition Dept.
Deputy J. Piper, Youngstown Sheriff Dept.
David Riley, R&R Construction