



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

Re: Cafaro
American Mall Property
Allen County
Notice of Violation

November 6, 2012

Mr. Earnest Chance
Cafaro
2445 Belmont Avenue
Youngstown, Ohio 44504

Dear Mr. Chance:

On October 24, 2012, the Ohio Environmental Protection Agency (Ohio EPA) conducted a complaint investigation at the American Mall property, located at 3000 West Elm Street, Lima, Ohio. I represented Ohio EPA, Division of Materials and Waste Management (DMWM) and was accompanied by Josh Clifton with Ohio EPA, Division of Air Pollution Control (DAPC). Cafaro was represented by yourself and Mr. James M. Dobran. This letter will explain the validity of the complaint, the violations found, and what you need to do to correct those violations.

The American Mall property is a large vacant commercial property that is owned by Cafaro. According to you, sometime between 2007 and 2008 the final anchor tenant left the mall and it was closed. At the time that the mall was closed Cafaro hired a liquidator to sell off the items remaining in the mall, items like shelving, light fixtures, and signs were just some of the many things that were sold. Between the liquidation, which occurred around 2008 the mall has been vacant. However, over that time period it has been a significant target for vandals and has been broken into and vandalized many times.

The initial complaint was received by Ohio EPA on October 18, 2012. The complainant was received through Ohio EPA, DAPC regarding asbestos issues and also alleged the mismanagement of waste lamps. On October 19, 2012, in an attempt to make contact with someone who could grant access to the building, Josh Clifton and I observed a significant amount of broken lamps through several of the windows at various ends of the building, further substantiating the validity of the complaint. This letter will specifically address the waste lamp and other hazardous waste related issues, the asbestos issues will be addressed under separate letter from DAPC.

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During the October 24, 2012 investigation various areas of the interior of the mall that could be accessed were observed. It should be noted that at the time the building did not have power and no other form of lighting was available beyond natural lighting, therefore, some areas of the mall such as the theater could not be observed. During the investigation, the interior appeared to be in disrepair with water leaking from the ceiling and various forms of construction and demolition debris (C&DD) throughout the interior. According to you the majority of the C&DD was generated through an attempt to make the building more secure for potential buyer showings, as well as damage from the leaking roof and the liquidation of some of the larger fixtures. A significant amount of whole and broken fluorescent lamps were observed scattered throughout the mall. Some areas, such as the east end of the mall near the former Value City and a small storefront that was located near the former Goodwill contained a significant amount of broken lamps. Whole and broken lamps were observed in the piles of C&DD that had been staged at various areas throughout the mall. You indicated that the liquidation company had been responsible for selling off the lighting fixtures and that they or people purchasing the fixtures had likely removed and stockpiled the lamps in various locations throughout the mall during the 2008 liquidation. Between 2008 and present, through the numerous acts of vandalism many lamps had been crushed and broken throughout areas of the mall. When questioned, you indicated that you were aware of Ohio's regulations regarding waste lamps and, waste lamps at Cafaro's other properties, are stored and managed appropriately.

During the complaint investigation, I found the following violation of Ohio's hazardous waste laws:

1. Ohio Administrative Code (OAC) Rule 3745-52-11

A person, who generates waste, as defined in OAC Rule 3745-51-02, must determine if that waste is a hazardous waste.

Cafaro is in violation of OAC Rule 3745-52-11 for not determining if whole or broken florescent lamps are hazardous. Spent florescent lamps are considered a universal hazardous waste in the state of Ohio and either must be managed as such, or must be proven to be a nonhazardous waste through sampling. Broken lamps, which when intact, are managed as a universal waste, must either be managed as a hazardous waste, or must be proven nonhazardous waste through sampling. The whole lamps and broken lamps observed during the inspection were not being managed as a universal waste or a hazardous waste, additionally no sampling data was available indicating that the whole or broken lamps were nonhazardous.

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To abate this violation Cafaro must properly evaluate or manage all spent lamps on-site as a universal waste. Additionally, Cafaro must determine if the broken florescent lamps need to be managed as hazardous or nonhazardous waste. Ohio EPA is requesting a response from Cafaro, providing sample results and how Cafaro intends to manage each waste stream, along with a timeframe for when these materials will be managed.

Area of Concern:

Additionally, during the inspection several one gallon paint containers and cleaners were observed throughout the mall. It should be noted that if these materials are determined to be waste, they must be characterized and properly managed prior to disposal.

Ohio EPA will issue an EPA ID number to track our inspection activity. Cafaro cannot use this tracking number for manifesting hazardous waste shipments. If Cafaro wants to use an EPA ID number for manifesting and other hazardous waste, used oil, or universal waste activities, you must complete and submit a Notification of Regulated Activity form (EPA form 9029, revised 11/2002) to Ohio EPA. You can obtain this form by contacting DMWM Central Office, at (614) 644-2977 or on Ohio EPA's website at www.epa.ohio.gov. This form can also be submitted electronically.

For your convenience I have included copies of: Fluorescent Lamps: What You Should Know, and Identifying Your Hazardous Waste. I recommend that you review these document and contact me if you have any questions.

Cafaro needs to take the necessary measures to return to compliance with Ohio's environmental laws. Additionally, Cafaro must provide information that documents either, how the materials under the "area of concern" paragraph will be used and where, or information on waste evaluation and how it will be disposed. Cafaro is requested to provide information documenting compliance within **14 days** of receipt of this letter.

Please contact me prior to completing any sampling activities, so that I may have the opportunity to provide input regarding sampling plans and/or observe the sampling.

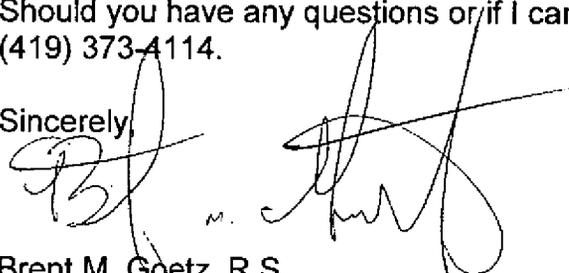
All correspondence and documentation can be sent to my attention at Ohio EPA NWDO or via email to brent.goetz@epa.ohio.gov.

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Please be advised that the violation cited above will continue until the violation has been properly abated. Failure to comply with Chapter 3734 of the Ohio Revised Code and rules promulgated thereunder may result in a civil penalty of up to \$10,000 per day for each violation. It is imperative that you return to compliance. If circumstances delay the abatement of the violation, Cafaro is requested to submit written correspondence of steps that will be taken by date certain to attain compliance.

Should you have any questions or if I can be of assistance, please contact me at (419) 373-4114.

Sincerely,



Brent M. Goetz, R.S.
Division of Materials and Waste Management

/cg

Enclosures

pc: Cindy Lohrbach, DMWM, NWDO
Colleen Weaver, DMWM, NWDO

ec: Josh Clifton, NWDO
Colleen Weaver, DMWM, NWDO

Notice:

Ohio's EPA's failure to list specific deficiencies or violations in this letter does not relieve your company from having to comply with all applicable regulations.