

OHIO E.P.A.

JAN 31 2013

ENTERED DIRECTOR'S JOURNAL

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Compass Family and	:	
Community Services	:	<u>Director's Final Findings</u>
284 Broadway Avenue	:	<u>and Orders</u>
Youngstown, Ohio 44504	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Compass Family and Community Services ("Respondent") 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 Respondent and successors in interest liable under Ohio law. No change in ownership of the Respondent or of the property (hereinafter defined) shall in any way alter Respondent's 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 has determined the following findings:

1. Respondent is a mental health care provider, and owns the commercial structure located at 278 Broadway Avenue ("Facility") in Youngstown, Mahoning County, Ohio.

2. The Kreidler Construction Company ("Kreidler") is a general contracting company, with an office located at 9548 South Avenue, Poland, Mahoning County, Ohio, and is incorporated as a business with the Ohio Secretary of State.

3. Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") is Ohio EPA's contractual representative in Mahoning County for the administration of Ohio Administrative Code ("OAC") Chapter 3745-20 ("Asbestos Emission Control Standards").

4. "Facility" as defined by OAC Rule 3745-20-01(B)(18) means, in part, any institutional, commercial, public, industrial or residential structure, installation, or building, excluding residential structures having four or fewer dwelling units.

5. "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 renovated or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation or both.

6. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-20 was adopted by Ohio EPA pursuant to ORC Chapter 3704.

7. OAC Rule 3745-20-02(A) states, in part, that each owner or operator of any renovation operation shall have the affected Facility where a renovation operation will occur thoroughly inspected by a certified asbestos hazard evaluation specialist, prior to commencement of the renovation, for the presence of asbestos, including Category I and Category II nonfriable asbestos-containing material ("ACM"), as defined in OAC Rules 3745-20-01(B)(9) and 3745-20-01(B)(10), in order to determine the applicability of OAC Rules 3745-20-03 and 3745-20-04.

8. OAC Rule 3745-20-03(A) states, in part, that each owner or operator of a renovation operation involving at least one of the combined amounts as specified in OAC Rule 3745-20-02(B)(4), of regulated asbestos-containing material ("RACM") as defined in OAC Rule 3745-20-01(B)(42), shall provide the Director of Ohio EPA with a written notice of intention to renovate within ten days prior to beginning renovation.

9. OAC Rule 3745-20-04(A)(1) states, in part, that each owner or operator of a renovation operation involving at least one of the combined amounts of RACM specified in OAC Rule 3745-20-02(B)(4) shall remove all RACM from a Facility being renovated before any activity begins that would disturb the materials or preclude access to the materials for subsequent removal.

10. From January 11 through February 9, 2010, Kreidler, contracted by Respondent, engaged in the renovation of the Facility. During the renovation, suspect ACM in the form of a pipe labeled "asbestos containing" was discovered at the Facility. After being informed of the discovery by Respondent, Kreidler called an asbestos hazard evaluation specialist who took three samples of the ACM (one from pipe wrap and two from the drywall) for laboratory analysis for the presence of asbestos. The lab results revealed the samples contained regulated asbestos at a level greater than 1%.

11. On February 11, 2010, Respondent met with M-TAPCA inspectors regarding the ACM discovered at the Facility during the aforementioned renovation as well as abatement of the remaining ACM. At the meeting, Respondent stated that the majority of the renovation had been completed and one dumpster of material (drywall, plaster, tile and miscellaneous Facility components) had been disposed. Being that there were five rooms of drywall and plaster, both parties agreed that the amount of RACM, as defined in OAC Rule 3745-20-01(B)(42), would be above the threshold levels for piping and other Facility components for the applicability of OAC Rules 3745-20-03 and 3745-20-04. Therefore, M-TAPCA inspectors requested that Respondent submit an estimate of the amount of ACM that was in the renovated area, conduct a survey for asbestos, and submit a separate 10-day notification to M-TAPCA for the remaining renovation.

12. Since this project constituted a "renovation," as defined in OAC Rule 3745-20-01(B)(44), and exceeded one or more of the threshold levels in OAC Rule 3745-20-02(B)(4), this project was subject to the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05.

13. Respondent's failure to submit a complete notification form to M-TAPCA, and failure to perform an asbestos inspection prior to beginning the renovation, constituted violations of OAC Rules 3745-20-03(A) and 3745-20-02(A), respectively. These violations also constituted violations of ORC § 3704.05(G).

14. Respondent failed to remove all RACM from the Facility being renovated before beginning activities that broke up, dislodged, or similarly disturbed the materials in violation of OAC Rule 3745-20-04(A)(1).

15. Respondent failed to deposit asbestos-containing waste materials as soon as practical at an appropriate waste disposal site or RACM conversion site, in violation of OAC Rule 3745-20-05(A).

16. On February 24, 2010, and February 25, 2010, M-TAPCA sent notice of violation ("NOV") letters to Respondent and Kreidler. The NOV's, in part, cited Respondent and Kreidler for the violations of the aforementioned OAC rules and

requested Respondent and Kreidler to submit to M-TAPCA, the following information and documents within five days of receipt of the letter:

- i. the date(s) the renovation began and ended;
- ii. any documents identifying the renovation contractor, such as contract agreements, and purchase orders; and
- iii. any document that indicates that the Facility had been inspected for asbestos prior to the commencement of renovation.

17. On March 4, 2010, Respondent hand delivered to M-TAPCA a written response to the NOV. The response stated that the renovation started on January 11, 2010, but was halted on February 9, 2010, when confirmation of the presence of asbestos was obtained. The amounts of ACM were not identified because no pre-renovation inspection was done. Included in the response was a copy of the contract agreement that was requested.

18. On March 4, 2010, M-TAPCA met with Respondent and an asbestos hazardous evaluation specialist for a site inspection and update on the status of the renovation project. The specialist indicated that a company had been hired to conduct an asbestos survey of the Facility which would include the assessment of previously removed asbestos, any future removal needs, air sampling, clean-up activities and disposal of any remaining ACM.

19. On March 4, 2010, M-TAPCA received from Kreidler, a written response to the NOV. The response stated that the renovation started on January 11, 2010, and ended on February 9, 2010. The response referenced Section 1.5D of the contract agreement, which Kreidler included a copy of, as requested in the NOV, and which indicated that hazardous materials were to be removed by the owner prior to renovation. The amounts of ACM were not identified because no pre-renovation inspection was done.

20. On April 2, 2010, M-TAPCA received the first 10-day notification form enclosed with a letter dated March 30, 2010, from Respondent. The notification disclosed that 1,162 square feet of RACM was removed from the Facility between January 11, 2010 and February 9, 2010. The letter indicated that the date of the removal of the remaining ACM would be specified in a second notification as soon as arrangements to remove the remaining RACM were concluded with a qualified asbestos removal contractor.

21. On April 24, 2010, a second notice was received for the remaining renovation work. Five hundred and eighty-one (581) square feet was estimated to have

been improperly removed and later revised to 840 square feet and 35 cubic feet. A survey conducted by Professional Service Industries, Inc. was also submitted.

22. From May 4, 2011, through May 14, 2011, Environmental Protection Systems removed the remaining ACM from the Facility. No RACM was removed improperly at that time. There was no final inspection by M-TAPCA, but the final air testing clearance levels done by Ohio Department of Health indicated that the building was safe to enter.

23. 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 benefits to the people of the State to be derived from such compliance.

## **V. ORDERS**

The Director of Ohio EPA hereby issues the following Orders:

1. Pursuant to ORC § 3704.06, Respondent is assessed a civil penalty in the amount of thirteen thousand five hundred dollars (\$13,500) in settlement of Ohio EPA's claims for civil penalties. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for ten thousand eight hundred dollars (\$10,800). The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondent, to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

2. In lieu of paying the remaining two thousand seven hundred dollars (\$2,700) of the civil penalty, Respondent shall, within thirty (30) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of \$2,700 to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$2,700. The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of each of the above checks shall be sent to Bruce Weinberg, Manager, Enforcement Section, or his successor, at the following address:

Ohio EPA  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$2,700 of the civil penalty in accordance with the procedures in Order 1.

#### **VI. TERMINATION**

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks required by Section V of these Orders.

#### **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the operations of Respondent.

#### **VIII. 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 Respondent.

#### **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties hereto. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

#### **X. NOTICE**

All documents required to be submitted by Respondent pursuant to these Orders shall be addressed to:

Mahoning-Trumbull Air Pollution Control Agency  
345 Oak Hill Ave., Suite 200  
Youngstown, Ohio 44502

Attention: Tara Cioffi, Administrator

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: Bruce Weinberg

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

#### **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent each reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

#### **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consents to the issuance of these Orders and agrees to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waives the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

#### **XIII. EFFECTIVE DATE**

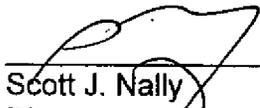
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

**XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**ORDERED AND AGREED:**

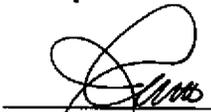
**Ohio Environmental Protection Agency**

  
\_\_\_\_\_  
Scott J. Nally  
Director

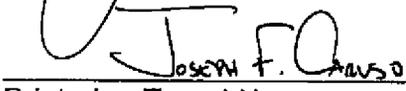
1/29/13  
\_\_\_\_\_  
Date

**AGREED:**

**Compass Family and Community Services**

  
\_\_\_\_\_  
Signature

1/10/13  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Printed or Typed Name

President + CEO  
\_\_\_\_\_  
Title