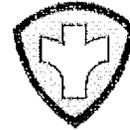


AIR POLLUTION CONTROL DIVISION

OHIO EPA AGENCY 15 • APC CONTRACTUAL REPRESENTATIVE SERVING ALL OF STARK COUNTY



Public Health
Prevent. Promote. Protect.

TERRI A. DZIENIS
APCD ADMINISTRATOR

JAMES M. ADAMS, RS, MPH
HEALTH COMMISSIONER

CANTON CITY HEALTH DEPARTMENT

420 MARKET AVENUE NORTH
CANTON, OHIO 44702-1544
PHONE: (330) 489-3385 • FAX: (330) 489-3335
WEB: WWW.CANTONHEALTH.ORG

CERTIFIED MAIL

January 28, 2013

Canton Palace Theatre Association
605 Market Avenue North
Canton, Ohio 44702

Motter and Meadows Architects
600 Market Avenue North
Canton, Ohio 44702

Norman Eckinger, Inc.
2500 Krisko Circle SW
Canton, Ohio 44706

**Re: NOTICE OF VIOLATION of Ohio EPA Asbestos Violations
RESOLUTION OF VIOLATION of Ohio EPA Asbestos Violations
Renovation without a proper asbestos inspection, First Violation
Palace Theatre, 605 Market Avenue North, Canton, Ohio 44702**

Dear Owners and Operators:

During routine surveillance on December 21, 2012, Canton APCD observed evidence of an active renovation project at the Palace Theatre building located at 605 Market Avenue North, Canton, Ohio (subject building). A roll-off dumpster containing apparent drywall and ceramic tile fragments was observed along the south side of the building (6th Street NW). In addition, APCD noticed a Norman Eckinger vehicle parked adjacent to the dumpster. Per the Stark County Auditor, the subject building is owned by Canton Palace Theatre Association. During subsequent correspondences, it has become clear that Motter and Meadows Architects is directing the renovation project and Norman Eckinger performed the physical work.

During an earlier request for information letter sent to you on January 4, 2013, Canton APCD requested additional information in order to determine the compliance status of the renovation project. Mr. David Patterson, Architect with Motter and Meadows Architects responded with details of the renovation project in a letter dated January 16, 2013.

According to Mr. Patterson, samples of the existing building plaster removed during the current renovation project were obtained after receipt of the Request for Information Letter (January 4, 2013). Motter and Meadows Architects also provided Canton APCD with copies of a *Report of Limited Phase II Environmental Site Assessment (ESA)* completed by Vadose Research, Inc. and dated December 24, 1996, and a *Limited Asbestos Survey of Wall Plaster Debris* completed by Environmental Support Network, Inc. (ESN) and dated January 15, 2013. A summary of the information obtained and reviewed by Canton APCD is included below.

According to Motter and Meadows Inc., the current renovation project was limited to renovation of the restrooms, replacement of the roof, and painting. Work performed in the current renovation project included removal and replacement of the wall tile, toilet partitions, water closets, lavatories, and plaster ceilings in lower level restrooms. Mr. Patterson indicated that very small amounts of plaster were affected in the work and no existing domestic pipe insulation was present. Motter and Meadows Inc. indicated in their letter on January 16, 2013 that no additional renovation work was to be performed which would disturb building materials. Based upon review of the *Limited Asbestos Survey of Wall Plaster Debris* completed by ESN, two samples of construction debris (which had been made friable during renovation work) were collected for asbestos analysis. The samples were taken from a debris pile which was generated during the removal of the walls within the women's restrooms. The analytical report found "no asbestos detected" in the two samples collected from the debris pile.

Based upon review of the *Limited Phase II ESA* report it appears that The Canton Palace Theatre Association did have a limited asbestos survey completed in December 1996. Building materials sampled at the time included plaster (from the main auditorium, lobbies, and dressing room), fire curtain, roof of marquee canopy, stage house roof, pipe wrap, vinyl flooring and mastic, and electrical wiring. The *Limited Phase II ESA* report clearly states that the number of samples collected did not meet the requirements of 40 CFR Part 763.86 and therefore, although the analytical results of several materials was "no asbestos detected", these material cannot be considered non-asbestos containing material (ACM). In addition, the *Limited Phase II ESA* did not mention building materials in the restrooms as a sampled material. Therefore, since the current renovation project began and disturbed building materials, including plaster, in which the asbestos content had not been verified, the owner and operators of the project have violated the asbestos regulations.

Below is a summary of the findings, violations, and requested actions that need to be addressed as a result of the investigation completed by the Canton City Health Department, Air Pollution Control Division.

Finding 1:

On or before December 21, 2012, renovation activities were being conducted without previous completion of a thorough inspection of the building to determine the presence or absence of asbestos-containing materials (asbestos survey).

Violation of:

Since an asbestos survey was not completed prior to renovation activities, Canton Palace Theatre Association (owner), Motter and Meadows Architects, and Norman Eckinger, Inc. (operators) are in violation of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), 40 Code of Federal Regulations (CFR) Part 61, Subpart M, Section 61.145, which states:

"prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos"

Due to failure to thoroughly inspect the facility prior to the start of renovation activities, Canton Palace Theatre Association (owner), Motter and Meadows Architects, and Norman Eckinger, Inc. (operators) are also in violation of Ohio Administrative Code (OAC) 3745-20-02(A) (which is attached for your review). This regulation states:

"each owner or operator of any demolition or renovation operation shall have the affected facility or part of the facility where a demolition or renovation operation will occur thoroughly inspected by a certified asbestos hazard evaluation specialist, in accordance with paragraph (C) of rule 3701-34-02 of the Administrative Code prior to the commencement of the demolition or renovation for the presence of asbestos, including category I and category II nonfriable asbestos-containing material."

Since Canton Palace Theatre Association (owner), Motter and Meadows Architects, and Norman Eckinger, Inc. (operators) violated OAC 3745-20-02(A), then they are also in violation of Ohio Revised Code (ORC) 3704.05(G), which states:

"No person shall violate any order, rule, or determination of the director issued, adopted, or made under this chapter."

Requested Actions and Resolution of Violation:

Your submission of an asbestos inspection report for the removed plaster (completed by ESN, dated January 15, 2013), satisfies Canton APCD's requested action(s). The violations noted above are now considered resolved.

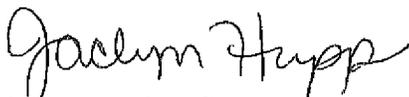
Please note that the Ohio EPA has the authority to seek civil penalties as provided in section 3704.06 of the Ohio Revised Code (ORC). Although the above-listed violations are resolved, this does preclude the Ohio EPA from seeking civil penalties pursuant to ORC section 3704.06. The decision about whether to pursue or decline to pursue such penalties regarding this matter is dependent on several factors, one of which is the company's future compliance with applicable Ohio EPA requirements. The following requested actions shall be completed to ensure future compliance:

1. The Canton Palace Theatre Association (owner), Motter and Meadows Architects, and Norman Eckinger, Inc. (operators) shall follow all federal, state, and local asbestos regulations during any future renovation and/or demolition projects.
2. In the event of future renovation work to be completed at the subject building, Canton Palace Theatre Association (owner), Motter and Meadows Architects, and Norman Eckinger, Inc. (operators), shall contact a certified asbestos hazard evaluation specialist to thoroughly inspect any building materials that will be disturbed. It should be noted, that although earlier samples were collected during a *Limited Phase II ESA* in 1996, the appropriate number of samples was not collected and therefore, the results of these analysis cannot be used to verify that a building material is free of asbestos.

Since this is a first time violation, civil penalties will not be pursued at this time. However, please note that as requested above (#1), Canton Palace Theatre Association, Motter and Meadows Architects, and Norman Eckinger, Inc. shall follow all federal, state and local asbestos regulations during any future renovation and/or demolition projects and repeat violations conducted will likely result in penalties.

If you have any questions, or want to know the requirements for future projects, please contact me at 330-489-3385 or via email to jhupp@cantonhealth.org.

Sincerely,



Jaelyn Hupp, AHES
Air Pollution Control Monitoring and Inspections Technician
Canton City Health Department