



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

CERTIFIED MAIL # 91 7108 2133 3932 1838 0570

April 11, 2013

Mr. Ben Lehner
Owner
B&K Lehner Excavating
2356 Troy Road
Delaware, OH 43015

Re: Notice of Violation – No Notification of Demolition submitted prior to demolition of house at 116 North Sandusky Street in Delaware, Ohio.

Dear Mr. Lehner:

On March 8, 2013, Ohio EPA, Central District Office, Division of Air Pollution Control (CDO) received a complaint about demolition of a house at 116 North Sandusky Street in Delaware Ohio. An inspector from CDO investigated the complaint and discovered that the house had been partially demolished. Because this house was being demolished as part of a multi structure demolition program, it does not qualify for the Residential Exempt Structure exemption, Ohio Administrative Code rule (OAC) 3745-20-01(45). Due to the fact that more than one structure is being demolished, the demolition activity is classified as demolition of an Installation (OAC rule 3745-20-01(28)). An Installation is also considered a Facility and as such is subject to all applicable requirements of OAC rule 3745-20 and the federal National Emission Standards for Hazardous Air Pollutants.

During CDO's investigation, it was noted that demolition activities had occurred without the use of water or any other dust suppressant during demolition. CDO also learned that an inspector from Moving Ohio Forward ordered the demolition activity to stop until such time as water was available to use during the remainder of the demolition. Please note that a violation of OAC 3745-15-07(A) (***Air pollution nuisances prohibited***) may have occurred. To avoid possible violation of OAC 3745-15-07(A), please apply water in sufficient quantities to prevent dust in all future demolitions performed.

Finding

During the investigation, the CDO inspector noted that no *Ohio Environmental Protection Agency Notification of Demolition and Renovation* form had been submitted to CDO prior to the demolition activity. Because the demolition of a Facility occurred without submitting required notification, a violation of OAC 3745-20-03 has occurred. To be in compliance with Ohio Administrative Code rule 3745-20-03, proper notification must be submitted prior to demolition.

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Violation

OAC rule 3745-20-03 contains content and submittal deadlines pertaining to demolition of facilities. Failure to observe these requirements is a violation of OAC rule 3745-20-03.

Failing to submit the required notification form prior to demolition is considered a violation of OAC rule 3745-20-03. Violation of OAC rule 3745-20-03 is also considered a 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 Action

Ohio EPA requests that B&K Lehner Excavating assure that proper notification of demolition or renovation has been submitted, prior to demolition, for all future demolitions of regulated structures. Ohio EPA requests that B&K Lehner Excavating comply with all applicable requirements of OAC rule 3745-20. Ohio EPA also requests that B&K Lehner Excavating take steps to prevent air pollution nuisances by applying water to prevent dust in future demolitions.

Please be aware that Ohio Environmental Protection Agency has the authority to seek civil penalties as provided in section 3704.06 of the ORC. Violation of Ohio's Asbestos Control Regulations may subject the owner, operator, and removal or renovation, or demolition contractor to civil penalties of up to \$25,000 dollars per day of violation. This letter or information submitted pursuant to this letter does not constitute a waiver of Ohio EPA's authority to seek civil penalties as provided in the ORC. The decision on whether or not to seek such penalties will be made by Ohio Environmental Protection Agency at a later date.

If you have any questions regarding this matter, please contact Richard Fowler of my staff at (614) 995-0671.

Sincerely,



Kelly Toth
Air Unit Manager
Division of Air Pollution Control
Central District Office

c: John Paulian DAPC/CO
Frederick Jones DAPC/CO
Mark Needham, Asbestos Program Administrator ODH/Asbestos Program
Richard Fowler, DAPC/CDO
J.D. Jones, Moving Ohio Forward