



Environmental
Protection Agency

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

CERTIFIED MAIL # 91 7108 2133 3932 4449 2414

March 11, 2011

Mr. Sean Fowler
Code Enforcement Officer
Code Enforcement Division
City of Lancaster
P.O. Box 2202
Lancaster OH 43130

**Re: Notice of Violation – Failure to Submit Proper Notification for Asbestos Abatement
at 110 Clark and 838 South Broad Streets**

Dear Mr. Fowler:

On November 24, 2010 the Ohio Environmental Protection Agency's Division of Air Pollution Control Central Office received demolition notifications for residential structures at 838 South Broad and 110 Clark Streets in Lancaster, Ohio. These notifications were postmarked November 15, 2010. These notifications were forwarded to the Ohio Environmental Protection Agency's Central District Office (CDO).

The two properties are adjacent to one another and were under the control of the City of Lancaster. The proximity and common control make the structures an "Installation" as defined by Ohio Administrative Code (OAC) rule 3745-20-01(B)(28). CDO contacted the listed contact for the City of Lancaster, Mr. Sean Fowler. Mr. Fowler was questioned about the notifications and CDO learned that information concerning the presence of asbestos and abatement activities, at the residences, was incorrect. Specifically, asbestos-containing materials were found, yet the notification indicated none was present. CDO requested that Mr. Fowler submit revised demolition notifications and surveys for the residences.

On November 30, 2010 CDO received from Mr. Fowler revised demolition notifications and asbestos surveys which indicated that Industrial Insulation Specialists (IIS) had found asbestos-containing materials during a survey of the properties and recommended abatement prior to demolition. Both revised notifications indicated that IIS performed asbestos removal activities at both residences between November 16 and November 23, 2010. Please note that the earliest abatement activities could have begun in accordance with OAC rule 3745-20-03(A)(3)(a) was November 2, 2010. *Typo should be 27 see next page*

On December 2, 2010, Ohio EPA inspected both residences. The inspector noted that it appeared as if abatement activities had already occurred, and was unable to find any asbestos containing materials documented in IIS's surveys of the structures.

Central District Office
50 West Town Street, Suite 700
P.O. Box 1049
Columbus, OH 43216-1049

614 | 728 3778
614 | 728 3898 (fax)
www.epa.ohio.gov

OAC rule 3745-20-01(B)(39)(a) defines "Owner or Operator" ... as *any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation, or both*. Due to the fact that the City of Lancaster controls the demolition and abatement activities at the aforementioned properties, it is considered an Operator. Because IIS is listed as a Removal Contractor on the revised demolition notification and performed an asbestos survey and asbestos abatement activities to facilitate the demolition of the Installation, IIS is an Operator under OAC Rule 3745-20-01(B)(39)(a). As an operator, both the City of Lancaster and IIS are required to comply with asbestos rules and regulations, including, but not limited to OAC 3745-20-02 through OAC 3745-20-05.

1. **Finding**

On November 24, CDO received demolition notifications for 838 South Broad and 110 Clark Streets. CDO then contacted the City of Lancaster concerning the demolition notifications, and learned that the demolition notifications were inaccurate and requested that corrected revisions be submitted. On November 30, CDO received the revised notifications. Reviewing the revised notifications, CDO learned that asbestos-containing materials were present and were removed without proper notification and observance of the required waiting period. Please note that OAC rule 3745-20-03 (A) requires:

"(A) Each owner or operator to whom this rule applies shall:

- (1) Provide the director of Ohio EPA with written notice of intention to demolish or renovate...*
- (3) Postmark or deliver the notice to the Ohio EPA field office having jurisdiction in the county where the demolition or renovation is to occur as follows:*
 - (a) At least ten working days before the beginning of any demolition operation, asbestos stripping or removal work, or any other activity including salvage activities and preparations that break up, dislodge or similarly disturb asbestos material if the operation is a demolition or renovation operation subject to this rule;"*

Please also note that the earliest abatement activities could have begun in accordance with OAC rule 3745-20-03(A)(3)(a) was November 27, 2010. Mr. Sean Fowler confirmed that abatement activities had occurred and revised the notifications to indicate that the asbestos was removed.

Violation

Failure to submit proper notification for abatement activities and observe the required 10 working day waiting period before beginning abatement is considered a violation of OAC rule 3745-20-03(A)

Violation of OAC rule 3745-20-03(A) 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 in the future the City of Lancaster and/or IIS submit a notice of intent to abate asbestos containing materials at least 10 working days prior to disturbing, and/or removing any asbestos containing material from a facility that is subject to the asbestos rules and regulations detailed in OAC chapter 3745-20.

2. **Finding**

The City of Lancaster signed and submitted original demolition notifications that did not indicate the presence of asbestos-containing materials, did not indicate abatement activities, and did not include amounts of asbestos-containing materials present and removed. The City later confirmed that asbestos-containing materials were present, had been abated, and provided the amounts present and removed.

Requested Action

Ohio EPA requests that in the future the City of Lancaster consult with their asbestos contractor/consultant and review the accuracy and completeness of their Notification of Demolition and Renovation forms submitted to the Ohio EPA. In doing so, the City of Lancaster can reduce the likelihood that they will find themselves in non-compliance with Federal and State laws pertaining to the demolition or abatement, and handling of regulated asbestos-containing materials. A review of the forms will also help the City of Lancaster and/or its signatory agent to avoid violating laws that require submissions to be true, accurate, and complete.

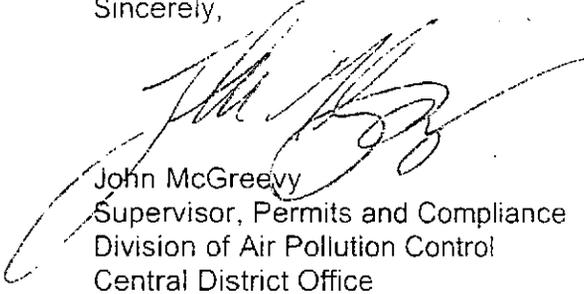
Please be aware that Ohio Environmental Protection Agency has the authority to seek civil penalties as provided in section 3704.06 of the Ohio Revised Code (ORC). Violation of Ohio's Asbestos Control Regulations may subject the operator and removal, renovation, or demolition contractor to civil penalties 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

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Code Enforcement Officer
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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 Richard Fowler of my staff at (614) 995-0671.

Sincerely,



John McGreevy
Supervisor, Permits and Compliance
Division of Air Pollution Control
Central District Office

- c: Adam Ward, Manager, DAPC/CDO
- Kelly Toth, Supervisor, Permits and Compliance DAPC/CDO
- Steve Lowry, DAPC/SEDO
- Mark Needham Supervisor, Environmental Abatement Program/ODH
- John Paulian, DAPC/CO
- Tom Buchan, DAPC/CO
- Richard Fowler, DAPC/CDO