

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.

MAY 30 2013

ENTERED DIRECTOR'S JOURNAL

In the Matter of:

Mr. Stuart Lictor, Owner :  
Mansfield Business Park, LLC : Director's Final Findings  
3623 Brecksville Road : and Orders  
Richfield, Ohio 44286 :

And

Ohio Realty Advisors :  
Mansfield Business Park, LLC :  
4060 Kinross Lakes Parkway :  
Suite 200 :  
Richfield, Ohio 44286 :

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to Mr. Stuart Lictor (property owner) and Ohio Realty Advisors (operator) ("Respondents") 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 Respondents and heirs and successors in interest liable under Ohio law. No change in ownership of the property (as hereinafter defined) shall in any way alter Respondents' 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 makes the following findings:

1. "Facility", as defined by OAC Rule 3745-20-01(B)(18), means any institutional, commercial, public, industrial or residential structure, installation, or building (including any structure, installation, or building containing condominiums or

individual dwelling units operated as a residential cooperative, or any operation involving the renovation/demolition of multiple residential structures identified by an owner or operator within a scheduled period of time; any ship; and any active or inactive waste disposal site. For purposes of this definition, any structure, installation or building that contains a loft used as a dwelling is not considered a residential structure, installation or building. Any structure, installation or building that was previously subject to this rule due to its prior use or function is not excluded, regardless of its current use or function.

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

3. OAC Rule 3745-20-02(A) requires that each owner or operator of a demolition or renovation operation, prior to the commencement of such operations, have the affected facility or portion of a facility thoroughly inspected by a certified asbestos hazard evaluation specialist for the presence of asbestos-containing material, including Category I and Category II non-friable asbestos-containing material as defined in OAC Rule 3745-20-01(B)(9) and (B)(10).

4. Pursuant to OAC Rule 3745-20-02(B)(1), all the requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05 apply to the owner and operator of a facility being demolished if the combined amount of regulated friable asbestos-containing material to be stripped, removed, dislodged, cut, drilled, or similarly disturbed in such facility is at least 260 linear feet on pipes, at least 160 square feet on other facility components, or at least 35 cubic feet off facility components where the length or area could not be measured previously.

5. OAC Rule 3745-20-03(A)(3) states, in part, that each owner or operator of a subject demolition operation shall provide the Director of Ohio EPA with a written notice of intention to demolish a facility by not later than 10 working days prior to beginning demolition.

6. OAC Rule 3745-20-04(A)(1) states, in part, that each owner or operator of a subject demolition operation shall remove all regulated asbestos-containing material from such facility before any activity begins that would break up, dislodge, or similarly disturb the materials or preclude access to the materials for subsequent removal.

7. OAC Rule 3745-20-04(B)(1) requires that no regulated asbestos-containing material be stripped, removed, or otherwise handled or disturbed at a subject facility unless at least one authorized representative, trained in the provisions of OAC Chapter 3745-20 and the means of complying with them, is present at the location of

operation.

8. OAC Rule 3745-20-05(B)(2) requires, in part, each owner or operator of any demolition operation to whom this rule applies and where asbestos was not removed prior to demolition to discharge no visible emissions to the outside air and to keep asbestos-containing waste material adequately wet at all times during and after demolition, and during handling, loading, transporting and disposal at an active waste disposal site.

9. ORC § 3704.05(G) prohibits any person from violating any OAC rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. OAC Chapter 3745-20 was adopted by the Director pursuant to ORC Chapter 3704.

10. Mr. Stuart Lictor owns the property located at 245 East 4<sup>th</sup> Street, Mansfield, Ohio (Richland County). The property was the location of the former Westinghouse manufacturing facility, and is now the location of the Mansfield Business Park, LLC. Mansfield Business Park, LLC is managed and/or operated by Ohio Reality Advisors. Mr. Mark Miley represents Ohio Reality Advisors for issues associated with Mansfield Business Park, LLC.

11. The former Westinghouse manufacturing facility included, among other things, numerous buildings. Some of the buildings contained regulated asbestos-containing materials ("RACM"). Asbestos surveys were conducted for the buildings located at the former Westinghouse facility and notifications for RACM removal by licensed asbestos abatement contractors were submitted to the Ohio EPA, Northwest District Office ("NWDO") in 2010.

12. On February 9, 2011, representatives from the Ohio EPA, NWDO inspected the asbestos abatement and demolition activities being performed at the former Westinghouse facility. Statewide Recycling and Recovery was the demolition contractor on site during NWDO's inspection. As a result of the inspection, NWDO discovered that some of the asbestos surveys conducted for the former Westinghouse facility buildings were not thorough in that they did not accurately quantify the amount and type of asbestos found on each floor of the buildings. The inspection also determined that the timeframes for the asbestos abatement work and subsequent demolition specified in one of the notifications for the project should have been revised. In addition, the inspection found an open bag of dry, asbestos-containing pipe wrap that the abatement contractor had hastily contained after discovering that vandals had striped the wrap from recyclable materials in one of the buildings (Building E).

On February 10, 2011, the Ohio EPA, NWDO discussed the issues discovered during the inspection with representatives from Statewide Recycling and Recovery and the Afco Group. The Afco Group is the primary asbestos abatement contractor for the

project. The Afcose Group acknowledged the problems related to the asbestos surveys and notification and promptly addressed the open bag of dry, asbestos-containing pipe wrap. Asbestos abatement and demolition activities on the buildings from the former Westinghouse facility continued throughout 2011.

13. In October of 2012, a representative from the Richland County Health Department contacted the Ohio EPA, NWDO regarding potential health and safety concerns about the demolition debris from the former Westinghouse facility that was still present at the Mansfield Business Park property. Observations by the Health Department indicated that there may be friable asbestos-containing materials in the demolition debris, and they requested that the Ohio EPA, NWDO conduct an inspection and collect samples of the suspect materials, if deemed appropriate.

14. On November 1, 2012, the Ohio EPA, NWDO conducted an inspection of the demolition debris present at the Mansfield Business Park property. Samples of the suspect demolition debris (transite and thermal system insulation) from the property were collected by Ohio EPA to check for asbestos. On November 8, 2012, the Ohio EPA, NWDO received the results from the certified laboratory that analyzed the samples. The results indicated that all but one of the samples from the demolition debris piles did contain asbestos. Ohio Realty Advisors was notified, in a conference call, that (1) the debris piles did contain asbestos; (2) because the debris piles did contain asbestos, the site would have to be re-surveyed; and (3) until the asbestos-containing materials are properly disposed of, the debris piles would have to be kept wet.

15. On November 12, 2012, Notice of Violation letters were sent to Mr. Stuart Lictor, representative for Mansfield Business Park, LLC (property owner) and to Mr. Mark Miley of Ohio Realty Advisors for the violations of Ohio's asbestos regulations and laws related to the asbestos abatement and demolition activities that occurred at the Mansfield Business Park property. The Notice of Violation letters cited both parties for failing to remove friable asbestos-containing materials prior to demolition of the facility's buildings and for failing to keep the asbestos-containing waste materials adequately wet at all times during and after demolition of the facility's buildings, in violation of OAC Rules 3745-20-04(A)(1) and 3745-20-05(B)(2), respectively.

16. On December 7, 2012, the Ohio EPA, NWDO met with representatives from the Afcose Group and Stone Environmental at the Mansfield Business Park property to observe the sampling associated with the re-survey of the demolition debris required by the Notices of Violation. Stone Environmental was hired to conduct the re-survey of the demolition debris; however, the scheduled survey was not completed on December 7, 2012 because the Afcose Group did not have the heavy equipment needed to properly survey and sample the large piles of demolition debris on site. The Ohio EPA, NWDO had previously discussed the need for the heavy equipment with the Afcose Group based upon the extent of the potential contamination of the property.

17. On December 19, 2012, the Afco Group requested additional time (several more days) to finalize and submit the sampling plan for the required re-survey of the demolition debris at the Mansfield Business Park property. On February 4, 2013, a conference call was held with Ohio Reality Advisors, the Afco Group, Statewide Recycling and Recovery, and the Ohio EPA, NWDO. During the call, the Ohio EPA, NWDO reemphasized the need for the sampling plan and survey of the demolition debris, explained that the majority of the demolition debris might have to be handled as asbestos-contaminated material because the RACM had been comingled with the non-asbestos-containing demolition debris, and expressed their concerns that the clean-up of the property begin as soon as possible to prevent the release of asbestos fibers into the ambient air. In response, Ohio Reality Advisors indicated that a schedule for the property clean-up would be submitted by February 13, 2013. To date, Ohio Reality Advisors has not submitted a schedule for the property clean-up.

18. On February 22, 2013, Ohio EPA issued a second Notice of Violation letter to Ohio Reality Advisors for failing to address the requirements specified in the original Notice of Violation issued on November 12, 2012. The February 22, 2012 Notice of Violation again cited Ohio Reality Advisors for failing to remove friable asbestos-containing materials prior to demolition of the facility's buildings and for failing to keep the asbestos-containing waste materials adequately wet at all times during and after demolition of the facility's buildings, in violation of OAC Rules 3745-20-04(A)(1) and 3745-20-05(B)(2), respectively. The February 22, 2012 Notice of Violation also requested Ohio Reality Advisors to submit a schedule for the required property clean-up by no later than March 8, 2013.

19. On March 19, 2013, the Director of the Ohio EPA issued Proposed Findings and Orders to Respondents in an attempt to resolve this matter. Communications have occurred between Respondents and Ohio EPA; however, to date, a schedule for the required property clean-up has not been submitted. The asbestos-contaminated waste materials remain uncontrolled and unsecured.

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

## **V. ORDERS**

The Director hereby issues the following Order:

1. Pursuant to ORC § 3704.03(R), Respondents shall immediately begin the process of having the RACM removed from the Mansfield Business Park, LLC property

(245 East 4<sup>th</sup> Street, Mansfield, Ohio (Richland County)). Respondents shall also ensure that public access to the property is precluded during the RACM removal process through the use of temporary fencing, and that the RACM are disposed of in a properly licensed landfill. All asbestos-related clean-up and removal activities occurring at the facility shall be conducted in full compliance with the applicable asbestos regulations and laws (see OAC Chapter 3745-20 and 40 CFR Part 61, Subpart M). The RACM must be removed from the Mansfield Business Park, LLC property and disposed of properly by no later than June 30, 2013.

#### **VI. TERMINATION**

Respondents' obligations under these Orders shall terminate when Respondents certify in writing and demonstrate to the satisfaction of Ohio EPA that Respondents have performed all obligations under these Orders and the Chief of Ohio EPA's Division of Air Pollution Control acknowledges, in writing, the termination of these Orders. If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondents of the obligations that have not been performed, in which case Respondents shall have an opportunity to address any such deficiencies and seek termination as described above.

The certification shall contain the following attestation: "I certify that the information contained in or accompanying this certification is true, accurate and complete."

This certification shall be submitted by each Respondent to Ohio EPA and shall be signed by Respondent.

#### **VII. 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 Respondents.

#### **VIII. RESERVATION OF RIGHTS**

Nothing contained herein shall be construed to prevent Ohio EPA from seeking legal or equitable relief to enforce the terms of these Orders or from taking other administrative, legal or equitable action as deemed appropriate and necessary, including seeking penalties against Respondents for noncompliance with these Orders and/or for the violations described herein. Nothing contained herein shall be construed to prevent Ohio EPA from exercising its lawful authority to require Respondents to perform additional activities pursuant to ORC Chapter 3704 or any other applicable law

in the future. Nothing herein shall restrict the rights of Respondents to raise any administrative, legal or equitable claim or defense with respect to such further actions which Ohio EPA may seek to require of Respondents. Nothing in these Orders shall be construed to limit the authority of Ohio EPA to seek relief for violations not addressed in these Orders.

**IX. EFFECTIVE DATE**

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

**IT IS SO ORDERED:**

**Ohio Environmental Protection Agency**

  
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Scott J. Nally  
Director

5/29/13  
\_\_\_\_\_  
Date