

AIR POLLUTION CONTROL DIVISION

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



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CERTIFIED MAIL

July 2, 2013

Mr. Greg Barkstrom
Fox Family II, LLC
20 North Union Street
Rochester, New York 14607

Mr. Doug Kincaid
Interstate Construction, Inc.
3511 Farm Bank Way
Grove City, Ohio 43123

**Re: NOTICE OF VIOLATION of Ohio EPA Asbestos Violations
Renovation without a proper asbestos inspection, First Violation
Commercial Building, 4220 Belden Village Street NW, Canton, Ohio 44718**

Dear Mr. Barkstrom and Mr. Kincaid (owner and operator):

The Canton City Health Department, Air Pollution Control Division (APCD) is the contractual representative for Ohio EPA in air quality matters within Stark County. As such, APCD employees have authority to investigate and enforce Ohio EPA air pollution regulations.

During routine surveillance on June 6, 2013, Canton APCD observed evidence of an apparent active renovation project at the commercial building (former Damon's Restaurant and future Dibella's) located at 4220 Belden Village Street NW, Canton, Ohio (subject building). The interior portions of the subject building appeared gutted and were under new construction at the time of the site visit. Various exterior portions of the building were void of finishes and wood sheets were in the place of windows. Canton APCD asked the onsite Project Manager, Mr. Mike France with Interstate Construction, Inc. if an asbestos inspection had been completed prior to the start of the renovation project. Mr. France was unaware as to if an asbestos inspection had been completed but indicated he would discuss this with the owner and inform Canton APCD of the results. Per the Stark County Auditor, the subject building is owned by Fox Family II LLC. Interstate Construction, Inc. is leading the renovation project. Per the regulations, both the owner (Fox Family II, LLC) and operator (Interstate Construction, Inc.) are dually responsible for ensuring that all applicable air pollution control rules and regulations are followed.

During subsequent discussions with Mr. Doug Kincaid, President of Interstate Construction, Inc., it became clear that an asbestos inspection had not been completed prior to the start of the renovation project. Mr. Kincaid indicated that the subject building was constructed in 2000 and provided Canton APCD with copies of a building finishes plan (2003) and various product descriptions and material safety data sheets (MSDS). Mr. Kincaid indicated that the building materials removed included various floor and ceiling tiles, fiber reinforced plastic (FRP) from walls, wood trim, gypsum based wallboard, fiberglass insulation, and exterior stone veneer. Mr. Kincaid indicated that portions of the gypsum based wallboard that was already removed from the site remained within the subject building. Therefore, Interstate Construction, Inc. contracted with Hina Environmental Solutions, LLC to assess the remaining gypsum based wallboard for asbestos content. The asbestos survey (*Asbestos Material Survey by Hina Environmental Solutions, Inc., June 14, 2013*) results indicate that the wallboard disturbed and/or removed was found to be non-detect for asbestos. Although, the MSDS for some of the building materials removed (quarry floor tiles and stone veneer) indicate that no asbestos is present in these materials, the asbestos content in other materials is unknown. In addition, the asbestos regulations require a thorough asbestos inspection be completed prior to any renovation or demolition project.

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 June 3, 2013, 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, Fox Family II LLC and Interstate Construction, Inc. (owner/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, Fox Family II LLC and Interstate Construction, Inc. (owner/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 Fox Family II LLC and Interstate Construction, Inc. (owner/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 Enforcement Details:

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). This letter or information 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 the Ohio EPA at a later date.

The following requested actions shall be completed to ensure future compliance:

1. Fox Family II LLC and Interstate Construction, Inc. (owner/operators) shall follow all federal, state, and local asbestos regulations during any future renovation and/or demolition projects.

Based upon the fact that the asbestos inspection was not completed prior to the start of the renovation project and the amount of regulated asbestos containing material cannot be determined, the above-listed violations are considered significant non-compliance per Ohio EPA's Compliance Assurance through Enforcement Program (CATEP). Therefore, Canton APCD will forward case-related information to Ohio Environmental Protection Agency, Central Office, for further enforcement actions. The Ohio EPA has the authority to seek civil penalties as provided in section 3704.06 of the Ohio Revised Code (ORC), regardless of Canton APCD's recommendations. However, it should be noted that Canton APCD will recommend that consideration be taken since this appears to be a first time violation for both Fox Family II LLC and

July 2, 2013

Page 3 of 3

Interstate Construction, Inc., and both parties have been highly cooperative by providing Canton APCD with finish plans, product descriptions, MSDS, and a subsequent asbestos inspection of remaining wallboard.

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,



Jaclyn Hupp, CAHES
Air Pollution Control Monitoring and Inspections Technician
Canton City Health Department

cc: Bruce Weinburg, Ohio EPA via email