

BEFORE THE  
OHIO ENVIRONMENTAL PROTECTION AGENCY

OHIO E.P.A.  
JUL 19 2016  
ENTERED DIRECTOR'S JOURNAL

In the Matter of:

RUKH-JAGI Holdings, LLC : Director's Final Findings  
4520 Everhard Road Suite 147 : and Orders  
Canton, Ohio 44718 :

**PREAMBLE**

It is agreed by the parties hereto as follows:

**I. JURISDICTION**

These Director's Final Findings and Orders ("Orders") are issued to RUKH-JAGI Holdings LLC (Respondent) 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**

These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law. No change in ownership of Respondent or of the Facility (as hereinafter defined) shall in any way alter Respondent's obligations under these Orders.

**III. DEFINITIONS**

Unless otherwise stated, all terms used in these Orders shall have the same meanings as defined in ORC Chapter 3704 and the regulations promulgated thereunder.

**IV. FINDINGS**

The Director of Ohio EPA has determined the following findings:

1. Respondent is the owner of the Belden Village Holiday Inn located at 4520 Everhard Road, Canton Ohio. The Holiday Inn is a "facility" as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18). Bennett construction Management, Inc. ("Bennett") was contracted by Respondent to refurbish the facility. The refurbishment included the complete wrecking of one wing of the facility and renovation of multiple other areas of the facility. Because the refurbishment involved the wrecking and/or taken out of load-supporting structural members of the facility, it is classified as "demolition" as defined in OAC Rule 3745-20-01(B)(13).

2. OAC Rule 3745-20-01(B)(39) defines the "owner or operator" as any person who owns, leases, operates, controls, or supervises the facility being demolished or any person who owns, leases, operates, controls or supervises the demolition, or both. Respondent operated, controlled, and supervised the demolition of the facility; therefore, retains responsibility for complying with the applicable requirements of OAC Chapter 3745-20.

3. OAC Rule 3745-20-02(A) states the 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, prior to the commencement of the demolition or renovation for the presence of asbestos, including category I and category II nonfriable asbestos-containing material.

4. OAC Rule 3745-20-03(A) states the owner or operator of an applicable demolition operation shall provide the director of Ohio EPA a written notice of intention to demolish 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.

5. OAC Rule 3745-20-02(B)(1) specifies that the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to the owner or operator of a demolition operation if the combined amount of regulated asbestos-containing materials ("RACM"), as defined in OAC Rule 3745-20-01(B)(42), is at least 260 linear feet on pipes or at least 160 square feet on other facility components (i.e., work practice thresholds). The facility contained amounts of RACM greater than the work practice thresholds. Therefore, the facility's demolition and renovation operations were subject to applicable requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 and Respondent was responsible for assuring compliance with the applicable requirements.

6. OAC Rule 3745-20-04(A)(2) requires the owner or operator of a demolition/renovation operation that exceeds the work practice threshold, to adequately wet all RACM exposed during cutting or disjoining operations when a facility component covered with, coated with or containing regulated asbestos-containing material is being taken out of the facility as units or in sections.

7. OAC Rule 3745-20-04(B) states if a facility being demolished exceeds the work practice thresholds, no RACM shall be stripped, removed, or otherwise handled or disturbed without at least one authorized representative trained in the requirements of OAC Chapter 3745-20 present at the site location.

8. OAC Rule 3745-20-05(C) requires the owner or operator of a demolition operation that exceeds the work practice thresholds to seal all asbestos-containing waste material in durable leak-tight disposal containers complying with the rule and to clearly label the containers. OAC Rule 3745-20-05(A) requires the waste generator to deposit all asbestos-containing waste material as soon as practical at either a waste disposal site in Ohio operated in accordance with the provisions of OAC Rule 3745-20-

06 of the Administrative Code, or a waste disposal site not in Ohio operated in accordance with the provisions of 40 CFR 61.154, or a site that converts regulated asbestos-containing material and asbestos-containing waste material into non-asbestos (asbestos-free) material in accordance with the provisions of OAC Rule 3745-20-13.

9. On November 11, 2014, Canton City Health Department, Air Pollution Control Division ("CCHD"), Ohio EPA's contractual representative in Stark County was contacted by Ohio EPA's Central District Office ("CDO") regarding a demolition notification CDO received for the facility. The original envelope sending the notice to CDO was post-marked November 14, 2014 and was sent by Bennett. It identified J. Eslich Wrecking ("Eslich") as the demolition/general contractor and Respondent as the owner of the facility. It further stated that no RACM were to be removed prior to the demolition of the northwest wing of the facility and that an asbestos survey had been performed. However, no valid Ohio Asbestos Hazard Evaluation Specialist ("AHES") certification number was noted on the form and the form appeared to contain several errors.

10. On November 19, 2014, CCHD contacted Eslich and requested additional information pertaining to the asbestos inspection and the demolition. Eslich indicated it was contracted by Bennett to demolish the northwest wing of the facility. Eslich further stated it would contact Respondent and Bennett to gather information regarding the asbestos inspection. On November 20, 2014, Eslich informed CCHD that the asbestos inspections could not be located and it planned to contract Cardinal Environmental to perform an asbestos inspection in the area it was contacted to demolish (i.e., the northwest wing of the facility).

11. On November 21, 2014, Cardinal Environmental performed the asbestos inspection on the northwest wing of the facility. As a result of the asbestos inspection, Eslich contracted with Diamond Services to abate the RACM from the west wing of the facility. On December 12, 2014, CCHD received a demolition notification form from Diamond Services, Inc. which included sections of the asbestos inspection report completed by Cardinal Environmental. It listed 16,100 square feet of RACM to be removed from the northwest wing (demo wing). The majority of the 16,100 square feet of RACM was identified as textured ceiling materials. Because the demolition involved amounts of RACM above the work practices threshold level, OAC Rule 3745-20-02(B)(1) required the demolition/renovation operations to be subject to all the applicable requirements specified in OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05.

12. On December 4, 2014, CCHD sent Respondent and Bennett requests for information ("RFI") letters asking for details pertaining to the completed and planned portions of the demolition and renovation project. Specifically, the letters requested, among other things, detailed descriptions and the amounts of the building materials already disturbed and the dates when the materials were disturbed. The letters also requested a copy of any prior asbestos inspection reports and recommended if no inspection had been conducted, disturbance of untested materials should cease to reduce potential asbestos exposure.

13. After several verbal discussions between CCHD and Respondent and Bennett, as well as the lack of written response to the December 4, 2014 RFI letters, CCHD sent Respondent and Bennett a notice of violation ("NOV") letters on January 16, 2015 for violations associated with OAC Chapter 3745-20. The letters stated that conversations with Respondent and Bennett had indicated that no thorough asbestos inspection to determine the presence of asbestos was completed prior to the start of operations which may have distributed asbestos materials. The NOV letters also asked for detailed information regarding the completed and planned renovation/demolition activities that were originally requested in the RFI letter but was never submitted.

14. On January 17, 2015, Respondent replied to the December 4, 2014 NOV letter. The letter stated that a financial phase 1 environmental site assessment ("ESA") had been conducted but no asbestos testing had been required. The letter referred to Bennett to provide the specifics of the building project. Respondent also committed to following the asbestos rule requirements in the future and attached a copy of the AIA agreement contract they had with Bennett for the refurbishment of the facility. Similarly, on January 26, 2015, Bennett submitted a response to the December 4, 2014 NOV letter. The letter stated that per the contract, Bennett did not have the responsibility to conduct environmental sampling or to remove any hazardous materials. Bennett indicated that Respondent provided a Phase 1 ESA report and stated that previous testing had been done and no hazardous materials were found. The Phase 1 ESA reportedly indicated that suspect asbestos materials may be present in the facility and identified the popcorn ceilings in the guest rooms as suspect asbestos-containing material. It also stated that Flynn Environmental later did sampling which did not identify any asbestos-containing materials. It further provided detailed descriptions of the work that had been performed prior to the submittal of the demolition notification for the northwest wing. However, it did not include information regarding the amount and date any asbestos-containing materials were disturbed or where the asbestos-containing waste debris had been disposed. It did state that construction on the new window walls began around April 2014 which disturbed the popcorn (i.e., textured) ceilings in the guestrooms being remodeled.

15. On April 23, 2015, Bennett submitted a copy of the analytical results of samples collected by Cardinal Environmental on February 16, 2015 in the work areas previously disturbed during the installation of the new windows. The test identified RACM in samples taken from the ceiling material which had been disturbed as part of the prior renovation section of the demolition project. This confirmed the RACM was disturbed prior to Respondent submitting a written notice of intention to demolish as required by OAC Rule 3745-20-03. Because the amount of RACM to be removed from the facility exceeded 160 square feet, the applicable requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 applied to the demolition project.

16. In accordance with the findings contained herein, Ohio EPA determined that Respondent committed or was otherwise liable for the following violations as a result of the renovation part of the demolition operations at the facility.

- OAC Rule 3745-20-02(A) for failing to have the facility thoroughly inspected by a certified asbestos hazard evaluation specialist prior to the commencement of the demolition/renovation operations;
- OAC Rule 3745-20-03(A) for failing to submit a notice within 10 days of the start of any activity that could break up, dislodge or similarly disturb asbestos-containing materials;
- OAC Rule 3745-20-04(A)(2) for failing to adequately wet all RACM exposed during the cutting or disjoining the facility's RACM components that were taken out of the facility as units or in sections;
- OAC Rule 3745-20-04(A)(6)(a) for failing to adequately wet all RACM removed or stripped from the facility and to ensure that it remained adequately wet until such materials were collected and contained in preparation for disposal;
- OAC Rule 3745-20-04(B) for stripping, removing, and/or otherwise handling or disturbing RACM without at least one authorized representative trained in the requirements of OAC Chapter 3745-20 present;
- OAC Rule 3745-20-05(A) by failing to not properly deposit all asbestos-containing waste material in a specified waste disposal site; and
- OAC Rule 3745-20-05(C) by failing to seal all asbestos-containing waste material in durable leak-tight disposal containers complying with the rule and by not clearly label the containers.

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

## **V. ORDERS**

The Director hereby issues the following Orders:

Respondent shall pay the amount of twenty-five thousand dollars (\$25,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Payment shall be made by official check made payable to "Treasurer, State of Ohio" for twenty-five thousand dollars (\$25,000) within 30 days of the effective date of these Orders. The official check shall be submitted to Carol Butler, Fiscal Specialist, or her successor, together with a letter identifying the Respondent to:

Ohio EPA  
Office of Fiscal Administration  
P.O. Box 1049  
Columbus, Ohio 43216-1049

## **VI. TERMINATION**

Respondent's obligation under these Orders shall terminate upon Ohio EPA's receipt of the valid official check required by Section V of these Orders.

## **VII. OTHER CLAIMS**

Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action or demand in law or equity against any person, firm, partnership or corporation, not a party to these Orders, for any liability arising from, or related to, the Respondent's activities at the facility.

## **VIII. 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 Respondent.

## **IX. MODIFICATIONS**

These Orders may be modified by agreement of the parties. Modifications shall be in writing and shall be effective on the date entered in the journal of the Director of Ohio EPA.

## **X. NOTICE**

All documents required to be submitted by Respondents pursuant to these Orders shall be addressed to:

Canton City Health Department  
Air Pollution Control Division  
420 Market Avenue North  
Canton, Ohio 44702-1544  
Attn: Terri A. Dzienis

and to:

Ohio Environmental Protection Agency  
Lazarus Government Center  
Division of Air Pollution Control  
P.O. Box 1049  
Columbus, Ohio 43216-1049  
Attn: James Kavalec, Manager, Enforcement

or to such persons and addresses as may hereafter be otherwise specified in writing by Ohio EPA.

## **XI. RESERVATION OF RIGHTS**

Ohio EPA and Respondent reserve all rights, privileges and causes of action, except as specifically waived in Section XII of these Orders.

## **XII. WAIVER**

In order to resolve disputed claims, without admission of fact, violation or liability, and in lieu of further enforcement action by Ohio EPA for only the violations specifically cited in these Orders, Respondent consent to the issuance of these Orders and agree to comply with these Orders. Compliance with these Orders shall be a full accord and satisfaction for Respondent's liability for the violations specifically cited herein.

Respondent hereby waive the right to appeal the issuance, terms and conditions, and service of these Orders, and Respondent hereby waives any and all rights Respondent may have to seek administrative or judicial review of these Orders either in law or equity.

Notwithstanding the preceding, Ohio EPA and Respondent agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retain the right to intervene and participate in such appeal. In such an event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

## **XIII. EFFECTIVE DATE**


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

**XIV. SIGNATORY AUTHORITY**

Each undersigned representative of a party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such party to these Orders.

**ORDERED AND AGREED:**


**Ohio Environmental Protection Agency**

  
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**Craig W. Butler**  
**Director**

7/14/16  
\_\_\_\_\_  
Date

**AGREED:**

**RUKH-JAGI Holding LLC**

  
\_\_\_\_\_  
Signature

7/7/16  
\_\_\_\_\_  
Date

Ripen Patel  
\_\_\_\_\_  
Printed or Typed Name

Managing Member  
\_\_\_\_\_  
Title