



John R. Kasich, Governor
Mary Taylor, Lt. Governor
Craig W. Butler, Director

April 26, 2017

CERTIFIED MAIL

Mr. Jeffrey Cohen
MPA Chesterfield, LLC
FKA: Metropolitan Properties of
America, Inc.
101 Federal Street, 22nd Floor
Boston, MA 02110

Re: Final Findings and Orders regarding
asbestos violations

Dear Mr. Cohen:

Transmitted herewith are the Final Findings and Orders ("Orders") of the Director of Ohio EPA concerning the above-referenced matter.

Please note that the effective date of the Orders is the date that the Orders were entered into the Ohio EPA Director's journal, which is the date that is stamped on the first page of the Orders.

Sincerely,

A handwritten signature in black ink, appearing to read "James Kavalec", is written over a horizontal line.

James Kavalec, Manager
Compliance/Enforcement Section
Division of Air Pollution Control

ec: James Lee, PIC
Kara Philibin, DAPC
Lee Tullis, DAPC
Steve Feldmann, Legal
Bryan Sokolowski, CDAQ
Valencia White, CDAQ

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

MPA Chesterfield, LLC	:	<u>Director's Final Findings</u>
FKA: Metropolitan Properties of America, Inc.:	:	<u>and Orders</u>
1801 East 12th Street	:	
Cleveland, Ohio 44114	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to MPA Chesterfield, LLC ("Respondent") FKA: Metropolitan Properties of America, Inc., 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. Prior to issuance of this Findings and Orders document the Respondent was referred to as Metropolitan Properties of America, Inc. in all previous correspondence documents, emails, issued notices of violations, and surveys and notification forms prepared for/ submitted by the Respondent MPA.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondent and successors in interest liable under Ohio law. No change in ownership of the facility (as hereinafter identified) 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 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. "Regulated asbestos-containing material" ("RACM") is defined in OAC Rule 3745-20-01(B)(42) and includes friable asbestos material; Category I nonfriable asbestos-containing material that has become friable; Category I nonfriable asbestos-containing material that will be or has been subjected to sanding, grinding, cutting, or abrading; or Category II nonfriable asbestos-containing material that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this chapter.

3. "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.

4. 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).

5. Pursuant to OAC Rule 3745-20-02(B)(4), the requirements of 3745-20-03, 3745-20-04, and 3745-20-05 apply in a facility being renovated if the combined amount of regulated asbestos-containing material ("RACM") to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is at least two hundred sixty linear feet on pipes or at least one hundred sixty square feet on other facility components, or at least thirty-five cubic feet off facility components where the length or area could not be measured previously.

6. OAC Rule 3745-20-03(A)(3), states, in part, that each owner or operator of a subject renovation or demolition operation shall provide the Director of Ohio EPA with a written notice of intention to demolish or renovate by not later than 10 days prior to beginning of any demolition operation, asbestos removal work, or any other activity that break up or disturb asbestos material.

7. OAC Rule 3745-20-04(A)(1), states, in part, that each owner or operator of a subject renovation or demolition operation shall remove all RACM 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.

8. OAC Rule 3745-04(A)(2)(b), states, in part, that each owner or operator of

a subject renovation or demolition operation shall carefully lower the units or sections of the facility components covered with, coated with or containing RACM to the floor and to ground level, not dropping, throwing, sliding or otherwise damaging or disturbing the RACM.

9. OAC Rule 3745-20-04(A)(4)(b), states, in part, that each owner or operator of a subject renovation or demolition operation shall use a local exhaust ventilation and collection system to capture the particulate asbestos material produced during the removal of RACM from a facility component being taken out of the facility as units or in sections.

10. OAC Rule 3745-20-04(A)(6)(a) requires the owner or operator of a subject renovation or demolition operation to maintain all RACM, including material that has been removed or stripped, adequately wet until collected and contained or treated in preparation for disposal in accordance for OAC Rule 3745-20-05.

11. OAC Rule 3745-20-05(A) states, in part, that all asbestos-containing waste material shall be deposited as soon as practical by the waste generator at an approved waste disposal site.

12. OAC Rule 3745-20-05(B) states, in part, that each owner or operator of any demolition operation shall discharge no visible emissions to the outside air during the collection, processing, packaging, transporting, or deposition of any of asbestos-containing waste material.

13. OAC Rule 3745-20-05(B)(1)(c) requires, in part, the owner or operator of the renovation or demolition operation to seal the asbestos-containing waste material after wetting in durable leak-tight containers or wrapping.

14. OAC Rule 3745-20-05(C)(1) requires, in part, each owner or operator of any demolition or renovation operation to whom this rule applies to ensure that all containers of asbestos-containing waste are properly labeled.

15. 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.

16. Cleveland Division of Air Quality ("CDAQ") is the contractual representative for Ohio EPA in air quality matters within Cuyahoga County.

17. The Sphere building is located at 1801 East 12th Street in Cleveland, Cuyahoga County, Ohio and it is owned by Respondent MPA. The Sphere is a facility as defined in OAC Rule 3745-20-01(B)(18).

Alleged Violations at the Second Floor of the Facility

18. On June 18, 2015, CDAQ received a complaint concerning renovation activities at the facility. CDAQ visited the facility on the same day and observed a permit displayed on a window and issued on May 7, 2015 by the City of Cleveland Department of Building and Housing. The permit confirmed that renovation activities on the second floor by All Trade Contracting, Inc. ("All Trade") were being conducted to convert commercial office space into apartment units. CDAQ was not able to inspect the second floor of the facility on that day; however, Respondent confirmed that All Trade was working on renovation of the second floor since June 15, 2015. Respondent stated that an asbestos survey was completed a couple of years ago for the entire building. Respondent was requested to provide CDAQ with a copy of the asbestos survey by June 22, 2015.

19. On June 26, 2015, CDAQ visited the facility and observed two of All Trade employees taking a break. The employees confirmed that the second floor renovation activities were in progress. On this date, Respondent denied CDAQ access to the second floor but agreed to reschedule the inspection for June 30, 2015, so that a representative from Respondent could travel from Massachusetts to attend the inspection. At or about that time, Respondent provided CDAQ with a Phase 1 Assessment dated August 7, 1998 as the asbestos survey for the building. CDAQ advised Respondent that the Phase 1 Assessment did not meet OAC Rule 3745-20-02(A) requirements and requested that Respondent provide a thorough asbestos survey for the second floor renovation project. Only a second floor asbestos survey was requested at this time, because Respondent informed CDAQ that no other renovation activities were taking place at other locations of the Sphere building.

20. On June 30, 2015, CDAQ conducted a third inspection of the second floor renovation activities and observed dry wall plaster, drywall, ceiling tile, and floor tile debris of varying sizes on the floor throughout the second floor. CDAQ collected eleven samples of suspect asbestos-containing material. CDAQ requested from Respondent to immediately stop all the second floor renovation activities and conduct a thorough asbestos survey. All Trade and Respondent immediately ceased work on receipt of the notice and secured the area to prevent any unauthorized access.

21. The renovation plan of the second floor that was received by CDAQ from Respondent showed that all interior walls, doors, windows, carpet, floor tiles, ceiling tiles, toilets, sinks, countertops, and light fixtures were to be removed.

22. The results of the analysis of CDAQ's samples confirmed the presence of asbestos in the debris. The report dated July 9, 2015, stated that all tile and mastic samples collected by CDAQ contained 3 to 5% Chrysotile asbestos.

23. Because a thorough survey was not performed for the second floor, CDAQ requested Respondent to perform one. On July 15, 2015, Edwin Morgan of FSL

Associates, Inc., acting for Respondent, conducted an asbestos survey of the facility. Although Mr. Morgan was licensed in Massachusetts, he was not licensed in the state of Ohio as an asbestos evaluation specialist at that time. He conducted a survey of the premises and in a report dated August 10, 2015, stated that 91 samples of building materials were collected from the second floor of the facility that included panel glue, floor tiles, mastic, plaster, paper glue, and piping insulation. A total of 34 of the 91 samples contained asbestos, ranging from 2 to 65% Chrysotile asbestos. One sample contained 30% Amosite asbestos.

24. On August 7, 2015, CDAQ sent a notice of violation ("NOV") to Respondent and All Trade. The NOV cited the alleged violations discovered during the site visits and requested Respondent and All Trade to provide a compliance plan that included an acceptable asbestos survey and demolition and renovation notification form.

25. On August 26, 2015, CDAQ received Respondent's response to the NOV stating that no floor tile or mastic was removed prior to CDAQ's inspections and that a notification was not required since the project did not exceed the threshold. The response included the survey dated August 10, 2015, a notification form, and copies of landfill receipts for the construction waste. Prior to the initial inspection and discovery of violations the construction waste was shipped to a regular construction and demolition waste landfill. Based on the notification form, the renovation activities started on May 7, 2015. The amount of nonfriable asbestos-containing material not to be removed were 1,000 square feet of Category I, 200 linear feet of Category II, and 100 cubic feet of Category II.

26. On August 28, 2015, CDAQ sent a letter informing Respondent that the submitted notification and asbestos survey were not accepted. The letter listed the alleged deficiencies and requested a new survey and notification so that renovation activities could be resumed.

27. On September 8, 2015, CDAQ received All Trade's response to the NOV. It was stated that no floor tile or mastic was removed prior to CDAQ's inspections. The response also stated that All Trade was working with Respondent to return the site to compliance. Further, it was stated that All Trade was of the belief that Respondent was correcting the deficiencies in the asbestos survey and notification previously submitted to CDAQ by Respondent.

28. On September 24, 2015, CDAQ sent a letter to Respondent and All Trade requesting them to submit the corrected notification form and asbestos survey. CDAQ refused to accept the survey Mr. Morgan had performed and its results because it was completed by an asbestos evaluation specialist not licensed in the State of Ohio. It is against the Ohio Department of Health ("ODH") rules for someone to collect asbestos samples without an Ohio license.

29. On September 29, 2015, CDAQ visited the facility and confirmed that no

additional work was done since the renovation activities were placed on temporary hold until the violations had been resolved and that the area remained secured from unauthorized access.

30. On October 1, 2015, Edwin Morgan of FSL Associates, Inc. after obtaining an asbestos hazard evaluation specialist ("AHES") license from ODH, conducted another asbestos survey of the second floor. In the report dated October 16, 2015, it was stated that 108 samples of building materials were collected from the second floor of the facility that included panel glue, floor tiles, mastic, plaster, paper glue, and piping insulation. A total of 25 of the 108 samples were identified as asbestos containing material that ranged from 2 to 40% Chrysotile asbestos. One sample contained 5% Amosite asbestos. The RACM was estimated at 4,215 square feet and 10 cubic feet.

31. On October 29, 2015, CDAQ received an original notification of demolition and renovation form for the facility's second floor renovation along with the asbestos survey dated October 16, 2015. The amount of asbestos to be removed included 200 cubic yards of RACM, 1,620 Category I, and 1,100 square feet Category II. The asbestos removal dates were listed as November 10, 2015 to December 4, 2015. The notification form was completed and signed by the licensed asbestos abatement contractor, All Aspects Contracting, Inc. that Respondent hired to clean up the asbestos contaminated demolition debris left on site by All Trade, and to finish abatement of the rest of the second floor that had not yet been disturbed pursuant to Respondent's plan to convert the second floor from commercial use to residential use.

32. On November 24, 2015, CDAQ visited the facility and found that the cleanup project of the facility was placed on hold and no RACM was removed yet by All Aspects Contracting, Inc. Unauthorized personnel were still prohibited from entering the area. A revised notification was submitted by All Aspects Contracting, Inc. on November 24, 2015 to place the project on hold.

33. On December 2, 2015, CDAQ received a revised notification to remove the hold on the cleanup project. The asbestos removal dates were listed from December 2, 2015 to December 23, 2015. CDAQ received other revised notifications to extend the asbestos removal dates.

34. On December 9, 2015, January 20, 2016, and January 22, 2016, CDAQ visited the facility to conduct inspections to observe the progress of the cleanup activities on the second floor. No violations were observed during these inspections.

35. On February 1, 2016, the abatement of the second floor of the facility was completed and CDAQ allowed Respondent to resume the planned renovation activities of the second floor.

36. As a result of the inspections of the facility's second floor, the Director has determined and alleges that Respondent and All Trade had:

- a. failed to conduct a facility thorough asbestos survey of the facility,

- in violation of OAC Rule 3745-20-02(A);
- b. failed to submit an original, signed Ohio EPA notification of demolition and renovation form, in violation of OAC Rule 3745-20-03(A);
- c. failed to remove all RACM from the facility before any activity begins, in violation of OAC Rule 3745-20-04(A)(1);
- d. failed to maintain the asbestos-containing waste material adequately wet to prevent the discharge of visible emissions to the outside air during the loading of the material into the dumpsters, in violation of OAC Rule 3745-20-05(B);
- e. failed to take the RACM to an asbestos-approved landfill, in violation of OAC Rule 3745-20-05(A);
- f. failed to contain RACM that has been removed in a leak-tight wrapping, in violation of OAC Rule 3745-20-05(B)(1)(c);

Alleged Violations at the First Floor of the Facility

37. On December 9, 2015, CDAQ received an anonymous complaint concerning alleged renovation activities at a former convenience store in the first floor of the facility (identified as 1810 East 12th Street). The complainant stated that removal of flooring and other materials was in progress that day without using water. CDAQ visited the facility to investigate the complaint and observed several piles of mixed debris in one of the stores in the first floor. The debris contained floor tiles, mastic, drywall, and plaster. All debris was dry and broken up into small pieces of less than 4 x 4 square inches. CDAQ collected 5 samples of suspect asbestos-containing material. The renovation work was done by SDF Construction, LLC ("SDF"). Respondent stated that an asbestos survey had not been completed for this project. No renovation and demolition notification form was submitted to CDAQ concerning this project. CDAQ requested that no work be done on the first floor renovation project until a thorough asbestos survey had been completed and a notification form submitted. Respondent and SDF complied with the CDAQ request.

38. On December 25, 2015, CDAQ received the analysis results for the 5 samples from the first floor. The report identified the presence of 3% Chrysotile asbestos in black mastic attached to red ceramic tiles. The broken pieces of ceramic tiles and mastic were mixed with other debris in the piles. On January 11, 2016, CDAQ received the point count results for the mastic. EPA Method 400 Point Count with Gravimetric Reduction was performed showing 4.5% chrysotile asbestos.

39. On January 8, 2016, CDAQ sent a NOV to Respondent and SDF. The NOV cited the alleged violations discovered during the site visit and requested Respondent and SDF to provide compliance plan that included an acceptable asbestos survey and demolition and renovation notification form. Respondent responded to the issued NOV and took action to clean up disturbed materials on the first floor. SDF never responded to the NOV issued by CDAQ on January 8, 2016.



40. MPA caused a full asbestos survey to be completed by January 12, 2016. Work at the site remained stopped. On January 20, 2016, CDAQ received the demolition and renovation notification form from All Aspects Contracting, Inc. Asbestos removal dates were listed as February 2, 2016 to February 12, 2016. The amount of demolition debris to be cleaned up and removed as RACM was listed as 40 cubic yards. The notification also included the asbestos survey that was completed on January 12, 2016.

41. On February 23, 2016, CDAQ visited the facility to conduct inspection of the cleanup activities at the first floor and no violations were observed during the inspection. SDF did not resume work on the 1st floor until February 24, 2016. All cleanup work was done by the licensed asbestos removal contractor All Aspects Contracting, Inc.

42. As a result of the inspection of the facility's first floor, the Director has determined that Respondent MPA and SDF had:

- a. failed to conduct a facility thorough asbestos survey of the facility, in violation of OAC Rule 3745-20-02(A);
- b. failed to submit an original, signed Ohio EPA notification of demolition and renovation form, in violation of OAC Rule 3745-20-03(A);
- c. failed to remove all RACM from the facility before any activity begins, in violation of OAC Rule 3745-20-04(A)(1);
- d. failed to maintain the asbestos-containing waste material adequately wet to prevent the discharge of visible emissions to the outside air during the loading of the material into the dumpsters, in violation of OAC Rule 3745-20-05(B);

Alleged Violations at Floors 3 to 19 of the Facility

43. On March 8, 2016, CDAQ received a complaint concerning renovation activities at the 16th and 17th floors of the facility that included remodeling of kitchen cabinetry and floors and replacing wall and floor tiles in baths and hallways.

44. CDAQ inspected the facility on March 10, 2016. CDAQ concluded that SDF was conducting renovation activities on the 3rd to 19th floors of the building but that no demolition was taking place. CDAQ also concluded that no thorough asbestos survey was completed and no demolition and renovation notification form was submitted to CDAQ. Bathroom walls and floors, and kitchen floors were being upgraded by dry removal of floor tile and surface materials. CDAQ collected 5 samples of suspect asbestos-containing material from an open dumpster inside the garage area.

45. None of the samples collected by CDAQ on March 10, 2016 were found to contain regulated amounts of asbestos.

46. On April 15, 2016, CDAQ sent a NOV to Respondent and SDF for the violations discovered during the inspection. The NOV requested Respondents to submit a thorough asbestos survey and compliance plan prior to continuation of the renovation of the 3rd to 19th floors of the facility.

47. As a result of the inspection of the facility's first floor, the Director has determined that Respondent MPA and SDF had failed to conduct a facility thorough asbestos survey, in violation of OAC Rule 3745-20-02(A). To date CDAQ has not received a thorough survey for floors 3 to 19 of the facility.

48. 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 Orders:

1. Within sixty (60) days after the effective date of these Orders, Respondent shall complete a thorough asbestos survey of the 3rd through 19th floors of the facility. Within seventy-five (75) days after the effective date of these Orders, Respondent shall submit a copy of the survey report to Ohio EPA and CDAQ in accordance with Section X of these Orders.

2. Respondent shall pay the amount of sixty thousand dollars (\$60,000) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within thirty (30) days after the effective date of these Orders, payment to Ohio EPA shall be made by an official check made payable to "Treasurer, State of Ohio" for sixty thousand dollars (\$60,000). The official check shall be submitted to Carol Butler, 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 obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations under these Orders, these obligations have been embedded in operation permits, 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 Respondent of the



obligations that have not been performed, in which case Respondent 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 Respondent to Ohio EPA and shall be signed by a responsible official of Respondent. For purposes of these Orders, a responsible official is as defined in OAC Rule 3745-33-03(F)(1) for a corporation, or a corporate officer who is in charge of a principal business function of Respondent.

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, operations by Respondent.

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 hereto. 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 Respondent pursuant to these Orders shall be addressed to:

City of Cleveland
Department of Public Health
Division of Air Quality
75 Erievue Plaza, Second Floor
Cleveland, Ohio 44114
Attn: Valencia White

and to:

Ohio Environmental Protection Agency



Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Jim Kavalec, Manager,
Compliance and Enforcement Section

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 each 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 consents to the issuance of these Orders and agrees 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 waives 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 retains 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



Craig W. Butler
Director

4/24/17

Date

AGREED:

MPA Chesterfield, LLC (FKA: Metropolitan Properties of America, Inc.)



Signature

April 14, 2017

Date

Jeffrey Cohen

Printed or Typed Name

Managing Member

Title