



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

Ohio EPA NOV 9 '18
Entered Directors Journal

November 9, 2018

CERTIFIED MAIL

Shawn Mouch
Double Bogie Pro LLC
1928 Harrowgate Hill Lane
Fairfield, Ohio 45014

Re: Final Findings and Orders for air pollution
violations

And

Gary Barnhart
Midwest Property Pros
4457 Bethany Rd., Bld. G Suite 200
Mason, Ohio 45040

Dear Mr. Barnhart and Mr. Mouch,

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,



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

ec: Steve Feldmann, Legal
Mark Needham, DAPC
Lee Tullis, DAPC
Brad Miller, SWOQA
James Lee, PIC

**BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY**

In the Matter of:

Ohio EPA NOV 9 '18
Entered Directors Journal

Double Bogie Pro LLC : **Director's Final Findings**
1928 Harrowgate Hill Lane : **and Orders**
Fairfield, Ohio 45014 :

And

Midwest Property Pros :
4457 Bethany Rd. Bldg. G Suite 2 :
Mason, Ohio 45040 :

I. JURISDICTION

These Director's Final Findings and Orders (Orders) are issued to Double Bogie Pro LLC and Midwest Property Pros ("Respondents") pursuant to the authority vested in the Director of the Ohio Environmental Protection Agency (Ohio EPA) under Ohio Revised Code (ORC) §§ 3704.03, 3745.01 and 3710.02.

II. PARTIES BOUND

These Orders shall apply to and be binding upon Respondents and successors in interest liable under Ohio law. No change in ownership of Respondents or of the facility (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 Chapters 3704 and 3710 and the rules promulgated thereunder.

IV. FINDINGS

The Director of Ohio EPA has determined the following findings:

1. Respondent Double Bogie Pro LLC owns the apartment building located at 4573 Smith Road, Norwood, Hamilton County, Ohio (Facility). Respondent Midwest Property Pros was the general contractor and therefore an operator at the Facility. The above-referenced structure constitutes a "facility" as defined by Ohio Administrative Code (OAC) Rule 3745-20-01(B)(21) and is subject to the requirements of ORC 3704., ORC 3710., OAC Chapter 3745-20 and OAC Chapter 3745-22.

2. Pursuant to OAC Rule 3745-20-02(A), 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 prior to the commencement of the demolition or renovation for the presence of asbestos, including Category I and Category II nonfriable asbestos-containing material as defined in OAC Rules 3745-20-01(B)(11) and 3745-20-01(B)(12).

3. Pursuant to OAC Rule 3745-20-02(B), the owner or operator of a demolition or renovation project must comply with the notification and work practice requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05 if the combined amount of regulated asbestos-containing material in a facility is at least 260 linear feet on pipes or 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. Regulated asbestos-containing material (RACM) is as defined in OAC Rule 3745-20-01(B)(45).

4. OAC Rule 3745-20-03(A) requires the owner or operator of a demolition or renovation operation involving a facility to submit a written notice of intention to demolish or renovate (Notification) to Ohio EPA at least ten working days prior to the start of the demolition or renovation if the project is as described in OAC Rule 3745-20-02(B)(1).

5. OAC Rule 3745-20-04(A)(3) requires, in part, the owner or operator of a demolition and/or renovation operation subject to the work practice requirements to adequately wet all RACM when it is being stripped from the facility components.

6. OAC Rule 3745-20-04(A)(6) requires the owner or operator of a facility subject to the work practice requirements to adequately wet all RACM, including material that has been stripped or removed, and to ensure that it remains adequately wet until such materials are collected and contained or treated in preparation for disposal.

7. OAC Rule 3745-20-05(B)(1)(c) requires, in part, that each owner or operator of any demolition, renovation, manufacturing, fabricating or spraying operation to whom this rule applies, shall discharge no visible emissions to the outside air during the collection, processing (including incineration), packaging, transporting, or deposition of any asbestos-containing waste material, and after wetting, seal all asbestos-containing waste material while wet in durable leak-tight containers or wrapping that complies with paragraph (C) of this rule.

8. OAC Rule 3745-20-05(C) requires each waste generator to seal all asbestos-containing waste material in durable leak-tight disposal containers which complies with the rule and to clearly label the containers with warning of the asbestos hazards, and the name and location of the generator.

9. OAC Rule 3745-20-01(B)(32) defines "leak-tight" to mean that liquids and cannot escape or spill out. Leak tight also means dust-tight.

10. OAC Rule 3745-22-02(A) states, that "No business entity or public entity shall perform, directly or indirectly, any asbestos hazard abatement activity as defined in paragraph (C) of rule 3745-22-01 of the Administrative Code without a valid license from the director."

11. OAC Rule 3745-22-02(B) states, that "No person shall coordinate, or supervise, an asbestos hazard abatement project unless he or she is certified as an asbestos hazard abatement specialist by the director pursuant to the requirements of Chapter 3710. of the Revised Code and the rules of this chapter."

12. ORC § 3704.05(G) prohibits any person from violating any rule adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704. ORC §3710.05(A) states, "Except as otherwise provided in this chapter, no person shall engage in any asbestos hazardous abatement activities in this state unless licensed or certified pursuant to this chapter." OAC Chapters 3745-20 and 3745-22 were adopted by the Director pursuant to ORC Chapter 3704 and ORC Chapter 3710.

13. On March 26, 2018, Southwest Ohio Air Quality Agency (SWOAQA), the contractual agent of Ohio EPA Division of Air Pollution Control in Hamilton County, and Ohio EPA received a complaint that asbestos was being improperly removed and debris scattered all over the Facility.

14. On March 26 and 27, 2018, SWOAQA conducted complaint investigations at the Facility and discovered suspect asbestos-containing waste material (ACWM) lying outside the front, side and back of the Facility and suspect asbestos-containing pipes located inside a U-Haul truck. SWOAQA obtained several samples of the ACWM. The laboratory results indicated greater than 1% asbestos to be present in several samples.

15. On March 28, 2018, SWOAQA conducted another inspection including an inspection of the interior of the facility and confirmed that ACWM in excess of the threshold quantities listed in OAC Chapters 3745-20 and 3745-22; therefore, making it regulated asbestos-containing material (RACM). SWOAQA observed RACM in the basement, laundry room and on the main floor. SWOAQA obtained several samples of the ACWM for which greater than 1% asbestos was present in several samples. No notification was submitted, or asbestos building inspection conducted for the abatement activities that were taking place at the Facility.

16. On March 28, March 29 and April 2, 2018, KSE LLC dba Restoration 1, a licensed asbestos abatement contractor hired by Respondents, cleaned up the exterior

of the building and the U-Haul truck. KSE LLC dba Restoration 1 also posted asbestos warning signs on the Facility and Respondents locked the building up.

17. Based upon the information gathered during the inspections as well as the sampling results, the Director has determined that Respondents have, *inter alia*:

- a. Failed to submit an asbestos notification to Ohio at least ten (10) days prior to the renovation, in violation of OAC Rule 3745-20-03(A);
- b. Failed to perform an asbestos building inspection prior to the renovation, in violation of OAC Rule 3745-20-02(A);
- c. Failed to remove all RACM from the facility before any demolition/renovation activity, in violation of OAC Rule 3745-20-04(A)(1);
- d. Failed to adequately wet RACM, including material that had been removed or stripped, and ensure the materials remained adequately wet until collected and contained or treated in preparation for disposal, in violation of 3745-20-04(A)(6)(a).
- e. Failed to have at least one authorized representative, trained in the provisions of OAC Chapter 3745-20 and the means of complying with them, present at the location of operations, in violation of 3745-20-04(B);
- f. Failed to seal all ACWM while wet in durable leak-tight containers or wrapping, in violation of OAC Rule 3745-20-05(B)(1)(c);
- g. Failed to properly package all ACWM in sealed plastic bags and label them, in violation of OAC Rule 3745-20-05(C); and
- h. Removed friable asbestos containing material without an Ohio EPA license as an asbestos hazard abatement contractor, in violation of OAC Rule 3745-22-02(A).

18. Respondents also violated ORC § 3704.05(G), 3710.05(A) and 3745.10 as a result of these OAC Rule violations. By letter dated April 6, 2018, Respondents were notified of these violations.

19. The Director has considered, 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. Respondents shall immediately employ a licensed asbestos hazard abatement contractor to complete under a negative pressure enclosure the removal of all asbestos-containing material in the basement and clean up all asbestos containing debris throughout the basement and first floor of the facility in accordance with the work-practice requirements of OAC Chapters 3745-20 and 3745-22. In accordance with OAC Rules 3745-20-03(A) and 3745-22-04(C)(4), Respondents shall submit a Notification to Ohio EPA Central Office. The requirement to notify ten (10) working days prior to commencing abatement and clean-up activities will be waived.

2. Obtain the services of an independent third-party asbestos consultant, who is certified as an AHES, to perform clearance air-sampling by Phase Contrast Microscopy (PCM) in accordance with OAC Chapter 3745-22 upon completion of the removal and decontamination activities within the basement and first floor of the facility.

3. Respondents shall notify the SWOAQA for a final inspection within three (3) days after passing clearance air-sampling and prior to work area deregulation and submit to SWOAQA written documentation from the AHES regarding the successful completion of the clearance.

4. Respondents shall pay the amount of twelve thousand dollars (\$12,000) 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 twelve thousand dollars (\$12,000). The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying Respondents, to:

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

VI. TERMINATION

Respondents' obligations under these Orders shall terminate when Respondents

certify in writing and demonstrates to the satisfaction of Ohio EPA that Respondents have 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 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 Respondents 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(D)(1) for a corporation, or a corporate officer who is in charge of a principal business function of Respondents.

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 Respondents.

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 Respondents pursuant to these Orders shall be addressed to:

Southwest Ohio Air Quality Agency

250 William Howard Taft Road
Cincinnati, Ohio 45219
Attn: Brad Miller

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 Respondents 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, Respondents 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 Respondents' liability for the violations specifically cited herein.

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

Notwithstanding the preceding, Ohio EPA and Respondents agree that if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondents retain the right to intervene and participate in such appeal. In such an event, Respondents 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



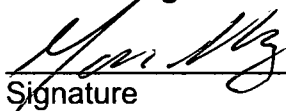
Craig W. Butler
Director

11/5/18

Date

AGREED:

Double Bogie Pro LLC



Signature

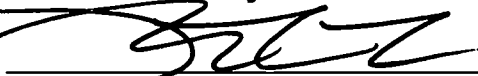
10-23-18

Date

Gary Baerhaert
Printed or Typed Name

Managing Member
Title

Midwest Property Pros



Signature

10-23-18

Date

Shaun Novot
Printed or Typed Name

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Managing Member
Title