



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

December 28, 2018

CERTIFIED MAIL

Re: Final Findings and Orders for air pollution
violations

Mr. Jesse Perkins
Dan's Wholesale Carpet Outlet LLC
6 Cherry Road NW
Massillon, Ohio 44646

Dear Mr. Perkins,

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 that reads "Mark B Needham".

Mark Needham, Manager
Asbestos Program
Division of Air Pollution Control

ec: James Kavalec, DAPC
Brandon Schwendeman, DAPC
Terri Dzienis/Jacki Hupp, Canton
Steve Feldmann, Legal Office
Lee Tullis, DAPC

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Dan's Wholesale Carpet Outlet LLC	:	<u>Director's Final Findings</u>
6 Cherry Road NW	:	<u>and Orders</u>
Massillon, Ohio 44646	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Dan's Wholesale Carpet 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 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

Nothing in the findings shall be considered to be an admission by Respondent of any matter of law or fact. The Director of Ohio EPA makes the following findings:

1. Respondent with its office located at 6 Cherry Road NW, in Massillon, Ohio, owns two multi-family residential structures located at 16 and 22 Cherry Road NW in Massillon, Stark County, Ohio. In or around the beginning of March of 2018, Respondent demolished the above-referenced structures. Each of the above-referenced residential structures constituted a "facility" as defined by Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(21) and the project involved a "demolition" as defined in OAC Rule 3745-20-01(B)(15). Respondent was an "owner" per OAC Rule 3745-20-01(B)(42). Regulated asbestos-containing material ("RACM") is as defined in OAC Rule 3745-20-01(B)(45).

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

4. OAC Rule 3745-20-04(A)(1) requires the owner or operator of a subject demolition project as described in OAC Rule 3745-20-02(B) to remove all regulated asbestos-containing material ("RACM") from a facility being demolished before any activity begins that would break up the materials, unless as otherwise provided in that rule.

5. ORC § 3704.05(G) prohibits any person from violating any 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.

6. On March 8, 2018, the Canton City Health Department, Air Pollution Control Division ("CCHD-APC"), Ohio EPA's contractual representative in Stark County, inspected the above-referenced structures to determine compliance with OAC Chapter 3745-20. During these inspections, the CCHD-APC documented the following: (1) the structures had been completely demolished and most of the building material had been removed; (2) some pieces of suspected RACM were left among the debris that was left behind in both structures; (3) there was no Notification submitted for this demolition; and (4) there was no asbestos building inspection performed prior to the demolition. CCHD-APC took two samples of the suspect materials from both demolition sites for analysis. CCHD-APC requested Respondent to employ an Ohio EPA licensed asbestos hazard abatement contractor to perform the necessary clean-up for these structures. Laboratory results later identified that both samples contained 15% Chrysotile asbestos.

7. Based on the findings from the March 8, 2018 inspection, CCHD-APC concluded that Respondent failed to: (1) submit to Ohio EPA a Notification prior to the commencement of the demolition of the structures, in violation of OAC Rules 3745-20-03(A)(1); (2) perform an asbestos building inspection of the structures prior to the demolition, in violation of OAC Rule 3745-20-02(A); and (3) remove all RACM from both structures before the demolition, in violation of 3745-20-04(A)(1). These violations also constitute violations of ORC § 3704.05(G).

8. On March 26, 2018, CCHD-APC issued a notice of violation letter to Respondent for the violations that were documented during the March 8, 2018 inspection. On June 27, 2018, CCHD-APC informed Ohio EPA that Respondent had completed the necessary clean-up at the above-referenced structures.

9. 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. Respondent shall pay the amount of ten thousand dollars (\$10,000) 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." The official check shall be submitted to Carol Butler, or her successor, together with a letter identifying 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 upon Ohio EPA's receipt of the 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, 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:

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

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 all 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 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 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

12-27-18

Date

AGREED:

Dan's Wholesale Carpet Outlet LLC



Signature
Daniel J. Beers II
Printed or Typed Name

12-20-18

Date

Owner / Manager

Title