

DEC 31 2007

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY DIRECTOR'S JOURNAL

In the Matter of:

Roger Wells,
d.b.a. Real Spaces Property for Rent
2760 Walsh Road
Cincinnati, Ohio 45208

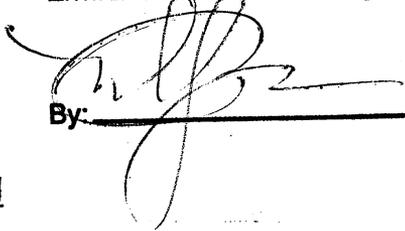
Director's Final Findings
and Orders

RESPONDENT

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

PREAMBLE

It is agreed by the parties hereto as follows:

By: 

Date: 12/31/07

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Roger Wells, d.b.a. Real Spaces Property for Rent ("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 heirs and successors in interest liable under Ohio law. No change in ownership of the Respondent's business 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 has determined the following findings:

1. Respondent was the owner of a multi-unit (20 unit) apartment building located at 3084 Celeron Avenue, Cincinnati, Ohio, which Respondent renovated in July 2004. The building is a "facility" as defined in Ohio Administrative Code ("OAC") Rule 3745-20-01(B)(18) and was subject to the applicable requirements specified in OAC Chapter 3745-20 ("Asbestos Emission Control Standards").

2. OAC Rule 3745-20-01(B)(38) defines, in part, the "owner or operator" as 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 of the facility, or both. Respondent owned, operated, controlled, and supervised the renovation of the facility; therefore, Respondent retained responsibility for the discovery, presence, handling, removal and disposal of all asbestos-containing material.

3. OAC Rule 3745-20-02(A) requires, in part, the owner or operator of a demolition or renovation operation to have the facility thoroughly inspected prior to commencement of demolition or renovation for the presence of asbestos.

4. OAC Rule 3745-20-01(B)(20) defines, in part, "friable asbestos material" as any material containing more than one percent asbestos by area, that when dry can be crumbled, pulverized, or reduced to powder by hand pressure.

5. OAC Rule 3745-20-01(B)(41) defines "regulated asbestos-containing material" ("RACM") as friable asbestos material, Category I nonfriable asbestos-containing material that has become friable, Category I nonfriable asbestos-containing material that will or has been subject 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.

6. OAC Rule 3745-20-01(B)(9) defines, in part, "Category I nonfriable asbestos-containing material" as asbestos-containing packing, gaskets, resilient floor covering, and asphalt roofing products containing more than one percent asbestos. OAC Rule 3745-20-(B)(10) defines, in part, "Category II nonfriable asbestos-containing material" as any material containing more than one percent asbestos, excluding Category I nonfriable asbestos-containing material, that when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.

7. OAC Rule 3745-20-02(B)(1) specifies, in part, that the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to each owner or operator of a renovation operation if the combined amount of RACM is at least 260 linear feet on pipes or at least 160 square feet on other facility components (i.e., work practice thresholds).

8. OAC Rule 3745-20-03(A) requires, in part, the owner or operator of a renovation operation to provide Ohio EPA with written notice of intention to renovation prior to starting of any renovation operation described in OAC Rule 3745-20-02(B)(1). Such notification must be received at least ten (10) days before any planned renovation operation begins.

9. If the facility being renovated exceeds the work practice thresholds, the owner or operator is required, in part, by:

- OAC Rule 3745-20-04(A)(1), to remove all RACM before any renovation activity starts that could break up, dislodge, or similarly disturb the material or preclude access to the materials for subsequent removal;
- OAC Rule 3745-20-04(A)(2), to adequately wet all RACM exposed during cutting or disjoining operations and to carefully lower the units or sections to the floor in a manner that will not damage or disturb the RACM;
- OAC Rule 3745-20-04(A)(3), to adequately wet RACM when it is being stripped from the facility's components; and
- OAC Rule 3745-20-04(A)(6)(a), to adequately wet all RACM and to keep it adequately wet until it is collected and contained or treated in preparation for disposal in accordance with OAC Rule 3745-20-05.

10. OAC Rule 3745-20-04(C) requires the owner or operator of a renovation operation that exceeds the work practice thresholds to ensure all RACM that has been made friable by renovation or adjacent stripping operations is repaired, encapsulated or removed for disposal in accordance with OAC Rule 3745-20-05 prior to the removal of emission controls.

11. OAC Rule 3745-20-05(B)(1) prohibits, in part, the discharge of any visible emissions to the outside air and requires the owner and operator of a renovation operation that exceeds the work practice thresholds to keep asbestos-containing waste material adequately wet at all times during and after renovation, and during handling, loading, transport and disposal. Additionally, this regulation requires that the asbestos-containing waste material be sealed while wet in durable leak-tight containers or wrapping that complies OAC Rule 3745-20-05(C).

12. OAC Rule 3745-20-05(C) requires, in part, that the owner or operator of a renovation operation that exceeds the work practice thresholds to seal all friable asbestos-containing waste materials into durable leak-tight disposal containers and to clearly label the containers.

13. ORC § 3704.05(G) prohibits any person from violating any order, rule or determination of the Director issued, adopted, or made under ORC Chapter 3704.

14. On July 13, 2004, Ohio Department of Health ("ODH") referred a complaint to the Hamilton County Department of Environmental Services ("HAMCO"), Ohio EPA's contractual representative in Hamilton County, regarding possible violations of OAC Chapter 3745-20 (i.e., the improper removal of asbestos) at 3084 Celeron Avenue,

Cincinnati, Ohio. That same day HAMCO visited the site and talked to Mr. Shamus Estep, an inspector for ODH. Mr. Estep stated that when he arrived at the facility he observed workers replacing the apartment complex's utilities. As part of this renovation, the workers were tearing out asbestos-containing materials in the facility's west wing basement. One of the workers, Mr. Burcham, the acting supervisor, admitted to Mr. Estep that he was aware that the material was asbestos-containing. Mr. Burcham also told Mr. Estep that he understood that the asbestos-containing material was being removed improperly and he said they have always done [removed] it that way. After Mr. Estep's conversation with Mr. Burcham, all the workers left the job site.

During the visit, HAMCO observed and sampled suspect dry asbestos-containing waste material on the outside front and rear of the building and in the parking lot. Two samples were taken and later tested positive for friable asbestos material content. HAMCO, with protective gear, entered the facility's west wing basement and discovered that most of the pipes had been removed and the bulk of the suspect asbestos-containing material had been removed from the boiler. Large amounts of suspect dry friable asbestos-containing material were scattered throughout the facility. Seven samples of the suspect material were collected from the boiler and several other locations. HAMCO and ODH were able to estimate that 120 square feet of suspect RACM heat shield had been removed from around the boiler and 108 squarefeet of RACM had been removed from the boiler. The east and west wing of the facility are virtually the same; therefore, HAMCO was able to estimate that an additional 300 linear feet of RACM had been removed from the west wing's basement pipes based on the undisturbed east wing pipes.

During the visit, HAMCO talked with two tenants of the facility who identified Respondent as the new owner.

15. On July 15, 2004, the samples results revealed that five of the seven samples contained friable asbestos-containing material. The test results in conjunction the estimated amount of RACM subjected the renovation to the notification and work practice requirements of OAC Chapter 3745-20. Thus, Respondent failed to: (1) submit written notification of intention to renovate at least 10 days prior to the start of the renovation project, in violation of OAC Rule 3745-20-03(A); (2) have the structured inspected for asbestos prior to the start of renovation, in violation of OAC Rule 3745-20-02(A); (3) remove the RACM before the start of the renovation which caused it to be damaged, in violation of OAC Rule 3745-20-04(A)(1); (4) repair, encapsulate or remove the RACM that was made friable by the renovation, in violation OAC Rule 3745-20-04(C); (5) adequately wet the RACM exposed during the cutting and stripping of the components that were taken out of the facility as units or sections, in violation of OAC Rules 3745-20-04(A)(2); (6) adequately wet the RACM when it was being stripped from the components, in violation OAC Rule 3745-20-04(A)(3); and (7) keep the RACM wet until it was collected and contained for disposal. Each of these violations are also a violation of ORC § 3704.05(G).

16. On July 15, 2004, ODH sent Respondent an Emergency Adjudication Order that said, in part, that a public health emergency existed due the improper asbestos abatement activities at the facility and that there were visible emissions of asbestos-containing materials on the outside and inside of the facility. Additionally, asbestos-containing insulation covering a boiler and heat shield located in the basement were recently removed and were scattered on the ground outside and inside the building. Asbestos-containing insulation removed from pipes that had been recently cut down was scattered throughout the building. Asbestos-containing plaster had also been disturbed and was scattered throughout the building. The actions of cutting and disturbing the asbestos-containing materials had made them significantly damaged, thus causing the asbestos fibers to become airborne and created a public health threat. The Order required, in part, that Respondent restrict access to the building and required that the remaining asbestos-containing materials be properly removed and that all contaminated areas be decontaminated.

17. On August 2, 2004, a Notice of Violation ("NOV") letter was sent to Respondent for the improper removal of RACM, in violation of the requirements of OAC Chapter 3745-20 and as mentioned in Findings 15 and 21. The NOV requested Respondent to submit, by August 17, 2004, the required notification of intent to renovate. The NOV also requested that Respondent submit a compliance plan that outlined the steps that would be taken to clean-up the asbestos contaminated areas and plan that Respondent would implement to prevent the recurrence of the violations. The plan was to include the amounts of RACM taken from the building and copies of all waste shipment manifests.

18. On August 13, 2004, Respondent hand delivered the required notice of intent to renovate along with an asbestos survey prepared by Buckeye Asbestos Removal, Inc. ("Buckeye"). In a letter accompanying the survey Respondent said that:

- after Respondent was first noticed by its contractor, Mr. Burcham, of an agency inspection, it hired Buckeye to clean-up the exterior, restrict access to the basement, cover all openings and conduct sampling of the basement;
- after receipt of the ODH letter, Buckeye was hired to do additional sampling, to create a project design to address all of ODH's concerns and to handle the abatement. Buckeye's asbestos renovation survey results stated that 79 suspect asbestos bulk samples were collected from the facility, and the analyses indicated that nine building materials located throughout the facility contained RACM;
- a third party would be hired to oversee the abatement work and to provide clearance-air sampling;

- the abatement work and testing will have cost about \$49,000 where as the removal of the pipes would have cost about \$6,000 or less for encapsulating the pipes;
- it takes full responsibility and was sorry for the improper removal of the asbestos;
- it was not aware of the danger that improper removal can cause and that it never had seen an asbestos abatement project; and
- the following steps would be taken to assure future compliance:
 - materials will be tested for asbestos;
 - Respondent and its contractor will be taking a course to learn about asbestos and its removal; and
 - Respondent had learned the hazards of asbestos and that it is much cheaper to properly remove the asbestos-containing materials.

19. On September 8, 2004, HAMCO received a revised notification from Buckeye for the cleanup and removal of RACM at the facility. The notification said that 450 linear feet and 255 square feet of RACM would be removed from the facility. This amount confirms that the renovation was subject to the work practice requirements specified in OAC Chapter 3745-20.

20. On September 17, 2004, HCDES inspected the facility and determined that Buckeye was removing and cleaning up the RACM in accordance with the requirements of OAC Chapter 3745-20. The abatement took place from September 9, 2004 to October 9, 2004.

21. Respondent is the "owner and operator" of the facility as defined in OAC Rule 3745-20-01(B)(38). Therefore, Respondent was responsible for submitting an accurate written notice of intention to renovate and for assuring that the facility was thoroughly inspected to determine the presence and amounts of asbestos-containing materials prior to the start of demolition. Respondent failed to comply with these requirements, in violation of OAC Rules 3745-20-02(A) and 3745-20-03(A) and ORC § 3704.05(G). Additionally, Respondent failed to comply with the requirements of OAC Rules 3745-20-04(A)(1), (A)(2), (A)(3), and (A)(6)(a) by failing to remove the RACM prior to the start of renovation operations and by failing to keep the RACM adequately wet during stripping and cutting and failing to keep the asbestos-containing waste material adequately wet until it was collected and contained or treated in preparation for disposal. Additionally, Respondent

failed to repair the RACM that was made friable during the renovation, in violation of OAC Rule 3745-20-04(C) Respondent also failed to adequately wet and seal the asbestos-containing waste material into durable leak-tight, clearly labeled containers, in violation of OAC Rules 3745-20-05(B)(1) and (C) . These omissions were also violations of ORC § 3704.05(G).

22. 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 makes the following Orders:

1. Respondent shall pay Ohio EPA the amount of seventeen thousand and seven hundred dollars (\$17,700) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704.06. Ten thousand eight hundred dollars (\$10,800) of the total amount shall be paid in eighteen (18) monthly payments of six hundred dollars (\$600). The first monthly payment shall be due within thirty (30) days after the effective date of these Orders. Three thousand three hundred and sixty dollars (\$3,360) of the total amount shall be paid within nineteen (19) months after the effective date of the Orders. Payments shall be made by official checks made payable to "Treasurer, State of Ohio." The official checks shall be submitted to Brenda Case, or her successor, at Ohio EPA, Office of Fiscal Administration, P.O. Box 1049, Columbus, Ohio 43216-1049, together with a letter identifying the Respondent.

2. In lieu of paying the remaining three thousand five hundred and forty dollars (\$3,540) of civil penalty, Respondent shall, within nineteen (19) months of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of three thousand five hundred and forty dollars (\$3,540) to the Ohio EPA's Clean Diesel School Bus Program Fund (Fund 5CD0). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$3,540. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent and Fund 5CD0, to the above-stated address.

3. A copy of each of the above checks shall be sent to James A. Orlemann, Assistant Chief, SIP Development and Enforcement, or his successor, at the following address:

Ohio EPA
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049

4. Should Respondent fail to fund the SEP within the required timeframe set forth in Order 2, Respondent shall immediately pay to Ohio EPA \$3,540 of the civil penalty in accordance with the procedures in Order 1.

VI. TERMINATION

Respondent's obligations under these Orders shall terminate upon Ohio EPA's receipt of the official checks 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 this demolition operation.

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:

Hamilton County Department of Environmental Services
Air Quality Programs
250 William Howard Taft Road
Cincinnati, Ohio 45219-2660
Attn: Kerri Castlen

Roger Wells,
d.b.a. Real Spaces Property for Rent
Director's Final Findings and Orders
Page 9 of 10

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Thomas Kalman

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.

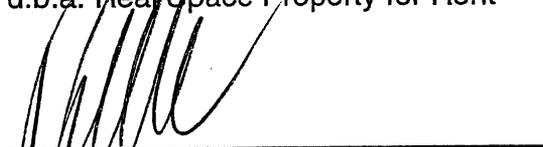
IT IS SO ORDERED AND AGREED:
Ohio Environmental Protection Agency


Chris Korleski
Director

12/31/07
Date

IT IS SO AGREED:

Roger Wells,
d.b.a. Real Space Property for Rent


Roger Wells

12/26/07
Date