Ohio | Environmental Protection Agency
John R. Kasich, Governor
Mary Taylor, Lt. Governor
Scott J. Nally, Director

May 2, 2012

CERTIFIED MAIL

Mr. Kevin D Margolis, Esq.
Benesch, Friedlander, Coplan
& Aronoff, LLP
2300 BP Tower
200 Public Square
Cleveland, Ohio 44114-2378

Re: Final Findings and Orders for: Violations of the Asbestos Emission Control standards associated with the renovation of the Cleveland Public Library's Woodland Branch Library located at 5809 Woodland avenue in Cleveland

Dear Mr. Margolis:

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,

Bruce D. Weinberg
Environmental Manager
Enforcement Section
Division of Air Pollution Control

BDW/lt

xc: Carol Hester, PIC
Lee Tullis, DAPC
Akia Smith, Fiscal Office (Agency # NA)
Stephen Feldmann, Legal Office
Tom Kalman, DAPC
Muhammad Mereb, DAPC
Ed Faskol / Bob Princic / Rich kolosionek, NEDO
Myron Scruggs, Cleveland Public Library
Valeria White, CDAQ

50 West Town Street, Suite 700
P.O. Box 1049
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OHIO E.P.A.

MAY -2 2012

ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

Cleveland Public Library	:	**Director's Final Findings**
325 Superior Avenue	:	**and Orders**
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 the Cleveland Public Library ("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

The Director of Ohio EPA makes the following findings:

1. " Facility" as defined by OAC Rule 3745-20-01(B)(18) means any institution, 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, but excluding residential buildings having four or fewer dwelling units. Any structure, installation, or building that contains a loft used as dwelling is not considered a residential structure, installation or building. Any structure, installation or building that was previously subject to this rule due its prior use or function is not excluded, regardless of its current use or function.

2. " 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

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.

By: Donna Lassiter Date: 5-2-12

renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation or both.

3. 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).

4. Pursuant to OAC Rule 3745-20-02(B)(4), all the requirements of OAC Rules 3745-20-03, 3745-20-04, and 3745-20-05 apply to the owner and operator of a facility being renovated if the combined amount of regulated friable asbestos-containing material to be stripped, removed, dislodged, cut, drilled, or similarly disturbed in such facility is at least 260 linear feet on pipes, 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.

5. OAC Rule 3745-20-03(A)(3) states, in part, that each owner or operator of a subject renovation operation shall provide the Director of Ohio EPA with a written notice of intention to renovate by not later than 10 working days prior to beginning renovation.

6. OAC Rule 3745-20-04(A)(1), states, in part, that each owner or operator of a subject renovation operation shall remove all regulated asbestos-containing material 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.

7. 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.

8. Respondent owns and operates Woodland Branch Library ("the facility") located at 5809 Woodland Avenue, Cleveland, Cuyahoga County, Ohio.

9. Respondent hired Sterling Professional Group, LLC ("Sterling") to perform a renovation project at the facility. Sterling is considered an "operator," as that term is defined in OAC Rule 3745-20-01(B)(39), of the renovation operation at the facility. Respondent is the "owner," as that term is defined in OAC Rule 3745-02-01(B)(39), of the facility being renovated.

10. Sterling started the renovation project on October, 28, 2009. On or about November 5, 2009, Sterling became concerned about the ceiling tiles in the facility possibly containing asbestos and it stopped work and notified Respondent.

11. On or about November 5, 2009, Respondent CPL hired EA Group to perform ambient airborne fiber sampling. Air sampling was performed by EA Group on November 5, 2009, and bulk sampling was performed by EA Group on November 11, 2009. It was confirmed that the ceiling tiles contained asbestos, and in response the facility was evacuated and closed to the public and employees on November 5, 2009.

12. Air monitoring was performed in three locations within the facility. Each of the samples was determined to have a fiber concentration of no more than 0.007 fiber per cubic centimeter ("f/cm^3"), which was below the Ohio Department of Health's ("ODH") maximum general standard for clean air which is 0.01 f/cm^3.

13. On November 9, 2009, Ohio EPA, Northeast District Office ("NEDO") received information regarding an alleged renovation of the facility. The information received indicated that possible asbestos-containing material had been disturbed and removed from the building.

14. On November 9, 2009, representatives from NEDO inspected the facility and they observed areas where ceiling tiles had been removed. They also observed dust and debris on the floor, bookshelves and furniture. Mr. Dennis Niedermyer, Assistant Facilities Administrator of Respondent, and Jeff S. Hakes, a Superintendent of Sterling, informed NEDO representatives that what were believed to be asbestos-containing tiles were discovered and the work was stopped.

15. On November 11, 2009, a certified asbestos hazard evaluation specialist from EA Group inspected the facility and collected bulk samples of ceiling tile materials that had been disturbed to confirm whether asbestos was present. Three representative bulk samples were collected and analyzed. The three samples were collected from 12-inch x 12-inch ceiling tile located in the basement, first floor staff restroom, and first floor main room. The bulk samples were analyzed by polarized light microscopy for asbestos content at the EA Group's laboratory. Two of the three samples of 12-inch x 12-inch ceiling tile were determined to contain regulated amounts of asbestos (5% amosite asbestos).

16. On December 2, 2009, NEDO sent a letter to Mr. Dennis Niedermyer requesting a report of any evaluation conducted on the building along with the proper notification. On December 3, 2009, Mr. Niedermyer informed NEDO by phone that they had a report from EA Group and they would forward a copy of it to NEDO.

17. On December 22, 2009, NEDO sent a Notice of Violation ("NOV") letter to Respondent. The letter stated that the requested information from the letter of December 2, 2009 was never received. The NOV letter cited Respondent for violating OAC Chapter 3745-20 "Asbestos Emission Control Standards," and it requested the submittal of additional information.

18. On December 29, 2009, NEDO received Respondent's response to the NOV letter of December 22, 2009. The letter stated that the renovation project started on October 28, 2009 and all work was stopped at the facility on November 5, 2009. The response included an undated letter from Sterling to Respondent, a letter dated November 29, 2009, from EA Group to Respondent, and a report dated December 5, 2009, from EA Group to Respondent. The letter from Sterling stated that the dumpster contained less than 500 square feet of the ceiling tiles removed from the Library.

19. On January 11, 2010, NEDO received an original Ohio EPA notification of demolition and renovation form for the facility. Emergency renovation was selected as the type of operation to be conducted. The facility size to be renovated was15,300 square feet and the approximate amount of regulated asbestos-containing material to be removed was 75 linear feet on pipes and 12,500 square feet of ceiling tiles. Dates of asbestos removal were from January 13, 2010 to April 30, 2010. Respondent was listed as the owner and Safe Air Contractors, Inc. was listed as the asbestos removal contractor. The project was completed and no additional cleanup was needed.

20. Respondent violated OAC Rule 3745-20-02(A) and ORC § 3704.05(G) by not inspecting the building for the presence of asbestos-containing material prior to the commencement of the renovation operation.

21. Respondent did not provide Ohio EPA with a written notice of intent to renovate at least 10 working days prior to starting the renovation work, in violation of OAC Rule 3745-20-03(A) and ORC § 3704.05(G).

22. Respondent failed to remove all regulated asbestos-containing material from the facility before any activity began that would break up or disturb the materials, in violation of OAC Rule 3745-20-04(A)(1) and ORC § 3704.05(G).

23. 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 twelve thousand two hundred and fifty dollars ($12,250) in settlement of Ohio EPA's claims for civil penalties, which may be assessed pursuant to ORC Chapter 3704. Within fourteen (14) 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 nine thousand and eight hundred dollars ($9,800) of the total amount. The official check shall be submitted to Akia Smith, 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

2. In lieu of paying the remaining two thousand four hundred and fifty dollars ($2,450) of the civil penalty, Respondent shall, within fourteen (14) days of the effective date of these Orders, fund a Supplemental Environmental Project ("SEP") by making a contribution in the amount of $2,450 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 $2,450. The official check shall be submitted to Akia Smith, 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 Tom Kalman, Acting 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 time frame set forth in Order 2, Respondent shall immediately pay to Ohio EPA $2,450 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, 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:

Ohio Environmental Protection Agency
Northeast District Office
2110 East Aurora Rd.
Twinsburg, Ohio 44087
Attn: Rich Kolosionek

and to:

Ohio Environmental Protection Agency
Division of Air Pollution Control
P.O. Box 1049
Columbus, Ohio 43216-1049
Attn: Tom Kalman, Acting Assistant Chief,
SIP Development and 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 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

Scott J. Nally
Director

7/26/12
Date

AGREED:

Cleveland Public Library

Signature

Date

THOMAS D. CORRIGAN
Printed or Typed Name

BOARD PRESIDENT
Title