

OHIO E.P.A.

DEC 29 2006

BEFORE THE
OHIO ENVIRONMENTAL PROTECTION AGENCY DIRECTOR'S JOURNAL

In the Matter of:

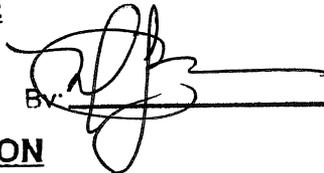
Adam Rutushin)
P.O. Box 3586)
Youngstown, Ohio 44512)

Director's Final Findings
and Orders

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: 12/29/06

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to Adam Rutushin ("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 facility 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 owns an apartment building ("facility") located at 224 West Wood Street, Youngstown, Mahoning County, Ohio.
2. Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") is Ohio EPA's contractual representative in Mahoning County for the administration of Ohio Administrative Code ("OAC") Chapter 3745-20 ("Asbestos Emission Control Standards").

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3. "Facility" as defined by OAC Rule 3745-20-01(B)(18) means, in part, any institutional, commercial, public, industrial or residential structure, installation, or building, excluding residential structures having four or fewer dwelling units.

4. "Friable asbestos material" as defined by OAC Rule 3745-20-01(B)(20) means, in part, any material containing more than one percent asbestos by area that hand pressure can crumble, pulverize or reduce to powder when dry.

5. "Nonfriable asbestos material" as defined by OAC Rule 3745-20-01(B)(34) means, in part, any material containing more than one percent asbestos by area that cannot be crumbled, pulverized or reduced to powder by hand pressure.

6. "Regulated asbestos-containing material" as defined by OAC Rule 3745-20-01(B)(41) means, in part, any friable asbestos material and any Category I or Category II asbestos-containing materials ("ACM") that will become friable.

7. "Owner or operator" as defined by OAC Rule 3745-20-01(B)(38) 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.

8. "Renovation" as defined by OAC Rule 3745-20-01(B)(43) means, in part, altering a facility or one or more facility components in any way, including the stripping of or removal of a regulated ACM from a facility component. Operations in which load-supporting structural members are wrecked or taken out are demolitions.

9. ORC § 3704.05(G) states, in part, that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under ORC Chapter 3704. OAC Chapter 3745-20 was adopted by the Director of Ohio EPA pursuant to ORC Chapter 3704.

10. OAC Rule 3745-20-02(A) states, in part, that each owner or operator of any renovation or renovation operation shall have the affected facility where a renovation operation will occur thoroughly inspected, prior to commencement of the renovation for the presence of asbestos, including Category I and Category II nonfriable ACM.

11. OAC Rule 3745-20-02(B)(4) states, in part, that the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 apply to the owner or operator of a renovation operation if the combined amount of regulated ACM is at least 260 linear feet of friable asbestos materials on pipes or at least 160 square feet on other facility components are to be stripped or removed at a facility being renovated.

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12. OAC Rule 3745-20-03(A) 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 days prior to beginning renovation.

13. OAC Rule 3745-20-04(A)(1) states, in part, that each owner or operator of any subject renovation operation shall remove friable asbestos materials from a facility being renovated before any wrecking or dismantling activity begins that would break the materials.

14. OAC Rule 3745-20-04(A)(6) states, in part, that each owner or operator of any subject renovation operation shall for all RACM, including materials that have been removed or stripped, adequately wet the materials to ensure that the materials remain adequately wet until collected and contained or treated in preparation for disposal.

15. OAC Rule 3745-20-05(B)(1)(c) states, in part, that each owner or operator of any renovation operation shall adequately wet asbestos-containing waste material and after wetting, seal all asbestos-containing waste materials while wet in durable leak-tight containers or wrapping.

16. On August 27, 2004, M-TAPCA received a complaint from Youngstown Thermal about asbestos removal taking place at the facility due to a switch to electric heat. On August 30, 2004, at 10:15 a.m., a M-TAPCA inspector visited the site and spoke with Respondent. Respondent and the inspector went to the basement where the disconnection to accommodate electric heating was taking place. The inspector observed dry and friable suspected ACM on the floor as well as on the pipe runs that were in the process of being removed. When asked who was doing the removal, Respondent claimed that one of the tenants was doing it without his consent. However, Respondent was aware of the electrical contractor's need to have a section of the pipe run removed to facilitate installation of the new electrical service. The inspector asked Respondent to stop all work in the basement, especially the suspected asbestos removal, and not to allow anyone in the basement until further notice. The inspector also left Respondent with his business card, asking him to call M-TAPCA if he had further questions. Respondent suspended all work in the basement at that time. Respondent did not perform an asbestos inspection prior to the renovation and, in the event there were ACM in excess of 260 linear feet present on pipes, did not submit a complete notification form to Ohio EPA prior to the renovation.

17. At 4:50 p.m. on August 30, 2004, the M-TAPCA inspector revisited the site, took pictures of the site and collected three samples of suspected ACM from the pipe insulation, and elbow and joint mud, and quantified the amount of pipe where the lagging had been cut and removed as 335 linear feet. The cut portion was lying on the floor in the

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southeast room where the new electrical service was installed. The waste materials from the renovation project were placed in trash bags and trash cans in the southwest room where the connection for Youngstown Thermal was located. The samples were sent to EA Group in Mentor, Ohio for asbestos content analysis.

18. On August 30, 2004, M-TAPCA sent a notice of violation ("NOV") letter to the Respondent. The NOV, in part, cited Respondent for the violations of the following:

- a. OAC Rule 3745-20-02(A) for failure to perform an asbestos inspection prior to the renovation;
- b. OAC Rule 3745-20-03(A) for failure to submit prior written notification of intention to renovate;
- c. OAC Rule 3745-20-04(A)(1) for failure to remove all RACM from the facility being renovated before any activity begins that would breakup, dislodge or similarly disturb the material; and
- d. OAC Rule 3745-20-04(A)(6) for failure to adequately wet the material and ensure that it remains wet until collected and contained for disposal.

The NOV contained a notification form that M-TAPCA requested Respondent to complete and return within five days after receiving the letter. The NOV also advised Respondent to suspend all activity that might disturb additional ACM, seal off the affected area, and contact a certified asbestos abatement contractor.

19. On September 10, 2004, M-TAPCA received the test results from EA Group of the samples sent to it on August 30, 2004 for asbestos content analysis. The test results revealed that two of the samples each contained 50% of chrysotile asbestos and one contained 60% of chrysotile asbestos. These analyses confirmed that the renovation involved an above threshold level of RACM.

20. Since this project constituted a "renovation," as defined in OAC Rule 3745-20-01(B)(43), and the amount of RACM was greater than 260 linear feet, the renovation project was subject to the requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 pursuant to OAC Rule 3745-20-02(B)(4).

21. At 9:15 a.m. on September 14, 2004, the M-TAPCA inspector returned to the site and took three samples of dry and friable suspect ACM in the area of the trash dumpster. The friable suspect ACM was not kept wet and/or sealed in durable leak-tight bags as specified in OAC Rule 3745-20-05(B)(1)(c) but rather put in plastic bags and garbage cans. While collecting the samples, the inspector spoke with a resident of the apartment, Sam Peterson. Mr. Peterson stated that he removed the asbestos from the

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basement under the direction of Respondent. The inspector could not gain access to the basement because Respondent had changed the locks, and the keys with Mr. George Clendenning, the building manager, didn't work in the new locks. At 10:05 a.m., Respondent called M-TAPCA and stated that he had changed the locks to keep people out. At about 1:00 p.m., the inspector met with Respondent at the facility. Both men went down to the basement at about 1:30 p.m., where Respondent stated that Mr. Peterson had removed the asbestos from the pipe at the time of the first inspection and cleaned the area without being told and without his knowledge. The inspector took additional photographs of the basement, collected additional samples and sent the samples to EA Group for asbestos-content analysis.

22. On September 13, 2004, Adam Rutushin contracted with Premium Air to remove 180 linear feet of RACM (Thermal System insulation) along with some environmental cleanup. Premium Air started the abatement work on September 16, 2004, and completed it on September 17, 2004. M-TAPCA inspected the facility on September 17, 2004, and found no further violation.

23. On September 23, 2004, M-TAPCA received the test results of the samples sent to EA Group on September 14, 2004. The test results revealed that two of the samples each contained 70% of chrysotile asbestos and one contained 65% of chrysotile asbestos. The renovation operation on this property involved friable asbestos material, and/or ACM that would become friable upon and after renovation, of more than 260 linear feet on pipes. Therefore, this renovation was subject to the work practice requirements of OAC Rules 3745-20-04 and 3745-20-05. Based on M-TAPCA's observation during the August 30, 2004 and September 23, 2004 inspections, Respondent: 1) failed to remove all RACM from the facility being renovated before any activity began that would breakup, dislodge or similarly disturb the material, in violation of OAC Rule 3745-20-04(A)(1); 2) failed to adequately wet the material and ensure that it remained wet until collected and contained for disposal, in violation of OAC Rule 3745-20-04(A)(6); and 3) failed to keep the friable ACM wet and sealed in durable leak-tight bags, in violation of OAC Rule 3745-20-05(B)(1)(c).

24. On October 4, 2004, M-TAPCA received a copy of the contract with Premium Air for removal of 180 linear feet of RACM (Thermal System insulation) and to perform some environmental cleanup, which was signed by Adam Rutushin on September 13, 2004.

25. On November 30, 2004, Respondent hand delivered to M-TAPCA, an Ohio EPA notification of renovation ("notification") form for the abatement at the facility that was signed by Respondent on September 17, 2004. The notification was for the removal of 180 linear feet of RACM from September 16 to 17, 2004.

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26. In conclusion regarding the August 30, 2004 and September 14, 2004 inspections, Respondent violated OAC Rules 3745-20-02(A) and 3745-20-03(A) by failing

to perform an asbestos inspection prior to the renovation and failing to submit a timely written notification of intent to renovate a facility at least 10 working days prior to beginning the renovation operation, respectively. Respondent also violated OAC Rule 3745-20-04(A)(1) for failure to remove all RACM from the facility being renovated before any activity begins that would breakup, dislodge or similarly disturb the material; OAC Rule 3745-20-04(A)(6)(a) for failure to adequately wet the material and ensure that it remains wet until collected and contained for disposal; and OAC Rule 3745-20-05(B(1)(c) for failure to keep the friable ACM wet and sealed in durable leak-tight bags. These violations also constituted violations of ORC § 3704.05(G).

27. 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 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 five hundred dollars (\$10,500) 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 eight thousand four hundred dollars (\$8,400). The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying 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 one hundred dollars (\$2,100) 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 \$2,100 to the Ohio EPA's Clean Diesel School Bus Fund (Fund 5CD). Respondent shall tender an official check made payable to "Treasurer, State of Ohio" for \$2,100. The official check shall be submitted to Brenda Case, or her successor, together with a letter identifying the Respondent, to the above-stated address.

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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 \$2,100 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, the operations of 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:

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Mahoning-Trumbull Air Pollution Control Agency
345 Oak Hill Ave., Suit 200
Youngstown, Ohio 44502
Attention: Larry Himes, Asbestos Coordinator

and to:

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

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XIII. EFFECTIVE DATE

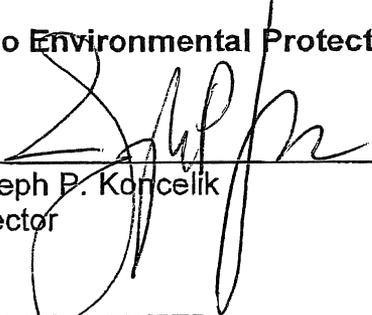
The effective date of these Orders is the date these Orders are entered into the Ohio EPA Director's journal.

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.

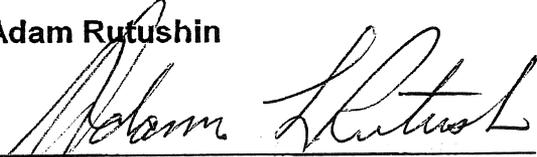
IT IS SO ORDERED AND AGREED:

Ohio Environmental Protection Agency

 <hr/> Joseph P. Korcelik Director	<hr/> Date 12/29/06
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IT IS SO AGREED:

Adam Rutushin

 <hr/> Signature	<hr/> Date 12/28/06
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