OHIO E.P.A.
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ENTERED DIRECTOR'S JOURNAL

BEFORE THE

OHIO ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:

RMS Investment Corporation	:	**Director's Final Findings**
7899 West Woodridge Drive	:	**and Orders**
Parma, Ohio 44129	:	

PREAMBLE

It is agreed by the parties hereto as follows:

I. JURISDICTION

These Director's Final Findings and Orders ("Orders") are issued to RMS Investment Corporation ("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 Respondent or 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 has determined the following findings:

1. Respondent, with offices located at 7899 West Woodridge Drive in Parma, Ohio, owned the Shoregate Shopping Center located in Willowick, Ohio, for all times relevant to these Orders and until May 6, 2008. In or about May 2006, Respondent had a renovation performed of the middle portion of the shopping center. The middle portion

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: _____ Date: 9-3-08

of the shopping center included Unit 520.

2. In a report titled Asbestos Survey Report, dated June 9, 2003, and prepared by RCS Environmental Group, Ltd. of 22130 Fairmount Blvd., Shaker Heights, Ohio, it was indicated that Unit 520 of the shopping center contained 4,500 square feet of 9-inch by 9-inch "green/blue" floor tile and black mastic that were Category I non-friable asbestos-containing material, as defined in ("OAC") Rule 3745-20-01(B)(9). Also, it was reported that the asbestos content of the floor tile was 4 percent chrysotile asbestos and of the mastic was 5 percent chrysotile asbestos.

3. Unit 520 was a "facility," as defined in OAC Rule 3745-20-01(B)(18). The work being performed at the facility in or about May 2006 constituted a "renovation," as defined in OAC Rule 3745-20-01(B)(44). Respondent constituted an "owner or operator" of the facility, as defined in OAC Rule 3745-20-01(B)(39), at all times relevant to these Orders.

4. On May 22, 2006, Unit 520 was observed to be completely gutted and the floor tile and mastic was removed except in the front and back vaults and the HVAC closet areas. Pieces of floor tile were observed around the perimeter of the unit and on an air handler four feet above the floor. Some of the pieces were of a greenish color. Also, there was evidence of the floor area being shotblasted to remove the mastic.

5. Respondent had hired CJI, Inc. ("CJI") of 1333 Highland Road, Suite A, in Macedonia, Ohio, to perform the renovation work. CJI is not licensed with the Ohio Department of Health as an asbestos abatement contractor.

6. In a report titled Asbestos Material Survey for Former Bank Space 502 at Shoregate Shopping Center, dated May 2006, and prepared by CMM Inc. of 3175 Independence Road, Station 86, Cleveland, Ohio, for CJI, only the 9-inch by 9-inch, "green streaked white and dark green" floor tile in the HVAC closet and front and back vaults, along with roof drain insulation, was found to contain asbestos. (The reference to Unit 502 is assumed to be a typographical error because there was and is no Unit 502, and the correct reference should be Unit 520.) 600 square feet of the floor tile was identified as Category I non-friable asbestos-containing material and containing 5 percent chrystotile asbestos and three linear feet of roof drain insulation was assumed to contain asbestos.

7. On May 26, 2006, Respondent and CJI acknowledged that CJI removed floor tiles and mastic in Unit 520 (except for the tiles and mastic in the HVAC closet and front and back vaults). It is alleged that the removal of those tiles and mastic occurred in a manner that, if such materials contained asbestos (which Respondent and CJI dispute), would render them friable. Respondent admitted that the material was removed without containment and in a dry condition, deposited in an unlined dumpster and not disposed of in an approved asbestos-containing waste material landfill. However, Respondent claims

there was no asbestos in the floor tiles and mastic that were removed at that time based on the 2006 asbestos survey report and, therefore, this removal was not subject to the applicability provisions of the notification and work practice requirements of OAC Chapter 3745-20.

8. The floor tile and mastic in the HVAC closet and front and back vaults constituted "regulated asbestos-containing material," as defined in OAC Rule 3745-20-01(B)(42) since this Category I nonfriable asbestos-containing material was subjected to grinding and abrading during removal.

9. OAC Rule 3745-20-02(B)(1) states, in part, that the requirements of OAC Rules 3745-20-03 (notifications), 3745-20-04 (asbestos emission control), and 3745-20-05 (asbestos waste handling) apply to each owner or operator of a renovation operation if the combined amount of regulated asbestos-containing material ("RACM"), as defined in OAC Rule 3745-20-01(B)(42), is at least 260 linear feet on pipes or at least 160 square feet on other facility components.

10. The requirements of OAC Rules 3745-20-03, 3745-20-04 and 3745-20-05 applied to this renovation operation because the amount of RACM removed from the facility exceeded 160 square feet of facility components other than pipes. Based on the information gathered by Ohio EPA, the entire renovation was subject to the notification requirements of OAC Rule 3745-20-03(A) and the removal of RACM from the HVAC closet and front and back vaults also was subject to OAC Rules 3745-20-04 and 3745-20-05.

11. The Director has determined that the following violations of state rules and laws occurred as a result of the Respondent's renovation operation:

a. OAC Rule 3745-20-03(A), for failure to provide the Director of Ohio EPA with written notice of intention to renovate the facility at least ten working days before beginning the renovation of Unit 520; and

b. ORC § 3704.05(G), for failure to comply with rules adopted by the Director of Ohio EPA pursuant to ORC § 3704.

12. On June 7, 2006, a Notice of Violation letter was sent by the Lake County General Health District, Ohio EPA's contractual representative in Lake County, to Respondent for the violation.

13. Respondent hired a licensed asbestos abatement contractor to cleanup the the site and to abate the RACM in the HVAC closet and front and back vaults.

14. 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 six thousand dollars ($6,000) in settlement of Ohio EPA's claim 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 four thousand and eight hundred dollars ($4,800) of the total amount. The official check shall be submitted to Brenda Case, 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 one thousand and two hundred dollars ($1,200) of 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 $1,200 to 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 $1,200. 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 $1,200 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 operation 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:

Lake County General Health District
33 Mill Street
Painesville, Ohio 44077
Attn: Bert Mechenbier

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

8/28/08
Date

IT IS SO AGREED:

RMS Investment Corporation

Signature

8/13/08
Date

Robert L. Gephart
Printed or Typed Name

Executive Vice President
Title