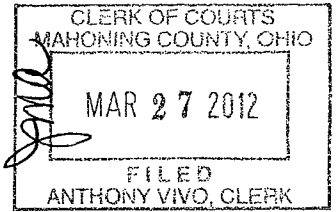


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IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

STATE OF OHIO, <i>ex rel.</i>)	CASE NO. 10 CV 4440
MICHAEL DEWINE)	
OHIO ATTORNEY GENERAL)	JUDGE MAUREEN A. SWEENEY
)	MAGISTRATE DENNIS J. SARISKY
Plaintiff,)	
)	MAGISTRATE'S DECISION
-v-)	
)	
GHASSAN K. MUSLEH)	
)	
Defendant.)	

This matter came before this Honorable Court for Trial on March 2, 2012. Plaintiff was present, in Open Court, represented by Assistant Attorney Generals Chris Kim and Clint White. Defendant was present in Open Court, represented by Attorney Mark I. Verkhlin. Testimony was taken and presented. Based upon the testimony and evidence presented, the Court finds as follows:

Statement of the Case

1. On November 26, 2010, Plaintiff State of Ohio, on relation of its Attorney General, and at the written request of the Director of the Ohio Environmental Protection Agency ("Ohio EPA"), filed a Complaint against Mr. Ghassan Musleh ("Defendant") for violations of Ohio's air pollution control laws at a facility located at 1823-1825 Wilson Avenue, Youngstown, Mahoning County, Ohio, 44506 ("Property"). *Complaint* (November 26, 2010); *Letter from Director of Ohio EPA to Ohio Attorney General* (December 31, 2008) (*State's Ex. 20*).

2. Count One of the State's Complaint alleged the Defendant failed to obtain a thorough asbestos inspection of his Property prior to the commencement of a renovation operation there, in violation of Ohio Adm.Code 3745-20-02(A). *Complaint at ¶¶ 19-22*.

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3. Count Two of the State's Complaint alleged the Defendant failed to notify Ohio EPA of the commencement of a renovation operation at the Property at least ten (10) days before beginning any activity there that would break up, dislodge, or disturb asbestos material, in violation of Ohio Adm.Code 3745-20-03(A). *Complaint* at ¶¶ 23-29.

4. Count Three of the State's Complaint alleged the Defendant failed to remove asbestos-containing material from the Property prior to renovation operations, or preclude access to the materials for subsequent removal, in violation of Ohio Adm.Code 3745-20-04(A)(1). *Complaint* at ¶¶ 30-34.

5. Count Four of the State's Complaint alleged the Defendant failed to have an authorized representative trained in the provisions of Ohio Adm.Code Chapter 3745-20 present at the Property while regulated asbestos-containing material ("RACM") was stripped, removed, or otherwise handled or disturbed, in violation of Ohio Adm.Code 3745-20-04(B). *Complaint* at ¶¶ 35-38.

6. Count Five of the State's Complaint alleged the Defendant failed to keep asbestos-containing waste material not removed prior to renovation adequately wet, in violation of Ohio Adm.Code 3745-20-05(B)(1)(c). *Complaint* at ¶¶ 39-43.

7. On March 2, 2012, the parties conducted a bench trial before the Court for determination of liability on Counts One through Five.

Findings of Fact

8. Defendant Ghassan Musleh is an individual that owns the property located at 1823-1825 Wilson Avenue, in Youngstown, Mahoning County, Ohio 44506. *Ghassan Musleh testimony.*

9. The property located at 1823-1825 Wilson Avenue, in Youngstown, Mahoning County, Ohio 44506 is a commercial building. *Musleh testimony; Larry Himes testimony.*
10. The Mahoning-Trumbull Air Pollution Control Agency ("M-TAPCA") contracts with the Ohio Environmental Protection Agency ("Ohio EPA") as the local air pollution control agency for Mahoning and Trumbull counties. *Tara Cioffi testimony; Himes testimony.*
11. The purpose of Ohio's asbestos control laws is to protect public health from asbestos, a hazardous air pollutant. Asbestos is hazardous to human health as it can be inhaled and result in conditions such as asbestosis and mesothelioma, a type of cancer. *Himes testimony.*
12. On December 28, 2005, Mr. Slanina, an M-TAPCA employee conducted an inspection of the Wilson Avenue structure in response to an anonymous complaint. *Slanina testimony.* Mr. Slanina took photographs and four samples of suspect RACM during his inspection. *Id. December 28, 2005 photographs (State's Exs. 15-18).*
13. On December 30, 2005, Mr. Larry Himes, former Administrator of M-TAPCA, conducted an inspection of the Wilson Avenue structure. Mr. Himes took photographs during his inspection. *Himes testimony. December 30, 2005 photographs (State's Exs. 4-11).*
14. The Wilson Avenue structure contained asbestos containing material. *Himes testimony; Slanina Testimony.* This is confirmed by EA Group's lab analysis of the samples of plaster taken by Mr. Slanina during his inspection on December 28, 2012. *Slanina testimony; Himes testimony; Laboratory Analytical Report (State's Ex. 13).* Specifically the test results revealed the presence of asbestos in excess of 1% for samples of plaster taken at each of the locations. *Id.* Further, the plaster was determined to be RACM because it had a high probability of becoming or has become crumbled, pulverized, or reduced to powder, and could be crumbled pulverized, or reduced to powder by hand pressure. *Slanina testimony; Himes testimony.*

15. Mr. Slanina and Mr. Himes observed that RACM, in the form of wooden lath and plaster had been crumbled, pulverized, or otherwise reduced to powder, had been stripped from the walls. *Slanina testimony; Himes testimony; December 28, 2005 Photo of exposed walls, second floor (State's Ex. 15).*

16. Mr. Slanina and Mr. Himes observed RACM in the form of wooden lath and plaster had been crumbled, pulverized, or otherwise reduced to powder, had been piled inside the Wilson Avenue structure. *Slanina testimony; Himes testimony; December 30, 2005 Photo of second floor, with black plastic bags (State's Ex. 10); December 30, 2005 Photo of second floor, pile of debris (State's Ex. 11); December 28, 2005 Photo of exposed walls, second floor (State's Ex. 15).*

17. Mr. Slanina and Mr. Himes observed an open-top trailer located below the second floor window containing RACM, in the form of wooden lath and plaster had been crumbled, pulverized, or otherwise reduced to powder. *Slanina testimony; Himes testimony; December 30, 2005 Photo inside of trailer (State's Ex. 8); December 28, 2005 Photo of contents of trailer (State's Ex. 18).*

18. Mr. Slanina and Mr. Himes observed pieces of plaster, which had been determined to be RACM, on the windowsill and similar pieces of plaster on the ground surrounding the trailer. No testing was done to determine that the material in the trailer was asbestos or contained asbestos. *Slanina testimony; Himes testimony; December 30, 2005 Photo of second floor ledge (State's Ex. 9); December 28, 2005 Photo of second floor window ledge, with tape measure (State's Ex. 17); December 30, 2005 Photo of ground near trailer next to building (State's Ex. 5).*

19. No evidence was presented that Defendant was responsible for removing the asbestos from the premises. *Himes testimony*.

20. No evidence was presented that Defendant conducted a renovation. *Slanina testimony; Handwritten notes and measurements from William Slanina from December 28, 2005, and January 17, 2006 (State's ex. 19)*.

21. Prior to the Mr. Slanina's December 28, 2005 inspection, Mr. Musleh did not hire a certified asbestos hazard evaluation specialist to inspect the Wilson Avenue structure for the presence of asbestos. *Cioffi Testimony; Musleh testimony*.

22. Prior to the Mr. Slanina's December 28, 2005 inspection, a notification for renovation had not been submitted to M-TAPCA for the Wilson Avenue structure. *Cioffi testimony; Musleh testimony*.

23. Neither Mr. Musleh, nor anyone on his behalf, removed all RACM at the Wilson Avenue structure prior to activity began that would break up, dislodge, or similarly disturb the materials. *Musleh testimony*.

24. No authorized representative, trained in the provisions of 3745-20 and the means of complying with them, was present at the Wilson Avenue structure when RACM was removed, or otherwise handled or disturbed. *Musleh testimony; Slanina testimony*.

25. No evidence was presented that Defendant removed asbestos containing materials or conducted a renovation *Id.*

Conclusions of Law

1. Ohio's environmental laws impose strict civil liability. See, e.g., *State of Ohio v. Mercomp, Inc.* (8th Dist.), 167 Ohio App. 3d 64, 2006-Ohio-2729 ¶¶ 39-43. Specifically, the

federal “[Clean Air Act] imposes strict liability upon owners and operators who violate the Act,” and courts are statutorily required to construe Ohio’s air pollution control laws consistently with the Clean Air Act. *United States v. Dell’Aquila* (C.A.3. 1993) 150 F.3d 329, 334; R.C. 3704.02(B).

2. Congress has found that medical science has not established any minimum level of exposure to asbestos fibers which is considered to be safe to individuals exposed to the fibers. 20 U.S.C. 3601(a)(3).

3. Ohio Revised Code 3704.05(G) states that no person shall violate any order, rule, or determination of the Director issued, adopted, or made under R.C. Chapter 3704. “Person” means “a public or private corporation, individual, partnership, or other entity.” Ohio Adm.Code 3745-15-01(V).

4. Ohio Adm.Code 3745-15-01(X) defines a “source” as “any building, structure, facility, operation, installation or other physical facility, or real or personal property that emits or may emit any air pollutant.”

5. Ohio Adm.Code 3745-15-01(C) defines “air pollutant” or “air contaminant” as particulate, dust, fumes, gas, mist, smoke, vapor or odorous substances, or any combination thereof.

6. Ohio Adm.Code 3745-15-01(U) defines “owner or operator” to mean “any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.” Further, Ohio Adm.Code 3745-20-01(B)(39) defines “owner or operator,” in relevant part, 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, or both.”

7. Ohio Adm.Code 3745-15-01(Q) defines "facility" as "any building, structure, installation, operation, or combination thereof which contains one or more stationary source(s) of air contaminants." Further, Ohio Adm.Code 3745-20-01(B)(18) defines a "facility," as it relates to the asbestos rules and in relevant part, as "any institutional, 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)."

8. As a former commercial building, the Wilson Avenue structure is a "facility," as defined in Ohio Adm.Code 3745-15-01(Q) and Ohio Adm.Code 3745-20-1(B)(18). Because the facility contained regulated asbestos containing material as confirmed by laboratory testing, the facility is also a "source," as defined in Ohio Adm.Code 3745-15-01(X), of "air contaminants," as defined in Ohio Adm.Code 3745-15-01(C).

9. Ohio Adm.Code 3745-20-01(B)(44) defines "renovation," in relevant part, as altering a facility or one or more facility components in any way, including the stripping or removal of regulated asbestos-containing material from a facility component.

10. Ohio Adm.Code 3745-20-01(B)(43) defines "removal," in relevant part as to *take out regulated asbestos containing material* or facility components that contain or are covered with regulated asbestos-containing material *from any facility*. (emphasis added).

11. The activity that occurred at the Wilson Avenue structure prior to December 28, 2005 is a "removal," as defined in Ohio Adm.Code 3745-20-01(B)(43), which is specifically identified as an activity meeting the definition of "renovation," as defined in Ohio Adm.Code 3745-20-01(B)(44).

12. Mr. Musleh is the “owner or operator,” as defined in Ohio Adm.Code 3745-15-01(U) and 3745-20-01(B)(39).

13. Mr. Musleh is a “person” under the law. Former Ohio Adm.Code 3745-15-01(U); *Complaint* at ¶ 9; *Answer* at ¶ 9. Mr. Musleh owns the Wilson Avenue structure, therefore is an “owner” subject to liability under R.C. Chapter 3704.

14. Mr. Musleh did not conduct a renovation, nor did anybody on his behalf conduct a renovation.

15. Mr. Musleh did not violate Ohio Adm.Code 3745-20-04(A)(1).

16. Mr. Musleh did not violate Ohio Adm. Code 3745-20-04(B);

17. Mr. Musleh did not violate Ohio Adm. Code 3745-20-04(B);

18. Mr. Musleh did not violate Ohio Adm. Code 3745-20-04(B);

19. Mr. Musleh did not violate Ohio Adm.Code 3745-20-05(B)(1)(c).

20. Accordingly, the Court finds that the State has not met its burden of proving by a preponderance of the evidence that Ghassan Musleh has committed the violations as alleged in Counts One through Five of the Complaint.

Decision

1. This Court hereby finds Defendant Ghassan Musleh not to be liable on Counts One through Five, and in violation of R.C. 3704.05.
2. The Court hereby dismisses the case against Defendant.
3. Costs are hereby assessed against Plaintiff.

MAR 27 2012

DATE


MAGISTRATE DENNIS J. SARISKY

NOTICE TO ATTORNEYS AND PARTIES

Pursuant to Civil Rule 53(D) (3), the parties shall have fourteen (14) days from the date of the filing of this Decision to file written Objections with the Clerk of Court's Office. The Objections shall be specific and state with particularity all grounds of objection. Any objection to a factual finding shall supported by a transcript of all the evidence submitted to the magistrate relevant to that finding or an affidavit of that evidence if a transcript is not available. Any such Objections must be served upon all parties to this action, and a copy must be provided to the Common Pleas Court. A party shall not assign as error on appeal the Court's adoption of any finding of fact or conclusion of law in that Decision unless the party has timely and specifically objected to that finding or conclusion as required by Civil Rule 53(E)(3).

THE CLERK SHALL SERVE NOTICE
OF THIS ORDER UPON ALL PARTIES
WITHIN THREE (3) DAYS PER CIV.R.5

done

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