

AGREED BOARD ORDER NO. 05-05

LOUISVILLE METRO AIR POLLUTION CONTROL BOARD

Incident No. 03941

This Order is issued by the Louisville Metro Air Pollution Control Board (Board) pursuant to Kentucky Revised Statutes, Chapter 77 (Air Pollution Control).

COMPANY: Southland Terrace Shopping Center, LLC
16 E. 34th Street
New York, New York 10016

REGULATIONS INVOLVED: 5.04 (Adoption of Federal Emission Standard for Asbestos)

NOTICE OF VIOLATION LETTER: No. 01696, dated March 11, 2005

BACKGROUND AND DISCUSSION:

The Company owns the Southland Terrace Shopping Center located on South Seventh Street Road in Louisville, Kentucky. On May 1, 2003, District officers observed suspect friable asbestos-containing material being removed from the former J.C. Penney department store renovation site at the center. The officers also observed suspect friable asbestos-containing material on the floor of the vacant store, and in dumpsters located outside the store on the south side of the site.

The District officers informed the Company's demolition and asbestos abatement contractor that the materials removed from the store appeared to contain asbestos. Despite the warning, the contractor continued operations. Samples of the materials obtained by the District that day tested positive for asbestos, and the District returned to the site the following day to advise the contractor to cease work. The contractor did cease operations on May 2, 2003. The District determined the site to be a hazard to public health and initiated a Metro Government Haz-Mat response.

The Company hired another asbestos abatement contractor, obtained necessary permits, abated the asbestos-containing materials, both from inside the facility and from the dumpsters, and properly disposed of the remaining asbestos-containing materials. On July 14, 2003, the District inspected the entire site, approved the asbestos abatement, and granted final clearance on the project.

The District alleges that the Company knowingly allowed its contractor to remove a minimum of 10,000 square feet of building components covered with asbestos-containing fireproofing without notification of the project to the District and without following work practice requirements, such as wetting, wrapping in plastic, and proper disposal. The District further alleges that the Company possessed asbestos surveys that indicated the location of the asbestos that was improperly removed but failed to take proper precautions to prevent the incident. As a result, asbestos fibers were released during the project, exposing workers and escaping to the outside air.

The District alleges that the Company violated the following federal regulations, incorporated by reference in District Regulation 5.04:

- 40 CFR 61.145(b)(1) – Failure to notify the District of intent to demolish and renovate
- 40 CFR 61.145(c)(2) – Failure to adequately wet asbestos-containing material
- 40 CFR 61.145(c)(4) – Failure to contain in leak-tight wrapping
- 40 CFR 61.145(c)(6) – Failure to keep wet until disposal
- 40 CFR 61.145(c)(8) – Failure to have trained supervisor present
- 40 CFR 61.150(a) – Discharge of visible emissions of asbestos-containing material
- 40 CFR 61.150(b) – Failure to dispose of asbestos-containing waste at acceptable site
- 40 CFR 61.150(c) – Failure to mark waste transportation vehicles
- 40 CFR 61.150(d) – Failure to maintain waste shipment records

The Company is one of five parties against whom the District has alleged violations related to this incident. To fully resolve the Company's portion of the violations alleged above of District Regulation 5.04, the parties agree to this Order assessing against the Company an administrative settlement of \$100,000.

On September 21, 2005, a public hearing was held before the Board on the proposed settlement. Based upon the evidence presented at that hearing, the Board determined that the proposed resolution and requirements were reasonable under the circumstances.

NOW THEREFORE, BE IT ORDERED THAT:

1. The Company will pay \$100,000 to the Louisville Metro Air Pollution Control District in quarterly installments of \$25,000 payable on September 21, 2005, January 31, 2006, May 31, 2006 and September 30, 2006.
2. The Company has reviewed this Order and consents to all its requirements and terms. Further, the Company agrees to pay the cost of publishing legal notice of the public hearing.
3. In the event that it is necessary for the District to seek a court order to enforce this Order, the Company agrees to pay filing fees and costs of such action.
4. This Order fully resolves the violations alleged against the Company in District Incident

No. 03941 and as alleged above in this Order.

5. Neither this Order nor the actions taken hereunder shall constitute an admission by the Company of any wrongdoing, or an admission of liability for any of the matters referenced in the Order, nor is it intended to affect any civil claims arising from this matter.

Dated this 21st day of September, 2005.

Louisville Metro Air Pollution Control Board

Southland Terrace Shopping Center, LLC

By: _____
Karen A. Cassidy
Chair

By: _____
Gabriel Jeidel
Manager

Louisville Metro Air Pollution Control
District

Stites & Harbison, PLLC

By: _____
Jesse Goldsmith, P.E.
Engineering/Enforcement Manager

By: _____
Marc S. Murphy
Attorney for Southland Terrace
Shopping Center, LLC

Approved as to form and legality:

By: _____
Lauren Anderson
Assistant County Attorney