

AGREED BOARD ORDER NO. 08-01

LOUISVILLE METRO AIR POLLUTION CONTROL BOARD

Incident Nos. 03665, 04385, 04390, 04594, 04595, 04596, 04597, 04598, and 04599

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

COMPANIES: Clark Management Co., Inc., and
1860 Mellwood, LLC.
1115 South 4th Street
Louisville, Kentucky 40203

INDIVIDUAL: John M. Clark, individually and
as officer of Clark Management Co., Inc., and
as officer of 1860 Mellwood, LLC.

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

NOTICE OF VIOLATION LETTER: Nos. 01703, dated May 2, 2005; 01855, dated March 30, 2007; 01919, dated December 3, 2007; and 01920, dated December 3, 2007.

BACKGROUND AND DISCUSSION:

1860 Mellwood LLC owns the Mellwood Arts and Entertainment Center (Center) located at 1860 Mellwood Avenue in Louisville, Kentucky. Clark Management Co., Inc. and John M. Clark act as operators of the Center. On Monday, March 15, 2004, the District received a call from a worker engaged in a renovation project at the Center, who stated that suspect asbestos-containing pipe insulation may have been disturbed. District officers arrived at the Center and observed an employee of Clark Management Co., Inc. cleaning up a floor near the back of the boiler room. The employee stated that he had disposed of suspect asbestos-containing pipe insulation, and contaminated debris, after workers had expressed concern that they were being exposed to asbestos. District officers sampled the material, and it tested positive for Amosite (18%).

On Wednesday, March 17, 2004, the District learned that another asbestos-related incident had occurred at the Center over the weekend. The District received a phone call from Mr. Clark, stating that an exterior wall had become unstable and he had ordered workers to tear it down. The 4,500 square foot wall was covered with transite panels that tested positive for Chrysotile (15%). Clark Management Co., Inc., 1860 Mellwood LLC., and Mr. Clark failed to notify the District, failed to follow proper work practices, and failed to have a trained supervisor present, prior to removing the asbestos-containing material (ACM). Mr. Clark subsequently hired an asbestos abatement contractor, and properly abated and disposed of the remaining ACM. On March 23, 2004, the District inspected the area near the boiler room, and the area previously containing the transite panels, and approved the asbestos abatement.

On June 27, 2006, District officials toured the Center and discovered evidence of unpermitted asbestos removal projects. The District then issued a written request for additional information. From the information provided by Mr. Clark and his asbestos abatement contractor, Dixie Demolition, Inc., the District discovered that Companies had conducted a renovation of the boiler room at the Center in 2003, without having thoroughly inspected for the presence of ACM. The District also discovered that Companies conducted another asbestos project, involving the removal of asbestos-containing pipe insulation, in 2005, after a District-issued asbestos permit had expired.

The District alleges Companies and Individual disturbed ACM without notification to the District, without thoroughly inspecting for asbestos, and without following work practice requirements, such as wetting ACM, wrapping it in plastic, and properly disposing of it. The District alleges that Companies and Individual violated the following federal regulations, incorporated by reference in District Regulation 5.04:

- 40 CFR 61.145(a) – Failure to thoroughly inspect the affected facility
- 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 asbestos-containing material in leak-tight wrapping
- 40 CFR 61.145(c)(6) – Failure to keep asbestos-containing material wet until disposal
- 40 CFR 61.145(c)(8) – Failure to provide trained supervisor

To fully resolve the violations alleged above of District Regulation 5.04, the parties agree to this Order assessing against Companies and Individual an administrative settlement of \$25,000 and requiring the completion of a comprehensive asbestos survey of the 360,000 square foot facility, conducted by Micro-Analytics, Inc. in accordance with AHERA regulations, as described in Exhibit A.

On February 20, 2008, 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. Companies and Individual shall pay \$25,000 in installments of \$5,000 due by May 31, 2008, June 30, 2008, July 31, 2008, August 31, 2008 and September 30, 2008, to the Louisville Metro Air Pollution Control District.
2. Companies and Individual shall complete a comprehensive asbestos survey of the 360,000

square foot facility, conducted by Micro-Analytics, Inc., in accordance with AHERA regulations, as described in Exhibit A, no later than April 15, 2008.

3. Companies and Individual shall provide proof of the asbestos survey described in paragraph 2 to the District no later than May 15, 2008.

4. Companies and Individual have reviewed this Order and consent to all its requirements and obligations. Further, Companies and Individual agree to pay the cost of publishing legal notice of the public hearing.

5. In the event that it is necessary for the District to seek a court order to enforce this Order, Companies and Individual agree to pay filing fees and costs of such action.

6. This Order fully resolves the violations alleged against Companies and Individual in District Incident Nos. 03665, 04385, 04390, 04594, 04595, 04596, 04597, 04598, and 04599, and as alleged above in this Order.

7. This Order fully resolves any violations alleged against Companies and Individual pertaining to asbestos projects conducted at the Center that are the subject matter of the Incident Nos. included in paragraph 6 above.

8. Neither this Order nor the actions taken hereunder shall constitute an admission by Companies and Individual of any wrongdoing.

Dated this 20th day of February, 2008.

Louisville Metro Air Pollution Control Board

Clark Management Co., Inc.,
1860 Mellwood, LLC., and
John M. Clark

By: _____
Karen A. Cassidy
Chair

By: _____
John M. Clark
Individually, and as officer of Clark
Management Co., Inc. and as officer
of 1860 Mellwood, LLC.

Louisville Metro Air Pollution Control
District

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

Approved as to form and legality:

By: _____
Lauren Anderson
Assistant County Attorney