IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **LEANDER CONSTRUCTION, INC.** Lee County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2016-AQ- 11

TO: Jerald W. Leander, Registered Agent
Leander Construction, Inc.
Box 345, RR 3
Canton, Illinois 61520

Todd Leander, President
Leander Construction, Inc.
256 E. Fernwood
Morton, Illinois 51550

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Leander Construction, Inc. (Leander Construction) for the purpose of resolving the asbestos violations which occurred during the renovation project at the Keokuk Water Treatment facility. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Tom Wuehr
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9576

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/725-9572

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II and the rules promulgated or permits issued pursuant to that division; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which

authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. The Keokuk Water Treatment facility is located at 1000 Mississippi Street in Keokuk, Iowa. The facility was undergoing a renovation project and the construction of a small addition. Leander Construction was the general contractor. Prior to the project, the Keokuk Water Treatment facility contracted with the Mississippi Valley Company to conduct an asbestos inspection. The inspection indicated that the main roof core contained 10% Chrysotile asbestos, flashing around a vent on the upper roof contained 6% Chrysotile asbestos, and flashing on the lower roof contained 8% Chrysotile asbestos. Iowa Illinois Taylor was contracted to remove the asbestos containing material.

2. On October 28, 2015, Tom Wuehr, DNR Air Quality environmental specialist, conducted an inspection at the facility. The inspection was the result of a complaint submitted by Iowa Illinois Taylor indicating that Leander Construction had improperly removed asbestos containing material. During the inspection, Mr. Wuehr discovered that Jerry Davis, Leander Construction superintendent of the project, directed James Curry, an employee of Leander Construction, to remove flashing from the building. Mr. Davis admitted that he had ordered Mr. Curry to strip the material from the roof. The asbestos inspection conducted prior to the project indicated this material contained 8% asbestos. Mr. Curry was not licensed to handle asbestos. Iowa Illinois Taylor employees had observed the removal by Mr. Curry. The Iowa Illinois Taylor employees cleaned up the roofing debris and placed it in leak tight containers. The material was taken to the landfill as asbestos containing material.

3. On November 2, 2015, DNR issued a Notice of Violation letter to Leander Construction for the asbestos violations discovered during Mr. Wuehr's inspection.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission

Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

3. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that Leander Construction was not in compliance with these provisions when the demolition occurred.

4. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. During Mr. Wuehr's inspection he determined that asbestos containing material was improperly removed; the material was not kept wet during the removal or disposal. The facts in this case indicate violations of this provision.

5. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the removal of the asbestos containing material. The above facts indicate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Leander Construction agrees to do the following:

1. Leander Construction shall pay an administrative penalty in the amount of $2,500.00 within 60 days of the date the Directors signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to $10,000.00 per day of violation for the air quality violations involved in this matter. Iowa Code section 455B.146A provides for more serious criminal sanctions for the air quality violations.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-

cited violations is the issuance of an administrative consent order with a $2,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." The project had an asbestos abatement contractor on site and would have been able to remove the asbestos containing material. Therefore, it is unlikely Leander Construction gained any economic benefit through its actions. Based on this information, an economic benefit amount is not being assessed.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to comply with the proper asbestos removal and disposal procedures has likely caused asbestos fibers to be released into the air through the removal of the asbestos containing material. These violations threaten the integrity of the regulatory program because compliance with the asbestos regulations is required of all persons in this state. Based on the above considerations, $1,500.00 is assessed for this factor.

Culpability – Leander Construction has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Leander Construction was aware of the presence of the asbestos containing material, yet ordered an employee to remove the material without complying with proper removal and disposal procedures. Based on the above considerations, $1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Leander Construction. For that reason, Leander Construction waives the rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this

administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146.

Chuck Gipp
CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 5th day of October, 2016.

David A. Johnson
LEANDER CONSTRUCTION, INC.

Dated this 26 day of September, 2016.

Kelli Book; Tom Wuehr; DNR Field Office 6; EPA; VII.C.4.