

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

<p>IN THE MATTER OF:</p> <p>J.S PROPERTIES, L.L.C. and TERRY ANDERSON</p> <p>Mahaska County, Iowa</p>	<p>ADMINISTRATIVE ORDER NO. 2016-AQ- 12</p>
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TO: Terry Anderson
2010 Suffolk Road
Oskaloosa, Iowa 52577

Becky Anderson, Registered Agent
J.S. Properties, L.L.C.
2010 Suffolk Road
Oskaloosa, Iowa 52577

I. SUMMARY

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this 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

Appeal, if any, addressed to:

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

Payment of Penalty to:

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

II. JURISDICTION

This Order is issued 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 violations of Iowa Code chapter 455B, Division II and the rules adopted 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.

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III. STATEMENT OF FACTS

1. J.S. Properties, L.L.C. (J.S Properties) owns a building located at 517 B Avenue West in Oskaloosa, Iowa. The building is a 15,000 square foot two story building built in 1852. The building had been used as a five unit apartment building. J.S. Properties purchased the building in October 2015.
2. On November 11, 2015, DNR received a complaint from a neighbor next to J.S. Properties' building. The complainant stated that the building was being demolished and dust was blowing around. The complainant believed the building had asbestos in it. Reid Bermel, DNR environmental specialist, contacted Mr. Anderson and verified that he was demolishing the building.
3. On November 12, 2016, Tom Wuehr, DNR environmental specialist senior, contacted Mr. Anderson to request that the demolition stop. Mr. Anderson stated he was conducting the demolition on his own. He said he used some of his own equipment and rented equipment to demolish the building. He indicated that he had already demolished most of the building. Mr. Anderson said that a City of Oskaloosa employee had taken a look at the building prior to the demolition. Mr. Anderson indicated the City of Oskaloosa had previously completed an asbestos inspection and there was virtually no asbestos in the building. No asbestos containing material had been abated prior to the demolition. Mr. Anderson stated Mr. Wuehr could obtain the inspection report from the City of Oskaloosa. Mr. Wuehr requested Mr. Anderson hire a site supervisor and keep water on the remaining debris until it could be taken to the landfill. Mr. Anderson agreed to do this. A significant portion of the building had already been taken to the landfill as regular demolition debris.
4. Mr. Wuehr contacted the City of Oskaloosa for the inspection report and it was forwarded to Mr. Wuehr. Terracon Consultants, Inc. completed an inspection in July of 2014. The inspection was done for the City of Oskaloosa and was not conducted as part of this demolition project. The report indicated regulated asbestos containing material throughout the building, ranging from 1.2% Chrysotile asbestos to 91.5% Chrysotile asbestos. The report stated that the "materials identified to contain asbestos greater than 1% should be removed by a qualified and Iowa-certified asbestos abatement firm." The report indicated the building contained over 10,000 square feet of regulated asbestos containing material (material containing more than 1% asbestos).
5. On November 19, 2015, Mr. Wuehr conducted an inspection of the building site. The building had been removed; however, Mr. Wuehr discovered damaged steam pipes with air cell insulation remaining on the pipe on the ground in the area where the building had been. The insulation was dry and friable. He

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collected a sample of the insulation. The laboratory sample indicated 40% Chrysotile asbestos.

6. On December 1, 2015, DNR issued a Notice of Violation letter to Mr. Anderson for the asbestos violations discovered during Mr. Wuehr's investigation. The letter informed Mr. Anderson that further enforcement may be pursued.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission (EPC) to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC section 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 asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. Mr. Anderson stated that he did not have the building inspected for asbestos prior to the demolition project. The above facts indicate violations of this provision.

3. 40 CFR section 61.145(b)(1) requires written notification of demolition to be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. The DNR has no evidence that a notification was ever submitted prior to the demolition of the building. The above facts indicate violations of this provision.

4. 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 J.S Properties and Mr. Anderson were not in compliance with these provisions when the demolition occurred.

5. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. No asbestos abatement occurred prior to the demolition project, even though a 2014 inspection conducted by the City of Oskaloosa indicated there were over 10,000 square feet of asbestos containing material in the building. During Mr. Wuehr's inspection he observed dry asbestos containing material on pipe debris left at the site after the cleanup was to have occurred. The facts in this case indicate violations of this provision.

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6. 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. Proper asbestos abatement did not occur prior to the demolition project, even though a 2014 inspection conducted by the City of Oskaloosa indicated there were over 10,000 square feet of asbestos containing material in the building. During Mr. Wuehr's inspection he observed dry asbestos containing material on pipe debris left at the site after the cleanup was to have occurred. The facts in this case indicate violations of this provision.

7. 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 demolition of the building. The above facts indicate noncompliance with this provision.

8. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. During Mr. Wuehr's inspection he observed dry asbestos containing material on pipe debris left at the site after the cleanup was to have occurred. The facts in this case indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders J.S. Properties and Terry Anderson to do the following:

1. Pay an administrative penalty in the amount of \$10,000.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII of this 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.

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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 Order with a \$10,000.00 penalty. J.S. Properties and Terry Anderson are jointly and severally liable for the penalty assessment. The administrative penalty 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.” Mr. Anderson demolished the apartment building owned by J.S Properties without properly removing the asbestos containing material. A 2014 asbestos inspection conducted by the City of Oskaloosa indicated the building contained over 10,000 square feet of regulated asbestos containing material. Per the asbestos NESHAP regulations, the regulated asbestos containing material was to be removed prior to the demolition. The DNR estimates the cost of removing the regulated asbestos containing material prior to the demolition to be between \$30,000.00 and \$40,000.00. Mr. Anderson and J.S. Properties avoided these abatement costs. Additionally, a portion of the building was taken to the landfill as regular construction and demolition waste. Most landfills charge a higher fee for disposal of asbestos containing material. It is estimated an additional \$5,000.00 to \$10,000.00 was saved in landfill fees. In addition, J.S. Properties and Terry Anderson failed to properly inspect the building prior to the demolition. The inspection cost is estimated at \$500.00. Based on this information, it is estimated that J.S. Properties and Terry Anderson gained an economic benefit of \$35,500.00 to \$50,500.00. However, the Department has determined to handle this matter administratively and therefore an economic benefit of \$6,000.00 is assessed for this factor.

Gravity – 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, \$3,000.00 is assessed for this factor.

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Culpability – J.S. Properties and Mr. Anderson have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Mr. Anderson was aware of the asbestos inspection conducted in 2014, but failed to comply with any of the asbestos regulations during the demolition and disposal of the building. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.138, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this 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 section 455B.146.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 12th day of
October, 2016.

Kelli Book; DNR Field Office 2; EPA; VII.C.4