IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: **LUND-ROSS CONSTRUCTORS, INC.**	ADMINISTRATIVE CONSENT ORDER NO. 2020-AQ- 08

To: Larry Lundquist, President
Lund-Ross Constructors, Inc.
4601 F Street
Omaha, Nebraska 68103

Thomas R. Brown, Registered Agent
10050 Regency Circle #200
Omaha, Nebraska 68114

Re: Non-compliance with National Emission Standard for Hazardous Air Pollutants (NESHAP) asbestos handling and removal regulations.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Lund-Ross Constructors, Inc. (Lund-Ross) for the purpose of settling certain alleged asbestos removal and handling violations.

Lund-Ross was an operator responsible for demolishing certain buildings in Clarinda, Iowa. Regulations governing demolition and disposal of commercial buildings that contain asbestos were not complied with. This Order requires Lund-Ross to pay an administrative penalty of $4,000.00 within 30 days.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Tom Wuehr, Env. Specialist Senior
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-725-9576

Relating to legal requirements:
Kelli Book, Attorney
Iowa Department of Natural Resources
502 E. Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-210-3408

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code §§ 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 (air quality), and the rules promulgated or permits issued pursuant to that division; and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

Lund-Ross neither admits nor denies the Statement of Facts and enters into this Order for settlement purposes only.

The following facts are relevant to this matter:

1. This Order addresses the demolition of three buildings in Clarinda, Iowa. The buildings were located at 101, 103, and 105 East Main Street in the city.

2. In June, 2017, DNR staff inspected the three structures and took samples. The samples showed that the buildings all contained asbestos containing material. The City of Clarinda (City) was notified of the applicability of the asbestos NESHAP to the demolition of the buildings.

3. In August, 2017, DNR staff was notified that Field Day Development, L.L.C. (Field Day), would be responsible for this construction and demolition project. Field Day was notified by DNR that the buildings all contained asbestos so any demolition had to occur in a manner that was consistent with the federal NESHAP. DNR also notified Field Day that the buildings located at 103 and 105 East Main Street must be demolished as an "ordered demolition" because they were already partially collapsed.

4. On October 4, 2017, all three buildings were sold from the City to Bank of Iowa Corporation.

5 On June 8, 2018, Lund-Ross contacted DNR regarding demolition of the buildings in Clarinda.

6. On or about June 22, 2018, Peitzmeier Demolition and Concrete Cutting, Inc. entered into a contract with Lund-Ross for demolition of the buildings in Clarinda.

7. On July 17, 2018, the City issued a demolition order for the buildings at 101, 103 and 105 East Main Street, Clarinda.

8. On July 20, 2018, after a conversation between DNR staff, property owners, and contract operators, DNR received incomplete demolition notifications from Pietzmeier for the properties at 101 and 105 East Main Street in Clarinda. No notification was received by DNR for the structure located at 103 East Main Street. The notification for 101 and 105 East Main Street stated incorrectly that the asbestos found in those two structures was under NESHAP limits. DNR sampling established otherwise. Additionally, the notification failed to identify the waste transporters that would participate in removal of the demolished material and the disposal site that would be utilized.

9. On August 6, 2018, demolition of all three buildings commenced. There was no Iowa licensed contractor/supervisor on-site as required by Iowa law and the federal NESHAP.

10. The operator contacted with a third party to haul building materials away from the site. Crain Construction took all the "structured pack and crushable materials" to their materials yard south of the City located at 2260 Highway 71.

11. On February 25, 2019, DNR staff were notified by the United States Environmental Protection Agency (EPA) that the demolition of all three buildings had occurred despite incomplete notification for two buildings and no notification for the third building. EPA also notified DNR that a debris pile was found south of the City.

12. On April 24, 2019, DNR staff inspected the debris pile and took samples that were eventually identified as 40% chrysotile asbestos. The asbestos was unsealed and dry.

13. Notices of Violation (NOV) were issued to Lund-Ross on June 4, 2019 and September 24, 2019. The NOVs addressed Lund-Ross' failure to inspect, failure to notify, failure to follow emission control procedures, failure to have a trained supervisor on-site, and failure to properly dispose of the asbestos containing material.

IV. CONCLUSIONS OF LAW

Lund-Ross neither admits nor denies the Conclusions of Law and enters into this Order for settlement purposes only.

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

2. Pursuant to Iowa Code § 455B.133, the Commission adopted 567 IAC section 23.1(3), which adopts by reference the federal regulations regarding asbestos removal. The EPA 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 Code of Federal Regulations (CFR) part 61, subpart M.

3. 40 CFR section 61.145(a) requires an operator to thoroughly inspect a structure for asbestos containing material prior to demolition to determine which section of the NESHAP apply. DNR inspections of the structures found significant evidence of asbestos on the property. The inspections completed by the operator were not considered thorough because the inspections did not indicate the presence of regulated amounts of asbestos. The above-stated facts establish violations of this provision.

4. 40 CFR section 61.145(b)(1) requires complete written notification to be submitted to the DNR prior to beginning demolition or renovation. The specific requirements for this notification are contained in the subsection and must be completed thoroughly and accurately. The notifications submitted did not contain all the required information. The above-stated facts establish violations of this provision.

5. 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 above-stated facts establish violations of this provision.

6. 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. DNR observed regulated asbestos containing material that had not been removed prior to the demolition of the buildings. The facts in this case indicate a violation of this provision.

7. 40 CFR 61.145(c)(6)(1) 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. DNR observed dry regulated asbestos containing material exposed to the open air at the demolition site. The facts in this case indicate a violation of this provision

8. 40 CFR section 61.145(c)(8) establishes that no asbestos containing

material shall be stripped, removed, or otherwise handled or disturbed at a facility unless at least one on-site representative is trained in compliance with the asbestos NESHAP. The above-stated facts establish violations of this provision.

9. 40 CFR section 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. DNR observed dry regulated asbestos containing material exposed to the open air at the demolition site. The above-stated facts establish violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Lund-Ross agrees to the following:

1. Lund-Ross will pay an administrative penalty of $4,000.00 within 30 days of the Order being signed by the Director.

VI. PENALTY

1. Iowa Code § 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 authorizing the Director to assess administrative penalties at 567 IAC 10.

2. Additionally, Iowa Code § 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. More serious criminal sanctions are also available pursuant to Iowa Code § 455B.146A.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the fine should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. 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 $4,000.00 penalty. The administrative penalty assessed by this Order is determined as follows:

a) 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."

All the materials (rock, brick, concrete, etc.) from the three buildings was hauled and disposed of at a materials yard south of Clarinda. All of this material should have been disposed of at a landfill as asbestos containing waste. Doing so would have resulted in additional expense for hauling and landfill fees. Lund-Ross benefited from improper disposal and saved at least $1,000.00. Therefore, $1,000.00 is assessed for this factor.

b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program.

Asbestos is a known carcinogen and inhalation of fibers is a primary pathway. Demolition commenced on three buildings (two with high concentrations of friable asbestos) in the high-traffic downtown area of Clarinda. Several friable materials with up to 40% asbestos were disturbed during the course of demolition, thus spreading the fibers of a known carcinogen into the local community and to local bystanders watching the demolition.

Thus, a penalty of $2,000.00 is assessed for this factor.

c) Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations.

DNR notified the owner and other parties involved with this project of the fact that samples showed asbestos in the structures. The NESHAP regulations are clear as to the fact that a person trained in the provisions of the asbestos NESHAP must be in control of the site during demolition, and the asbestos-containing rubble cannot simply be dumped on ground. As such, a penalty of $1,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

As this Order is issued with the consent of the parties, it is not subject to appeal.

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.146. Compliance with Section V (Order) of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.

Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 14th day of August, 2020.

Lund-Ross Constructors, Inc.

Dated this 12 day of Aug., 2020.

CC: DNR AQB Asbestos Compliance Unit; Kelli Book; VII.C(4).