

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: ELITE LODGE OF ASHWORTH LLC	ADMINISTRATIVE CONSENT ORDER NO. 2023-AQ- 25
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TO: Hershel Bodansky, Registered Agent Elite Lodge of Ashworth LLC 909 Ashworth Road West Des Moines, Iowa 50265	Moses Spitzer, Home Office Elite Lodge of Ashworth LLC 1 Hillcrest Center Suite 223 Spring Valley, New York 10977
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I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Elite Lodge of Ashworth LLC (Elite Lodge) for the purpose of resolving the air quality violations which occurred during the demolition of a building on the Elite Lodge property in West Des Moines, Iowa. This administrative consent order requires Elite Lodge to pay a \$5,000.00 administrative penalty. 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, Air Quality Bureau
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/343-7063

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/210-3408

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 (air quality), and the rules

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promulgated or permits issued pursuant to that division and Iowa Code section; 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. Elite Lodge is a retirement community located in West Des Moines, Iowa. The retirement community contains approximately 60 apartments in eight buildings. The entire complex is situated on 11 acres.

2. On May 1, 2023, DNR was notified by Iowa OSHA that a demolition had taken place at the Elite Lodge property on the weekend of April 29 and April 30, 2023. Iowa OSHA stated that a large multi-story storage building, that once housed apartments was demolished.

3. On May 1, 2023, Tom Wuehr, DNR Air Quality environmental specialist senior, traveled to the Elite Lodge property. Mr. Wuehr confirmed that the building had been demolished. At the time of the inspection the building was completely demolished and in a pile on the property. He spoke to the demolition contractor, Elisha Haan with Haan Services. Mr. Haan stated he was unaware of the asbestos NESHAP regulations and that no asbestos testing had been conducted. Mr. Wuehr asked Mr. Haan to halt work, which Mr. Haan agreed to do. Mr. Wuehr also spoke to Dick Roghair, the Elite Lodge property general manager. Mr. Roghair claimed to be unaware of the asbestos NESHAP regulations. However, Mr. Wuehr learned after the inspection that a contractor who had bid on the project had notified Mr. Roghair of the asbestos inspection requirement prior to the demolition.

4. On May 5, 2023, Mr. Wuehr returned to the property. He noted that most of the building was in a large pile. Since there was no pre-demolition asbestos inspection, the debris was to be handled as if it contained asbestos. On May 12, 2023, Mr. Wuehr returned to the property to confirm that Iowa Demolition, a permitted asbestos abatement contractor, had properly removed all of the debris.

5. On May 17, 2023, DNR issued a Notice of Violation letter to Elite Lodge for the asbestos violations discovered during the investigation. On May 30, 2023, DNR received a response from Elite Lodge in which Elite Lodge admitted error and stated they were unaware of the asbestos NESHAP regulations.

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.

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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(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. No asbestos inspection was conducted prior to the demolition of the Elite Lodge building. The above facts indicate a violation of this provision.

4. 40 CFR section 61.145(b)(1) requires written notification to be submitted to the DNR prior to beginning a renovation or demolition. The specific requirements for this notification are contained in the subsection. No notification was submitted prior to the demolition of the Elite Lodge building. The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, DNR orders and Elite Lodge agrees to do the following:

1. Send at least one primary employee to a three-day asbestos inspector course and submit proof of completion to DNR within 60 days of the date the Director signs this administrative consent order;
2. Comply with all asbestos regulations in the future; and
3. Pay an \$5,000.00 administrative penalty within 30 days of the date the Director 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. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

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

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the issuance of an administrative consent order with an \$5,000.00 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 average cost of an asbestos inspection is \$200.00 and the notification fee to DNR is \$100.00. Therefore, based on the above-mentioned facts, \$300.00 is assessed for this factor.

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 submit a notification and inspect a structure for asbestos prohibits the removal of potential asbestos containing material prior to demolition. These violations threaten the integrity of the regulatory program because compliance with the asbestos regulations is required of all persons in this state. Therefore, \$2,700.00 is assessed for this factor.

Culpability – Elite Lodge has a duty to remain knowledgeable of DNR's asbestos rules. Based on the above considerations, \$2,000.00 assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Elite Lodge. For that reason, Elite Lodge waives the right 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 and 455B.307.

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KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



ELITE LODGE OF ASHWORTH LLC

Dated this 21 day of
NOVEMBER, 2023.