

**IN THE IOWA DISTRICT COURT FOR BENTON COUNTY**

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STATE OF IOWA ex rel. IOWA )  
DEPARTMENT OF NATURAL )  
RESOURCES, )  
) )  
Plaintiff, )  
) )  
vs. )  
) )  
JOEL G. THYS, )  
) )  
Defendant. )  
)

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NO. EQCV009722

**PETITION IN EQUITY**

COMES NOW Plaintiff State of Iowa ex rel. Iowa Department of Natural Resources (“DNR”) and for its claims against Defendant Joel Thys (“Thys”) states as follows:

**INTRODUCTION**

1. Asbestos is a hazardous air pollutant known to cause disease and cancer in humans. There is no known safe level of asbestos exposure. If microscopic fibers of asbestos are released into the air and inhaled when asbestos-containing material is disturbed, the asbestos fibers can become permanently lodged in lung tissue and cause lung disease and cancer such as asbestosis and mesothelioma.

2. Improper disposal of solid waste creates nuisance conditions and the potential of soil and groundwater contamination. Furthermore, open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, hydrocarbons, and toxins that pollute the air and pose a risk to human health and the environment.

3. A DNR inspection of property owned by Thys in Belle Plaine, Iowa, revealed asbestos-containing materials in debris of five residential trailer homes demolished and burned by Thys. Thys demolished the five residential trailer homes without taking any precautions for

asbestos, and he improperly disposed of the demolition debris by open burning. The State of Iowa, therefore, seeks the assessment of civil penalties and the issuance of a permanent injunction against Thys for asbestos, solid waste, and open burning violations committed at and in relation to the demolition project.

## **PARTIES**

4. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the DNR, a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2.

5. Joel Thys is a resident of Benton County, and owns the property in Belle Plaine that is the subject of this action.

## **DEFINITIONS**

### **Asbestos Definitions**

6. “‘Adequately wet’ means sufficiently mix or penetrate with liquid to prevent the release of particulates.” 40 C.F.R. § 61.141.

7. “‘Category I nonfriable asbestos-containing material’ (ACM) means asbestos-containing packings, gaskets, resilient floor covering, and asphalt roofing products containing more than 1 percent asbestos [and] Category II nonfriable ACM’ means any material, excluding Category I nonfriable ACM, containing more than 1 percent asbestos . . . that, when dry, cannot be crumbled, pulverized, or reduced to powder by hand pressure.” 40 C.F.R. § 61.141.

8. “‘Demolition’ means the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility.” 40 C.F.R. § 61.141.

9. “‘Facility’ means any institutional, commercial, public, industrial, or residential structure, installation, or building (including any structure, installation, or building containing

condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units) . . . .” 40 C.F.R. § 61.141.

10. “‘Friable asbestos material’ means any material containing more than 1 percent asbestos . . . that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure . . . .” 40 C.F.R. § 61.141.

11. “‘Outside air’ means the air outside buildings and structures . . . .” 40 C.F.R. § 61.141.

12. “‘Owner or operator of a demolition or renovation activity’ means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.” 40 C.F.R. § 61.141.

13. “‘Regulated asbestos-containing material’ (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations . . . .” 40 C.F.R. § 61.141.

14. “‘Visible emissions’ means any emissions, which are visually detectable without the aid of instruments, coming from RACM or asbestos-containing waste material . . . .” 40 C.F.R. § 61.141.

### **Solid Waste and Open Burning Definitions**

15. “‘Construction and demolition waste’ means waste building materials including wood, metals and rubble which result from construction or demolition of structures. Such waste shall also include trees.” 567 Iowa Admin. Code 100.2.

16. “‘Open burning’ means any burning of combustible materials where the products of combustion are emitted into the open air without passing through a chimney or stack.” 567 Iowa Admin. Code 100.2.

17. “‘Open dump’ means any exposed accumulation of solid waste at a site other than a sanitary disposal project operating under a permit from the department.” 567 Iowa Admin. Code 100.2.

18. “‘Open dumping’ means the depositing of solid wastes on the surface of the ground or into a body or stream of water.” 567 Iowa Admin. Code 100.2.

19. “‘Solid waste’ means garbage, refuse, rubbish, and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities.” Iowa Code § 455B.301(23).

## **JURISDICTION**

### **Asbestos Regulations**

20. The United States Environmental Protection Agency has established emission standards for asbestos which is a hazardous air pollutant regulated pursuant to Section 112 of the Clean Air Act. *See* 40 C.F.R. §§ 61.140-61.157. These standards for asbestos and other hazardous air pollutants are called the National Emission Standards for Hazardous Air Pollutants (NESHAP).

21. The asbestos NESHAP was adopted by reference by the Iowa Environmental Protection Commission and is codified at 567 Iowa Admin. Code 23.1(3). *See* Iowa Code § 455B.133.

22. The owner or operator of a demolition activity shall thoroughly inspect the facility to be demolished for the presence of asbestos prior to commencement of demolition activities. 40 C.F.R. § 61.145(a).

23. In a facility being demolished, if the combined amount of RACM in the facility is at least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components, or at least 1 cubic meter (35 cubic feet) on facility components where the length or area could not be measured previously, written notification of demolition activities is to be submitted to the DNR prior to beginning the activities. 40 C.F.R. §§ 61.145(a)(1)-(b)(1).

24. Each owner or operator of a demolition activity shall “[r]emove all RACM from a facility being demolished . . . before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.” 40 C.F.R. § 61.145(c)(1).

25. For all RACM, including material that has been removed or stripped, each owner or operator shall “[a]dequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal . . . .” 40 C.F.R. § 61.145(c)(6)(i).

26. For all RACM, including material that has been removed or stripped, each owner or operator shall “[c]arefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material.” 40 C.F.R. § 61.145(c)(6)(ii).

27. No RACM shall be stripped, removed, or otherwise handled or disturbed at a facility “unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of [the NESHAP] regulation and the means of complying with them, is present.” 40 C.F.R. § 61.145(c)(8).

28. Each owner or operator of a demolition activity shall either “[d]ischarge no visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos-containing waste material generated by the source, [or,] [f]or facilities demolished where the RACM is not removed prior to demolition[,] . . . adequately wet

asbestos-containing waste material at all times after demolition and keep wet during handling and loading for transport to a disposal site.” 40 C.F.R. § 61.150(a)(3).

29. “All asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at a waste disposal site operated in accordance with the [standards for active waste disposal sites that receive asbestos-containing materials].” 40 C.F.R. § 61.150(b)(1) & § 61.154.

30. The Attorney General, at the request of the DNR, is authorized to “institute a civil action . . . for injunctive relief to prevent any further violation of [an] order, permit, or rule, or for the assessment of a civil penalty . . . not to exceed ten thousand dollars [(\$10,000.00)] per day for each day such violation continues, or both such injunctive relief and civil penalty.” Iowa Code § 455B.146.

### **Solid Waste Regulations**

31. The Iowa Environmental Protection Commission is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relative to the treatment and disposition of solid waste. Iowa Code § 455B.304. Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 100-123 concerning solid waste management and disposal.

32. The dumping or depositing or permitting dumping or depositing of solid waste at any place other than a facility permitted by the DNR is prohibited, unless otherwise permitted by rule. Iowa Code § 455B.307(1); 567 Iowa Admin. Code 100.4.

33. The Attorney General is authorized, on request of the DNR, to institute any legal proceedings necessary in obtaining compliance with an order of the director or prosecuting any person for a violation of Iowa Code chapter 455B, Division IV, Part 1, or the rules issued under that part. Iowa Code § 455B.307(2). Any person who violates any provision of Iowa Code

chapter 455B, Division IV, Part 1, or any rule or any order adopted pursuant to that part is “subject to a civil penalty not to exceed five thousand dollars [(\$5,000.00)] for each day of such violation.”

Iowa Code § 455B.307(3).

### **Air Quality Regulations**

34. The Iowa Environmental Protection Commission is required to adopt rules pertaining to the evaluation, abatement, control, and prevention of air pollution. Iowa Code § 455B.133(2). Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 20-35 concerning air quality.

35. Any person is prohibited from allowing, causing, or permitting open burning of combustible materials, unless a variance has been granted under 567 Iowa Admin. Code 23.2(2) or one of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies. 567 Iowa Admin. Code 23.2(1).

36. The Attorney General is authorized, on request of the DNR, to “institute a civil action . . . for injunctive relief to prevent any further violation of [an] order, permit, or rule, or for the assessment of a civil penalty . . . not to exceed ten thousand dollars [(\$10,000.00)] per day for each day such violation continues, or both such injunctive relief and civil penalty.” Iowa Code § 455B.146.

### **FACTS**

37. Thys owns 2.2 acres of real property located on 3<sup>rd</sup> Street in Belle Plaine, Iowa (“Thys property”).

38. The Thys property is located directly west of the Thys Motor Company located at 210 7th Avenue, Belle Plaine, Iowa, which is also owned and operated by Thys.

39. The Thys property contained residential mobile homes that had been left by prior tenants.

40. During the week of February 12, 2017, Thys demolished five mobile homes and cut down trees on the Thys property.

41. Thys created a pile of mixed debris of an estimated twenty feet in height by mixing mobile home debris with tree debris.

42. On February 18, 2017, Belle Plaine Fire Chief, Russ Spading, informed Thys that the mixed pile of demolition debris and tree debris was not allowed to be burned, but the tree debris could be burned separately.

43. On February 20, 2017, Thys sought approval from the City of Belle Plaine to burn the mixed pile of demolition debris and tree debris, and the request was denied.

44. On February 23, 2017, Thys contacted the police department indicating he was conducting a controlled burn of the residential trailer homes at the Thys property, and a Belle Plaine police officer, Tyler Brandt (“Officer Brandt”), investigated the burn site to find, among other things, roofing, flooring, insulation, and belongings of the former mobile home tenants.

45. Officer Brandt then contacted DNR Conservation Officer Pat Jorgensen about the burning, and the complaint was forwarded to DNR Field Office 1.

46. On February 24, 2017, Thys admitted in an email to Belle Plain City Administrator Jeff Horne (“Horne”) that “[he] decided to burn” the mobile home trailers.

47. On February 28, 2017, DNR environmental specialist, Nathan Stueve (“Stueve”), responded to the complaint with a field inspection of Thys’s property, and, upon inspection, Stueve saw that a number of mobile home trailers had been demolished and burned, with the material pile still hot and smoldering.

48. Stueve saw burned oil filters on site and collected fourteen samples of debris including silver paint, trailer frame coating, shingles, tar paper, flooring, and residue from tin.



49. Thys informed Stueve during the investigation that Thys had not inspected the mobile homes for asbestos nor had he removed asbestos from the mobile homes prior to the demolition.

50. Stueve instructed Thys that the fire needed to be extinguished by the end of that day, February 28, 2017.

51. On March 1, 2017, the fourteen samples were submitted to the University of Iowa Hygienic Lab, and the results of the lab confirmed that six of the fourteen samples contained between 2% to 13% asbestos.

52. On March 3, 2017, Stueve returned to the burn site and saw that the pile, still hot and smoking, had yet to be extinguished.

53. On March 22, 2017, Iowa OSHA conducted an inspection and noted the debris was still hot and smoldering.

54. On March 27, 2017, DNR issued a Notice of Violation letter to Thys for the asbestos and open burning violations discovered during Stueve's investigation.

55. The letter required Thys to hire an asbestos abatement contractor to remove the burned and unburned demolition debris associated with the residential mobile homes and dispose of the material as regulated asbestos-containing material.

56. Thys hired ECCO Midwest, an asbestos abatement company, to remove the remaining debris and dispose of it at the landfill.

57. On May 2, 2017, Tom Wuehr visited the property and verified the debris was removed and properly disposed.

58. Prior to the 2017 incident, the DNR previously issued Thys a Notice of Violation letter in 2011 for improper open burning of used oil filters, and an Administrative Order in 2014 for asbestos, open burning, and solid waste violations in relation to the demolition of a building.

## **VIOLATIONS**

### **Asbestos Violations**

59. Thys failed to thoroughly inspect the residential mobile homes for the presence of asbestos prior to commencement of demolition activities in violation of 40 C.F.R. § 61.145(a).

60. Thys failed to submit written notification of demolition activities to the DNR prior to beginning the demolition of the residential mobile homes in violation of 40 C.F.R. § 61.145(b)(1).

61. Thys failed to remove all RACM from the residential mobile homes before activities that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal in violation of 40 C.F.R. § 61.145(c)(1).

62. Thys failed to adequately wet RACM, including material that was removed or stripped, and ensure that it remained wet until collected and contained or treated in preparation for disposal in violation of 40 C.F.R. § 61.145(c)(6)(i).

63. Thys failed to carefully lower RACM, including material that was removed or stripped, to the ground and floor in violation of 40 C.F.R. § 61.145(c)(6)(ii).

64. Thys disturbed RACM during the demolition of the residential mobile homes without the presence of one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of the NESHAP regulation and the means of complying with them in violation of 40 C.F.R. § 61.145(c)(8).

65. Thys failed to use any means or methods during the demolition of residential mobile homes that would prevent the discharge of visible emissions to the outside air during the collection, processing, packaging, or transporting of asbestos-containing waste material, or adequately wet the material and, while wet, seal it in leak-tight containers or wrapping in violation of 40 C.F.R. § 61.150(a).

66. Thys did not dispose of the asbestos-containing waste material as soon as practical, and he did not deposit the demolition waste in a landfill operated in accordance with the provisions of 40 C.F.R. § 61.154 in violation of 40 C.F.R. § 61.150(b)(1).

**Solid Waste Violation**

67. Thys deposited and permitted the depositing of solid waste on the Thys property in violation of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4.

**Air Quality Violation**

68. Thys caused and allowed the open burning of combustible materials on the Thys property in violation of 567 Iowa Admin. Code 23.2(1).

WHEREFORE, Plaintiff State of Iowa ex rel. Iowa Department of Natural Resources requests that the Court:

- a. assess a civil penalty against Defendant Joel Thys pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 23.2(1), and 40 C.F.R. sections 61.145(a), 61.145(b)(1), 61.145(c)(1), 61.145(c)(6)(i), 61.145(c)(6)(ii), 61.145(c)(8), 61.150(a), and 61.150(b)(1), adopted by reference in 567 IAC 23.1(3), not to exceed ten thousand dollars (\$10,000.00) per day, per violation, for each day of such violation; and
- b. assess a civil penalty against Defendant Joel Thys pursuant to Iowa Code section 455B.307(3) for each day of violation of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4, not to exceed five thousand dollars (\$5,000.00) per day, per violation, for each day of such violation; and
- c. issue a permanent injunction enjoining Thys from any violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 23.2(1), 100.4, and 40 C.F.R. sections 61.145(a), 61.145(b)(1), 61.145(c)(1), 61.145(c)(6)(i), 61.145(c)(6)(ii), 61.145(c)(8), 61.150(a), and 61.150(b)(1), adopted by reference in 567 IAC 23.1(3).

Plaintiff further requests such other relief the Court may deem just and proper, and that the Court tax the costs of this action to Defendant Joel Thys.

Respectfully submitted,

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