

[Filed 5/5/09.]

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA, ex rel., IOWA  
DEPARTMENT OF NATURAL  
RESOURCES,

Plaintiff,

vs.

EQUITABLE, L.P.,

Defendant.

NO.

CV 7701

PETITION AT LAW

CLERK DISTRICT COURT

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FILED  
POLK COUNTY, IA

COMES NOW Plaintiff State of Iowa, ex rel., Iowa Department of Natural Resources ("IDNR") and for its claims against Equitable, L.P. ("Equitable") states as follows:

INTRODUCTION

1. The State of Iowa seeks the assessment of civil penalties and the issuance of a permanent injunction against Equitable for a variety of asbestos violations committed at and in relation to a long-term renovation project at the Equitable Building located at 604 Locust Street, Des Moines, Polk County, Iowa.

PARTIES

2. The State of Iowa is a sovereign state of the United States of America and brings this action on behalf of the IDNR, a duly constituted agency of the State of Iowa pursuant to Iowa Code section 455A.2 (2009).

3. Equitable is an Iowa limited partnership doing business in Polk County, Iowa.

DEFINITIONS

4. "Adequately wet" means sufficiently mix or penetrate with liquid to prevent the release of particulates. 40 C.F.R. § 61.141.

5. "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.

6. "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.

7. "Outside air" means the air outside buildings and structures. 40 C.F.R. § 61.141.

8. "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.

9. "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.

10. "Renovation" means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component. 40 C.F.R. § 61.141.

11. "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.

12. "Waste shipment record" means the shipping document, required to be originated and

signed by the waste generator, used to track and substantiate the disposition of asbestos-containing waste material. 40 C.F.R. § 61.141.

### **JURISDICTION**

13. The United States Environmental Protection Agency has established emission standards, codified at 40 C.F.R. Part 61, Subpart M, (40 C.F.R. sections 140-157), for asbestos which is a hazardous air pollutant regulated pursuant to Section 112 of the Clean Air Act. These standards for asbestos and other hazardous air pollutants are called the National Emission Standards for Hazardous Air Pollutants (NESHAP).

14. Pursuant to Iowa Code section 455B.133, the asbestos NESHAP was adopted by reference by the Iowa Environmental Protection Commission and is codified at 567 Iowa Admin. Code 23.1(3).

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

16. In a facility being renovated, if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed 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 renovation activities is to be submitted to the IDNR prior to beginning the activities. 40 C.F.R. § 61.145(b)(1).

17. Each owner or operator of a demolition or renovation activity shall remove all RACM from a facility being demolished or renovated 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).

18. For all RACM, including material that has been removed or stripped, each owner or operator shall adequately 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).

19. For all RACM, including material that has been removed or stripped, each owner or operator shall carefully 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).

20. For all RACM, including material that has been removed or stripped, each owner or operator shall transport the material to the ground via leak-tight chutes or containers if it has been removed or stripped more than 50 feet above ground level and was not removed as units or in sections. 40 C.F.R. § 61.145(c)(6)(iii).

21. 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).

22. Each owner or operator of a demolition or renovation activity shall either discharge 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 adequately wet the material and, while wet, seal it in leak-tight containers or wrapping. 40 C.F.R. § 61.150(a).

23. Each owner or operator of a demolition or renovation activity shall mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste so that the signs are visible. The markings must conform to the NESHAP requirements. 40 C.F.R. § 61.150(c).

24. For all asbestos-containing waste material transported off the facility site, each owner or operator of a demolition or renovation activity shall maintain waste shipment records conforming with NESHAP requirements, and provide a copy of the record to the disposal site owners or operators. 40 C.F.R. § 61.150(d)(1)-(2).

25. Iowa Code section 455B.146 authorizes the Attorney General, at the request of the IDNR, 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.

### FACTS

26. The Equitable Building was constructed in 1924 and is 19 stories tall, with floors 7-19 in various stages of renovation from 2005-2008. The renovation objective was to construct condominiums.

27. Equitable owns and operates the Equitable Building located at 604 Locust Street in Des Moines, Iowa, and acted as the general contractor of the renovation project.

28. During the renovation activities, floors one through six of the Equitable Building were at least partially occupied by several law offices, a jewelry store, a bookstore, a print shop, and other businesses.

29. The renovation included complete removal of ceiling tiles, floor tiles, plaster and sheetrock walls, piping and pipe insulation, and dividing walls.

30. On September 6, 2007, the Polk County Health Department contacted Tom Wuehr, IDNR environmental specialist, and reported the Health Department had received an anonymous letter regarding alleged improper asbestos removal at the Equitable Building.

31. On September 10, 2007, Mr. Wuehr visited the Equitable Building and observed a dumpster by the building that was partially filled with broken floor tile. He was unable to locate building management on this date; he returned the next day to conduct an inspection.

32. On September 11, 2007, Mr. Wuehr conducted a complaint investigation. Mr. Wuehr did a walk-through inspection of the basement "boiler room" and the 8<sup>th</sup>, 18<sup>th</sup>, and 19<sup>th</sup> floors. During the inspection, Mr. Wuehr noted that on many of the building's floors, the interior had been extensively stripped of floor tile, ceiling tile, plaster, and thermal insulation. Mr. Wuehr took photographs of the areas and collected samples of suspect material during the inspection.

33. Mr. Wuehr took the samples to the University of Iowa Hygienic Laboratory in Ankeny, Iowa for processing the same day of the inspection. A sample of the floor tile debris taken from the basement area tested positive for 10% Chrysotile Asbestos. Based on the large amount of floor tile observed during the initial IDNR inspection and the size of the project, it was determined an additional IDNR asbestos inspection was necessary.

34. On September 12, 2007, Mr. Wuehr, along with Marion Burnside, IDNR asbestos NESHAP coordinator, conducted another inspection of the Equitable Building. Mr. Wuehr and Mr. Burnside inspected floors 8-13 which were all under renovation. They observed a large amount of renovation debris, including floor tile, ceiling tile, and cement like material around the pipe chases. Workers were observed throughout the various floors during the inspection. On the 12th floor, Mr. Burnside and Mr. Wuehr discovered approximately 41 tubes of nine foot long "Air Cell" pipe insulation that was not enclosed at the endpoints. From the similarity and location of other removed piping, it appeared that all of the gutted floors had this same type of insulation removed.

35. Mr. Wuehr and Mr. Burnside also inspected the 18<sup>th</sup> and 19<sup>th</sup> floors. The two floors were bare as the renovation activities had been completed and the areas already cleaned. Mr. Wuehr and Mr. Burnside collected 14 samples of suspect debris and took several photographs. The

samples included suspect material such as floor tile and pipe insulation. The samples were taken to the University of Iowa Hygienic Laboratory in Ankeny, Iowa on September 13, 2007. The sample locations, along with the laboratory results are as follows:

Sample Number	Sample Location	Laboratory Results
Sample #1	Ceiling debris from the 8 <sup>th</sup> floor	No asbestos detected
Sample #2	Black tar material from the 8 <sup>th</sup> floor	4.4% Chrysotile Asbestos
Sample #3	Pipe insulation from the 8 <sup>th</sup> floor	No asbestos detected
Sample #4	Floor tile in restroom from the 8 <sup>th</sup> floor	12% Chrysotile Asbestos
Sample #5	Floor tile from the 8 <sup>th</sup> floor	Less than 1% asbestos
Sample #6	Black bench top material from the 9 <sup>th</sup> floor	No asbestos detected
Sample #7	Floor tile from the 9 <sup>th</sup> floor	12% Chrysotile Asbestos
Sample #8	Ceiling tile from the 9 <sup>th</sup> floor	No asbestos detected
Sample #9	Pipe insulation from the 11 <sup>th</sup> floor	30% Chrysotile Asbestos
Sample #10	"Air Cell" pipe insulations from the 12 <sup>th</sup> floor	35% Chrysotile Asbestos
Sample #11	Pipe chase insulation from the 13 <sup>th</sup> floor	10% Chrysotile Asbestos and 2% Amosite Asbestos
Sample #12	Pipe chase insulation from the 13 <sup>th</sup> floor	10% Chrysotile Asbestos and 2% Amosite Asbestos
Sample #13	Pipe chase insulation from the 13 <sup>th</sup> floor	15% Chrysotile Asbestos
Sample #14	Floor tile from 13 <sup>th</sup> floor	15% Chrysotile Asbestos

36. From September 14, 2007 to December 7, 2007, Mid-Iowa Environmental removed asbestos containing material and debris from the areas being renovated.

37. On September 28, 2007, IDNR issued Administrative Order No. 2007-AQ-19 to Equitable for the violations observed during the inspections (a copy of which is attached, marked as

Exhibit A, and incorporated by reference). The Administrative Order required Equitable to do the following:

- a. Stop any and all work, including all subcontractors' work, on the Equitable Building renovation until the following has occurred:
  - i. Thoroughly inspect all floors involved in the renovation project for the presence of asbestos containing material.
  - ii. Thoroughly inspect all floors, including those floors that were not part of the renovation project, for asbestos containing material that may have been disturbed as a result of this renovation.
  - iii. A licensed asbestos abatement contractor must clean up all asbestos containing waste material from all floors where asbestos containing materials have been disturbed.
  - iv. Submit the asbestos inspection reports to the IDNR within 10 days of completion of the inspections.
- b. Prior to resuming the renovation project, a licensed asbestos abatement contractor must remove all asbestos containing material that will be disturbed by the renovation project in accordance with the asbestos NESHAP regulations, including but not limited to proper notifications and proper removal techniques.
- c. Comply with all asbestos NESHAP regulations for asbestos containing material waste disposal.
- d. Submit copy of all waste shipment records to the IDNR for the clean up and any additional removal of asbestos within 10 days of completion of the cleanup and additional removal project.

38. On October 5, 2007, a Notice of Violation letter was issued to Equitable for the violations cited in the Administrative Order (a copy of which is attached, marked as Exhibit B, and incorporated by reference). The letter required that Equitable submit copies of all waste shipment manifests and receipts for the last 18 months.



39. Equitable submitted the landfill records to the IDNR following the issuance of the letter. According to the records, Equitable transported approximately 1,186 tons of renovation debris from the Equitable Building to the Metro Park East Sanitary Landfill in Mitchellville, Iowa over the course of the project in approximately 225 separate shipments made on 192 separate days. The renovation debris was not identified as asbestos-containing waste material, and was transported to the landfill and disposed of as regular construction and demolition waste.

40. Mr. Wuehr conducted another inspection of the Equitable Building on January 15, 2008. The inspections required by Administrative Order No. 2007-AQ-19 had not yet been conducted by Equitable L.P. Mr. Wuehr inspected the 7th through the 19th floors.

41. Some of the floors that were supposedly "cleaned" were scattered with debris. On the sixth floor, Mr. Wuehr observed active renovation on the floor's west side, and discovered dry and damaged "Air Cell" material on this floor. Laboratory results of the dry "Air Cell" material revealed it contained 26% Chrysotile asbestos.

42. During the inspection, Mr. Wuehr also noted that the eighth floor, where portions of the asbestos containing debris was located during the September 2007 inspections, was now a completely renovated office suite with a company conducting business. The IDNR was not able to verify if the cleanup was properly conducted because the required inspection reports had not been submitted at the time of the inspection and only partial waste shipment records had been received. Mr. Coco also informed Mr. Wuehr that Equitable no longer owned the 8<sup>th</sup> floor of the building.

43. On January 21, 22, 29, and 31, 2008, Ames Environmental conducted an asbestos inspection of the basement and floors 2, 4, 5-7, 9, 11-19 of the Equitable Building. Ames Environmental identified and confirmed asbestos containing material remained on all floors inspected with the exception of floor 19. On February 15, 2008, Ames Environmental submitted an

asbestos inspection report to the IDNR.

44. On February 19, 2008, Equitable was issued a Notice of Violation letter for the violations discovered during Mr. Wuehr's January 15, 2008 inspection (a copy of which is attached, marked as Exhibit C, and incorporated by reference). The letter cited Equitable for failing to thoroughly inspect prior to renovation (a violation of 40 CFR 61.145(a)) and failing to remove all asbestos containing material prior to beginning any activity that would break up, dislodge, or similarly disturb the material (a violation of 40 CFR 61.145(c)(1)). The violations are based on the discovery of the dry asbestos containing "Air Cell" material located on the sixth floor.

45. The Notice of Violation also cited Equitable with failure to comply with Administrative Order No. 2007-AQ-19. The Order required Equitable to stop any and all work on the renovation project until a thorough asbestos inspection was conducted. Although an asbestos inspection had not been conducted, active renovation was taking place on the sixth floor and renovation had been completed on the eighth floor. An inspection report was not submitted to the IDNR until February 15, 2008.

46. From February 12 to March 5, 2008, Mid-Iowa Environmental resumed asbestos abatement activities in the renovation areas.

47. On April 1, 2008, Ames Environmental conducted a visual inspection of the asbestos abatement areas, and certified no dust, debris or residue from the asbestos removal remained.

48. Upon information and belief, Equitable, L.P. resumed the renovation project on April 21, 2008, and the project was completed during 2008.

#### **VIOLATIONS**

49. Equitable failed to thoroughly inspect the Equitable Building for the presence of asbestos prior to commencement of renovation activities in violation of 40 C.F.R. § 61.145(a).

50. Equitable failed to submit written notification of renovation activities to the IDNR prior to beginning asbestos removal and renovation in violation of 40 C.F.R. § 61.145(b)(1).

51. Equitable failed to remove all RACM from the areas of the Equitable Building being renovated 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).

52. Equitable 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).

53. Equitable 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).

54. Equitable disturbed RACM during the renovation 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).

55. Equitable failed to use any means or methods during the renovation activity 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).

56. Equitable failed to mark vehicles used to transport asbestos-containing waste material during the loading and unloading of waste in violation of 40 C.F.R. § 61.150(c).

57. Equitable failed to maintain waste shipment records conforming with NESHAP requirements for asbestos-containing waste material, and failed to provide such records to the disposal site owners or operators in violation of 40 C.F.R. § 61.150(d)(1)-(2).

58. Equitable continued renovation activities in violation of the directive in Administrative Order 2007-AQ-19 to stop such activities until thoroughly inspecting all floors involved in the renovation project for the presence of asbestos containing material.

59. Equitable continued renovation activities in violation of the directive in Administrative Order 2007-AQ-19 to stop such activities until thoroughly inspecting all floors, including those floors that were not part of the renovation project, for asbestos containing material that may have been disturbed as a result of this renovation.

60. Equitable continued renovation activities in violation of the directive in Administrative Order 2007-AQ-19 to stop such activities until a licensed asbestos abatement contractor cleans up all asbestos containing waste material from all floors where asbestos containing materials had been disturbed.

61. Equitable failed to submit asbestos inspection reports to the IDNR within 10 days of completion of the inspections on January 31, 2008, in violation of Administrative Order 2007-AQ-19.

62. Equitable continued renovation activities in violation of the directive in Administrative Order 2007-AQ-19 to stop such activities until a licensed asbestos abatement contractor removed all asbestos containing material that would be disturbed by the renovation project in accordance with the asbestos NESHAP regulations, including but not limited to proper notifications and proper removal techniques.

63. Equitable continued renovation activities in violation of NESHAP regulations in violation of the directive in Administrative Order 2007-AQ-19 to comply with all asbestos NESHAP regulations for asbestos containing material waste disposal.

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

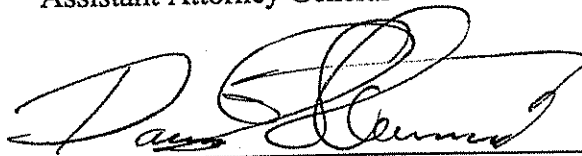
- a. assess a civil penalty against Equitable, L.P. for asbestos regulation violations pursuant to Iowa Code section 455B.146 for each day of violation of Administrative Order 2007-AQ-19, and 40 C.F.R. sections 61.145(a), 61.145(b)(1), 61.145(c)(1), 61.145(c)(6)(i), 61.145(c)(6)(ii), 61.145(c)(6)(iii), 61.145(c)(8), 61.150(a), 61.150(c), and 61.150(d)(1)-(2), 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. issue a permanent injunction enjoining Equitable, L.P. from any violation of Administrative Order 2007-AQ-19, 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)(6)(iii), 61.145(c)(8), 61.150(a), 61.150(c), and 61.150(d)(1)-(2), 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 the Defendant.

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

DAVID R. SHERIDAN  
Assistant Attorney General



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ATTORNEYS FOR PLAINTIFF

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER

IN THE MATTER OF:

EQUITABLE L.P. AND THE  
EQUITABLE CONDO

ADMINISTRATIVE ORDER  
NO. 2007-AQ-19

TO: Bob J. Knapp, Registered Agent  
Equitable L.P.  
3535 Westown Parkway, Suite 103  
West Des Moines, Iowa 50266

I. SUMMARY

Due to the potential environmental and health hazards associated with asbestos, this administrative order requires you to immediately stop any and all work, including all subcontractors' work, on the Equitable Building renovation until you have complied with the provisions stated in Section V "Order" of this administrative order.

Any questions regarding this administrative order should be directed to:

Relating to technical requirements:

Tom Wuehr  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-7212

Relating to appeal rights:

Kelli Book  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Iowa Dept. of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034

II. JURISDICTION

The DNR has jurisdiction to issue this administrative order 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 promulgated and permits issued pursuant thereto.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: EQUITABLE, L.C. and THE EQUITABLE CONDO

III. STATEMENT OF FACTS

1. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to follow proper removal and disposal techniques of the regulated asbestos containing material may create an environmental hazard to the workers and general public through the likely release of asbestos fibers.

2. Equitable L.P. and The Equitable Condo (Equitable) own the Equitable Building located at 604 Locust Street in Des Moines, Iowa. The building was constructed in 1924 and is 19 stories tall. The seventh, eighth, and twelfth through nineteenth floors are in various stages of renovation. The renovation objective is to construct condominiums. The renovation includes complete removal of ceiling tiles, floor tiles, plaster and sheetrock walls, piping and pipe insulation, and dividing walls. Floors one through six are at least partially occupied by several law offices, a jewelry store, a book store, a print shop, and other businesses.

3. On September 6, 2007, the Polk County Health Department contacted Tom Wuehr, DNR environmental specialist, and reported the Health Department had received an anonymous letter regarding alleged improper asbestos removal at the Equitable Building.

4. On September 10, 2007, Mr. Wuehr visited the Equitable Building and observed a dumpster by the building that was partially filled with broken floor tile. He was unable to locate building management on this date; he returned the next day to conduct an inspection.

5. On September 11, 2007, Mr. Wuehr conducted a complaint investigation. Mr. Wuehr met with Russ Coco, the construction manager for Equitable. Mr. Coco informed Mr. Wuehr that there had not been an asbestos inspection and a notification for the project had not been submitted prior to the start of the renovation. Mr. Coco stated that all floors above the sixth floor of the 19 story building were being renovated and that most of these, except for the tenth floor had either been partially or fully gutted. Mr. Wuehr and Mr. Coco did a walk-through inspection of the basement boiler room, the eighth floor, the eighteenth floor, and the nineteenth floor. During this inspection Mr. Wuehr noted workers doing active renovation work on the eighth floor with a large amount of suspect material around the pipe chases. A worker was observed pushing a wheel barrow filled with broken floor tile toward the service elevator. Mr. Wuehr observed white dust and footprints on carpeted and uncarpeted areas, in the service elevator, the elevator lobbies on the eighth floor, and on the occupied sixth floor. In the boiler room, Mr. Wuehr observed suspect material. Throughout the building, Mr. Wuehr noted numerous pipe chases where the piping had been cut from floor to ceiling. On many of the building's floors, the interior had been extensively stripped of floor tile, ceiling tile, plaster, and thermal insulation. Mr. Wuehr took photographs of the areas and collected five sample of suspect material during the inspection. Mr. Wuehr took the sample to the University of Iowa Hygienic Laboratory in Ankeny, Iowa for processing the same day of the inspection. The sample locations, along with the laboratory results are as follows:

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: EQUITABLE, L.C. and THE EQUITABLE CONDO

Sample Number	Sample Location	Laboratory Results
#1	Floor tile debris in the basement area	10% Chrysotile Asbestos
#2	Fiber insulation in the boiler room	No asbestos detected
#3	Debris from the 19 <sup>th</sup> floor	No asbestos detected
#4	Gasket material from the 8 <sup>th</sup> floor	No asbestos detected
#5	Tar paper from the 8 <sup>th</sup> floor	No asbestos detected

6. Based on the large amount of floor tile observed during the initial DNR inspection and the size of the project, it was determined an additional DNR asbestos inspection was necessary. On September 12, 2007, Mr. Wuehr, along with Marion Burnside, DNR asbestos NESHAP coordinator, conducted another inspection of the Equitable Building. Mr. Wuehr and Mr. Burnside met with Mr. Coco and Bob Knapp, from Equitable. The DNR inspectors explained the purpose of the inspection and provided copies of the asbestos NESHAP regulations. Mr. Wuehr and Mr. Burnside suggested that all work cease until the building had been inspected by a certified asbestos inspector and that any asbestos discovered be removed prior to resuming the renovation. Mr. Knapp removed his crew of workers from the building, but other subcontractors continued to work. Mr. Wuehr and Mr. Burnside inspected the eighth, ninth, eleventh, twelfth, and thirteenth floors. They observed a large amount of renovation debris, including floor tile, ceiling tile, and cement like material around the pipe chases. Workers were observed throughout the various floors during the inspection. Mr. Burnside and Mr. Wuehr noted a dust and dust footprints in the stairwells as they went from floor to floor. On the twelfth floor, Mr. Burnside and Mr. Wuehr discovered approximately 41 tubes of nine foot tall "Air Cell" pipe insulation that was not enclosed at the endpoints. From the similarity and location of other removed piping, it appeared that all of the gutted floors had this same type of insulation removed. Mr. Wuehr and Mr. Burnside collected an additional fourteen samples of suspect debris and took several photographs. The samples included suspect material such as floor tile and pipe insulation. The samples were taken to the University of Iowa Hygienic Laboratory in Ankeny, Iowa on September 13, 2007. The sample locations, along with the laboratory results are as follows:

Sample Number	Sample Location	Laboratory Results
Sample #1	Ceiling debris from the 8 <sup>th</sup> floor	No asbestos detected
Sample #2	Black tar material from the 8 <sup>th</sup> floor	4.4% Chrysotile Asbestos
Sample #3	Pipe insulation from the 8 <sup>th</sup> floor	No asbestos detected
Sample #4	Floor tile in restroom from the 8 <sup>th</sup> floor	12% Chrysotile Asbestos
Sample #5	Floor tile from the 8 <sup>th</sup> floor	Less than the regulated amount of asbestos detected
Sample #6	Black bench top material from the 9 <sup>th</sup> floor	No asbestos detected



IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: EQUITABLE, L.C. and THE EQUITABLE CONDO

Sample #7	Floor tile from the 9 <sup>th</sup> floor	12% Chrysotile Asbestos
Sample #8	Ceiling tile from the 9 <sup>th</sup> floor	No asbestos detected
Sample #9	Pipe insulation from the 11 <sup>th</sup> floor	30% Chrysotile Asbestos
Sample #10	"Air Cell" pipe insulation from the 12 <sup>th</sup> floor	35% Chrysotile Asbestos
Sample #11	Pipe chase insulation from the 13 <sup>th</sup> floor	10% Chrysotile Asbestos and 2% Amosite Asbestos
Sample #12	Pipe chase insulation from the 13 <sup>th</sup> floor	10% Chrysotile Asbestos and 2% Amosite Asbestos
Sample #13	Pipe chase insulation from the 13 <sup>th</sup> floor	15% Chrysotile Asbestos
Sample #14	Floor tile from 13 <sup>th</sup> floor	15% Chrysotile Asbestos

7. Mr. Knapp has prior knowledge of the asbestos NESHAP regulations. Mr. Knapp was the registered agent of a company that was issued a Notice of Violation letter for failing to conduct an asbestos inspection prior to the renovation of a commercial building at 800 Locust Street in Des Moines, Iowa. The Notice of Violation letter was issued on September 11, 2000.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 657 IAC chapter 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.

2. 40 CFR 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 commencement of demolition or renovation. Mr. Coco stated there was not a thorough asbestos inspection prior to the Equitable Building renovation. The above facts indicate a violation of this provision.

3. 40 CFR section 61.145(b)(1) requires written notification of demolition must be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. Mr. Coco admitted that a notification had not been submitted for the Equitable Building renovation. The above facts indicate a violation 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

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procedures. The facts in this case indicate that Equitable was not in compliance with these provisions when the renovation project 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. Mr. Wuehr and Mr. Burnside observed a large amount of regulated asbestos containing material that had not been removed prior to the renovation project. The facts in this case indicate violations of this provision.

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. Mr. Wuehr and Mr. Burnside found dry regulated asbestos containing material exposed to the open air of the building. The material was found throughout the building. 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 renovation of the building despite the fact regulated asbestos containing material was being disturbed by the renovation activities. 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. The facts in this case indicate that Equitable was not in compliance with these provisions when the renovation project occurred.

V. ORDER

THEREFORE, it is hereby ordered that Equitable immediately do the following:

1. Stop any and all work, including all subcontractors' work, on the Equitable Building renovation until the following has occurred:
  - a. Thoroughly inspect all floors involved in the renovation project for the presence of asbestos containing material.
  - b. Thoroughly inspect all floors, including those floors that were not part of the renovation project, for asbestos containing material that may have been disturbed as a result of this renovation.

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- c. A licensed asbestos abatement contractor must clean up all asbestos containing waste material from all floors where asbestos containing materials have been disturbed.
  - d. Submit the asbestos inspection reports to the DNR within 10 days of completion of the inspections.
2. Prior to resuming the renovation project, a licensed asbestos abatement contractor must remove all asbestos containing material that will be disturbed by the renovation project in accordance with the asbestos NESHAP regulations, including but not limited to proper notifications and proper removal techniques.
  3. Comply with all asbestos NESHAP regulations for asbestos containing material waste disposal.
  4. Submit copy of all waste shipment records to the DNR for the clean up and any additional removal of asbestos within 10 days of completion of the clean up and additional removal project.

**VI. RESERVATION OF RIGHTS**

This administrative order is being issued for the sole purpose of requiring immediate clean up and further asbestos remediation at the Equitable Building. DNR reserves the right to amend the administrative order or to bring an additional enforcement action to assess monetary penalties for the alleged violations addressed in this administrative order or to pursue referral to the Attorney General, to obtain injunctive relief and penalties or fines, pursuant to Iowa Code section 455B.146 or 455B.146A. DNR reserves the right to bring an additional enforcement action or to pursue referral to the Attorney General, to obtain injunctive relief and penalties or fines, pursuant to Iowa Code section 455B.146 or 455B.146A, for alleged violation not addressed in this administrative order which may have occurred during the renovation project at the Equitable Building. Additionally, DNR reserves the right to add additional parties to this administrative order or additional enforcement actions. Nothing in this administrative order restricts or limits the administrative or judicial enforcement remedies available to the DNR or the state of Iowa for the violations referred to in this administrative order or any other violations which may have occurred at the Equitable Building.


**VII. APPEAL RIGHTS**

Pursuant to Iowa Code section 455B.138 and 567 IAC chapter 7.5(1), a written Notice of Appeal to the Environmental Protection 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.

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VIII. NONCOMPLIANCE

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

  
\_\_\_\_\_  
RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 28 day of  
Sept., 2007.

No facility number – Barb Stock; Kelli Book; Tom Wuehr; Joe Sanfilippo; Dave Sheridan; VII.C.4



CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNOR

## STATE OF IOWA

DEPARTMENT OF NATURAL RESOURCES  
RICHARD A. LEOPOLD, DIRECTOR

### CERTIFIED MAIL

October 5, 2007

Bob Knapp, Owner  
Equitable, L.P.  
604 Locust Street  
Des Moines, Iowa 50309

R. SERIES / Initials \_\_\_\_\_  
FACILITY ID \_\_\_\_\_  
WK ACT / Doc Code \_\_\_\_\_

7005311000005996361

RE:

### NOTICE OF VIOLATION

- 40CFR 61.145(a) Thorough Inspection
- 40 CFR 61.145(b) Notification Requirements
- 40 CFR 61.145(c) 1 Emission Control Procedures
- 40 CFR 61.145(c) (6) (i) Adequately Wet
- 40 CFR 61.145(c) (8) Trained Supervisor
- 40 CFR 61.150(a) (1) (iii) After wetting, seal all asbestos-containing waste

Dear Mr. Knapp:

The Iowa Department of Natural Resources (DNR) received a complaint on September 6, 2007 that renovation was being done at the Equitable Building at 604 Locust Street in Des Moines and that asbestos containing material (ACM) was being improperly removed by Equitable, L.P. A subsequent conversation between yourself, Russ Coco and Tom Wuehr and Marion Burnside, both of the DNR Air Quality Bureau, confirmed that your company was in the process of renovating the site and that you had not notified the DNR prior to this activity and had not done an inspection for asbestos materials before activity began. Samples taken during the DNR inspections confirmed the presence of asbestos containing material (ACM) in the building.

The Iowa Department of Natural Resources (DNR) has been charged with the responsibility of maintaining a healthy environment in which the citizens of Iowa can live. Environmental pollutants that are harmful to the health and well being of Iowa citizens are of concern to the DNR. Asbestos is a known to cause cancer and is considered a hazardous air pollutant.

DNR has been delegated the authority to administer and enforce the asbestos portions of the NESHAP regulations as created pursuant to section 112 and 114 of the Act, 42 U.S.C. Subsections 7412 and 7414 respectively. Failure to comply with the requirements as specified in 40 CFR Part 61 is a violation of the Clean Air Act (the Act), as amended 42 U.S.C. Section 7401 et seq. The DNR can assess and recover penalties for violations of the NESHAP from both the building owner and operator.

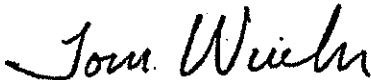
Equitable L.P. is found to be in violation of the asbestos NESHAP for failing to thoroughly inspect, failing to notify prior to renovating, failing to follow emission control procedures, failing to maintain adequately wet, failing to employ a trained supervisor on site and failing to seal all asbestos containing waste at a regulated facility.

Within 15 days from receipt of this notice, and specific to the renovation and demolition activities at the Equitable building at 604 Locust Street in Des Moines, please submit copies of all waste shipment manifests, receipts, bills-of-lading, etc., covering the last 18 months from all waste shipment contractors. Please identify all landfills which were used by the Equitable, L.P. during this time period and provide copies of all receipts and concomitant information received from these landfills.

This letter does not preclude the DNR from taking further action pursuant to their delegated authority under the Clean Air Act, as amended 42 U.S.C. Section 7401 et seq

Questions concerning this letter should be directed to Tom Wuehr at (515) 281-7212.

Sincerely,  
Environmental Protection Division



Tom Wuehr  
Environmental Specialist/Compliance Section  
Iowa DNR - Air Quality Bureau

CC: Brian Hutchins, Supervisor  
Kelli Book, Legal Services Bureau  
Larry Hacker, EPA Region VII  
John Haan, Department of Workforce Development



# STATE OF IOWA

CHESTER J. CULVER, GOVERNOR  
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES  
RICHARD A. LEOPOLD, DIRECTOR

## CERTIFIED MAIL

February 19, 2008

Bob Knapp, Owner  
Equitable, L.P.  
604 Locust Street  
Des Moines, Iowa 50309

RE: NOTICE OF VIOLATION  
40CFR 61.145(a) Thorough Inspection  
40CFR 61.145(c) Emission Control  
Administrative Order No. 2007-AQ-19, Section V

Dear Mr. Knapp:

The Iowa Department of Natural Resources (DNR) did a follow-up inspection of the Equitable Building at 604 Locust Street in Des Moines on January 15, 2008. Additional asbestos material was found in one of the areas under renovation and violations of the Administrative Order issued on September 28<sup>th</sup>, 2007 were also determined.

The Iowa Department of Natural Resources (DNR) has been charged with the responsibility of maintaining a healthy environment in which the citizens of Iowa can live. Environmental pollutants that are harmful to the health and well being of Iowa citizens are of concern to the DNR. Asbestos is known to cause cancer and is considered a hazardous air pollutant.

DNR has been delegated the authority to administer and enforce the asbestos portions of the NESHAP regulations as created pursuant to section 112 and 114 of the Act, 42 U.S.C. Subsections 7412 and 7414 respectively. Failure to comply with the requirements as specified in 40 CFR Part 61 is a violation of the Clean Air Act (the Act), as amended 42 U.S.C. Section 7401 et seq. The DNR can assess and recover penalties for violations of the NESHAP from both the building owner and operator.

### Asbestos NESHAP Violations, 40 CFR Part 61

Any demolition or renovation project subject to the regulations specified in 40 CFR Part 61 must be conducted according to the methods specified therein, including applicability determination, notification procedures, emission controls, and waste disposal.

During the time of the DNR inspection, parts of the 6<sup>th</sup> floor, west side, were under active renovation. DNR found suspect asbestos containing material (pipe-insulation) on this floor and collected a sample for analysis. The subsequent laboratory analysis determined that the 6<sup>th</sup> floor damaged "air cell" pipe-insulation sample contained 26% Chrysotile asbestos.

Each owner or operator of a demolition or renovation activity shall thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM prior to the commencement of the demolition or renovation [40CFR 61.145(a)]. The thorough inspection was not conducted prior to the start of renovation.

Each owner or operator of a demolition or renovation activity to which this paragraph applies, according to paragraph (a) of this section, shall comply with the following procedures:

\* Remove all regulated asbestos-containing material (RACM) from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal [40 CFR 61.145(c)(1)]. RACM was left in the facility (6<sup>th</sup> floor west, damaged "air cell" asbestos pipe insulation at 26% Chrysotile asbestos), prior to and during renovation activities.

Equitable L.P., is found to be in violation of the asbestos NESHAP for failing to thoroughly inspect prior to renovation [40CFR 61.145(a)] and for failing to remove regulated asbestos containing material (RACM) prior to and during renovation activities [40 CFR 61.145(c)(1)].

#### Violations of Administrative Order 2007-AQ-19

The Iowa DNR - Air Quality Bureau issued an Administrative Order on September 28, 2007 that was hand delivered and signed by a representative of Equitable, L.P. on the same day.

Section V of the Administrative Order (Roman numeral "V") states:

"THEREFORE, it is hereby ordered that Equitable immediately do the following:

1. Stop any and all work, including all sub-contractors' work, on the Equitable Building renovation until the following has occurred:
  - a. Thoroughly inspect all floors involved in the renovation project for the presence of asbestos containing material.



- b. Thoroughly inspect all floors, including those floors that were not part of the renovation project, for asbestos containing material that may have been disturbed as a result of this renovation.
  - c. A licensed asbestos abatement contractor must clean up all asbestos containing waste material from all floors where asbestos containing materials have been disturbed.
  - d. Submit the asbestos inspection reports to the DNR within 10 days of completion of the inspections.
2. Prior to resuming the renovation project, a licensed asbestos abatement contractor must remove any asbestos containing material that will be disturbed by the renovation project in accordance with the asbestos NESHAP regulations, including but not limited to proper notifications and proper removal techniques.
  3. Comply with all asbestos NESHAP regulations for asbestos containing material waste disposal.
  4. Submit copy of all waste shipment records to the DNR for the clean up and any additional removal of asbestos within 10 days of completion of the clean up and additional removal project."

The first sentence in item 1, states: "Stop any and all work, including all sub-contractors' work, on the Equitable Building renovation until the following have occurred:

- a. Thoroughly inspect all floors involved in the renovation project for the presence of asbestos containing material."

The DNR follow-up inspection revealed that the eighth floor of the Equitable Building had been totally renovated since the time of the first inspections and is now the newly completed office space of a business. After questioning one of the building administrators, I was informed that the 8th floor of the Equitable Building is now owned by the business and is no longer owned by Equitable, L.P. In addition to the 8th floor, sections of the 6th floor were also under active renovation during the time of the DNR inspection.

I asked when the inspection for asbestos containing material (ACM) would take place as required in the Administrative Order. I was told in a week or two. I urged that the inspection take place as soon as possible. I have only been in receipt of the Ames Environmental asbestos inspection report, as of Friday, February 15, 2008.

The inspection for ACM was required to have been completed before any renovation activities resumed and before the business was allowed to occupy this floor, or any other floor under renovation. Equitable, L.P. is in violation of Section V, item 1 and 1(a) of the Administrative Order, which required that all work cease until, among other requirements, "...all floors involved in the renovation project...", have been inspected for the presence of asbestos containing material.

Item 2 of Section V of the Administrative Order states:

2. Prior to resuming the renovation project, a licensed asbestos abatement contractor must remove any asbestos containing material that will be disturbed by the renovation project in accordance with the asbestos NESHAP regulations, including but not limited to proper notifications and proper removal techniques.

Since Equitable, L.P. did not complete the required inspection for asbestos containing material prior to resuming renovation activities it is unknown if all asbestos containing material was removed in accordance with asbestos NESHAP regulations. During the January 15, 2008 follow-up inspection, DNR did find asbestos-containing material ("air cell" pipe insulation) on the 6<sup>th</sup> floor where renovation was ongoing. Therefore, Equitable, L.P. is found to be in violation of Section V, item 2 of the Administrative Order.

This letter does not preclude the DNR from taking further action pursuant to their delegated authority under the Clean Air Act, as amended 42 U.S.C. Section 7401 et seq.

Questions concerning this letter should be directed to Tom Wuehr at (515) 281-7212.

Sincerely,



Tom Wuehr  
Environmental Specialist/Compliance Section  
Iowa DNR - Air Quality Bureau

CC: Brian Hutchins, Supervisor  
Kelli Book, Legal Services Bureau  
Larry Hacker, EPA Region VII  
John Haan, Department of Workforce Development