

IN THE IOWA DISTRICT COURT FOR IOWA COUNTY

FILED  
2013 APR 22 AM 9:46  
CLERK OF DISTRICT COURT

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

NO. CVCV023572

Plaintiff, )

vs. )

PETITION AT LAW

BHUPEN PATEL and JAI SANTOSHI MA,) )  
INC., )

Defendants. )

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

INTRODUCTION

1. Asbestos is known to cause disease and cancer in humans, and there is no known safe level of asbestos exposure. Microscopic fibers of asbestos are released into the air when asbestos-containing material is disturbed. If inhaled, asbestos fibers can become permanently lodged in lung tissue and cause lung disease and cancer such as asbestosis and mesothelioma, although symptoms may not appear for up to 20 or more years after exposure.

2. An IDNR inspection of the former Middle America Truck Stop located at 120 Hawkeye Drive, Williamsburg, Iowa, revealed asbestos-containing materials in debris of a building demolished by Defendants. Defendants demolished the building without taking any precautions for asbestos, improperly disposed of debris by dumping it into a pit excavated on site, and violated an IDNR administrative order. Furthermore, Defendants subsequently demolished two mobile homes without inspecting for asbestos or notifying the DNR prior to the demolition. The State of Iowa,

therefore, seeks the assessment of civil penalties and the issuance of a permanent injunction against Defendants for the asbestos and solid waste violations committed at and in relation to the demolition projects.

## **PARTIES**

3. 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.

4. Bhupen Patel is President and sole corporate officer of Jai Santoshi Ma, Inc.

5. Jai Santoshi Ma, Inc. is an Iowa corporation doing business in Iowa County, Iowa.

## **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.

15. “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.

#### **Solid Waste Definitions**

16. “‘Construction and demolition waste’ means waste building materials including wood, metals and rubble which result from construction or demolition of structures.” 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, 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).

21. 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).

22. 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).

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 IDNR prior to beginning the activities. 40 C.F.R. § 61.145(b)(1).

24. 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).

25. 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).

26. 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).

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 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 for 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) and § 61.154.

30. 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).

31. 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. 40 C.F.R. § 61.150(d)(1).

32. For all asbestos-containing waste material transported off the facility site, each owner or operator of a demolition or renovation activity shall provide a copy of the waste shipment record to the disposal site owners or operators at the same time as the asbestos-containing waste material is delivered to the disposal site. 40 C.F.R. § 61.150(d)(2).

33. For all asbestos-containing waste material transported off the facility site, each owner or operator of a demolition or renovation activity shall retain copies of waste shipment records conforming with NESHAP requirements for asbestos-containing waste material, including a copy of the waste shipment record signed by the operator of the waste disposal site. 40 C.F.R. § 61.150(d)(5).

34. For all asbestos-containing waste material transported off the facility site, each owner or operator of a demolition or renovation activity shall furnish all waste shipment records conforming with NESHAP requirements for asbestos-containing waste material to the IDNR upon request. 40 C.F.R. § 61.150(e).

35. The Attorney General, at the request of the IDNR, 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**

36. 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.

37. 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.

38. 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 the violation. Iowa Code § 455B.307(3).

### **FACTS**

39. Defendant Bhupen Patel (Patel) is President, and sole corporate officer, of Jai Santoshi Ma, Inc.. Jai Santoshi Ma owns real property located at 120 Hawkeye Drive in Williamsburg, Iowa, where a Middle America Truck Stop formerly operated (the "Site").

40. On May 25, 2012, IDNR Field Office 6 received an anonymous telephone complaint alleging Patel began demolishing a commercial building at the Site without conducting an asbestos inspection, and that Patel had proposed burying the waste on Site.

41. On May 30, 2012, Jim Kacer (Kacer), an Environmental Specialist located at IDNR Field Office 6, investigated the complaint. When Kacer arrived at the Site, he met with Ken Odom (Odom), the contractor hired by Patel to conduct the demolition. Odom was not trained in the requirements of the asbestos NESHAP regulations, or how to comply with them.

42. Kacer informed Odom the demolition waste may contain asbestos and could not be buried on Site. Kacer explained the demolition needed to stop until an asbestos inspection was conducted and a notification was delivered to the IDNR. Odom agreed to cease the demolition.

43. Patel and Jai Santoshi Ma were both owners and/or operators of the demolition activity for purposes of 40 C.F.R. § 61.141.

44. On May 31, 2012, Kacer contacted Patel by phone and informed Patel that demolition activities needed to stop until the structure was inspected for asbestos, and an asbestos notification was submitted to the IDNR. Kacer also informed Patel the demolition waste could not be buried on Site. Patel informed Kacer he did not intend to bury the debris on Site, and that he already contacted an environmental consultant, Gaylen Hiesterman (Hiesterman) with ATC Associates, for assistance with this matter.

45. On June 1, 2012, the IDNR issued a Notice of Violation (NOV) letter to Patel for failure to inspect the building for asbestos prior to the demolition, and for failing to notify the IDNR of the demolition activity. The letter also provided information about the solid waste and open burning regulations. The letter required Patel to do the following: 1) immediately cease all demolition activities until the structure and debris were inspected for asbestos and all identified asbestos was abated; 2) to submit a notification to the IDNR if asbestos-containing material was found; 3) dispose of all demolition debris as asbestos-containing material at the landfill if asbestos-containing material was found in the debris; and 4) to dispose of the demolition waste at the landfill if it did not contain asbestos-containing material.

46. On Monday, June 4, 2012, John Avery (Avery), the Williamsburg Public Works Director, telephoned the IDNR and notified it that the upper level (the level above ground) of the former truck stop building had been completely demolished over the previous weekend.

47. On June 12, 2012, Hiesterman contacted the IDNR to inform it that although some demolition debris was taken off Site for disposal, demolition waste was being buried on Site after Hiesterman informed Patel that burying the waste on Site is illegal. Hiesterman also informed the IDNR that several samples he took on June 1, 2012, tested positive for asbestos.

48. On June 14, 2012, Kacer and IDNR Environmental Specialist Brian Lee (Lee) inspected the Site. They witnessed visible clouds of dust being blown from the ground surface and piles of demolition debris. They also observed demolition waste deposited in a pit dug on Site.

49. Kacer and Lee met Odom hauling metal offsite that he removed from the demolition waste, and informed him all the waste, including the metal, was contaminated with asbestos. Odom claimed Patel did not inform him of the asbestos, and did not direct him to cease demolition work.

50. During the inspection, Kacer collected samples of three different suspect asbestos-containing materials and delivered them to the State Hygienic Laboratory at the University of Iowa for asbestos testing. Test results indicated one sample contained 10% chrysotile asbestos, and white powder on another of the samples contained 10% chrysotile asbestos.

51. On June 15, 2012, Kacer spoke on the telephone with Ron Cox (Cox), of Cox Sanitation, who hauled 8 loads (totaling 51 tons) of the demolition waste to the Iowa County Landfill. Cox was not informed it was asbestos-containing waste, and confirmed it was disposed of as regular waste. Cox provided copies of the landfill receipts to the IDNR.

52. On June 15, 2012, the IDNR issued a second NOV letter to Patel for failure to inspect the building for asbestos prior to the demolition, for failing to notify the IDNR of the demolition activity, disregarding procedures for asbestos emission control, and disregarding standards for waste

disposal of asbestos-containing material. The letter required Patel to cease demolition activities on Site until a notification had been submitted and that further demolition activities at the Site were to be conducted in accordance with the regulations.

53. On June 18, 2012, Kacer again inspected the Site and observed the asbestos-containing demolition material remained dry and exposed to the wind.

54. On June 18, 2012, the IDNR issued a revised NOV that referenced the June 18 inspection, and included a correction to the summary of violations section in the June 15 NOV.

55. On June 21, 2012, Kacer and Dennis Ostwinkle, the IDNR Field Office 6 Supervisor, called Patel and informed him the Site was a public health hazard that needed to be abated immediately. Patel stated he would be out of town and could not address the situation until the next week.

56. On June 24, 2012, Kacer visited the Site and noted that the Site had not noticeably changed since his June 14 visit.

57. On June 25, 2012, Kacer spoke to Avery who said a blue tarp had been placed on the debris pile north of the building, but that the remainder of the Site remained the same.

58. On June 27, 2012, the IDNR issued Administrative Order No. 2012-AQ-17/2012-SW-16 to Jai Santoshi Ma and Patel for the asbestos and solid waste violations. (attached hereto as Exhibit A). The administrative order required Jai Santoshi Ma and Patel to immediately do the following:

- a. The remaining demolition debris on site shall not be buried or burned;
- b. Immediately take steps to limit access to the site. Only authorized, properly trained personnel shall be allowed access to this site;
- c. Under the supervision and guidance of a licensed asbestos abatement contractor, immediately wet the exposed asbestos-containing debris, containerize it, and maintain it in a wet condition until properly disposed of as asbestos-containing material at permitted landfill. This includes exposed debris in the excavated area;

d. Under the supervision and guidance of a licensed asbestos abatement contractor, immediately begin abatement and proper disposal of the waste piles, debris, asbestos-contaminated soil, and asbestos-contaminated dust at the site;

e. Until asbestos has been cleaned from the paved areas where demolition waste has been dumped, collect and contain runoff from this area. Asbestos is designated as a priority pollutant pursuant to the Federal Clean Water Act and unpermitted discharges could be subject to additional enforcement action;

f. Determine the applicability of the storm water permit requirements for soil disturbance related to the waste disposal area. If over 1 acre of soil was disturbed, the site is subject to the requirements of the Iowa General Permit No. 2;

g. Within 5 working days of receipt of this order, submit notification to DNR containing the following information:

- Scheduled starting and completion dates of excavation of the buried waste.

- Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the DNR may require changes in the emission control procedures to be used.

- Procedures to be used to manage petroleum-contaminated soil if encountered during the excavation process, since this is a high-risk LUST site.

- Location of any temporary storage site and the final disposal site;

h. Before initiating excavation activities at the site, contact Verne Schrunk (515-281-6704, DNR LUST Section) to determine if the LUST section has additional requirements regarding excavation at this high risk LUST site;

i. Upon DNR approval of the emission control procedures and petroleum-contaminated soil excavation procedures, immediately begin excavating and properly disposing of any demolition waste remaining at the site as asbestos-containing waste at a permitted sanitary disposal project, such as the Iowa County Landfill;

j. Provide landfill receipts to DNR within 10 days of disposal to document the proper disposal of the demolition waste;

k. All waste must be handled by personnel properly trained and licensed to handle asbestos-containing waste. This includes personnel involved in excavating the buried waste;

l. Because of the potential for petroleum contamination, personnel involved in excavation of the waste may be required to have current hazardous waste operations and emergency response (HAZWOPER) training (29 CFR 1910.120); and

m. Provide of copy of the administrative order to all contractors and subcontractors who work at this site.

59. On June 28, 2012, Mark Heiderscheid (Heiderscheid), an IDNR Field Office 6 Environmental Specialist, visited the property. Heiderscheid noted the piles of debris remained, and there were no barriers around the area.

60. On July 2, 2012, Kacer spoke with personnel from the Williamsburg Public Works Department. Kacer was informed the Site had not changed since the initial visits in June. The debris piles remained dry and uncovered. The area was not fenced off and no warning signs had been posted.

61. On July 3, 2012, Kacer visited the property and observed it remained the same as in June, with the exception of a tarp placed over a small portion of the debris. The debris piles were dry and uncovered. The area was not fenced off and no warning signs had been posted. Kacer collected samples of suspect material around the area. Test results showed a sample of the surfacing material contained 9% Chrysotile asbestos.

62. On July 11, 2012, Kacer and Kurt Levetzow, an IDNR Field Office 6 Environmental Specialist Senior, met with Patel and Richard Low (Low), with Kelly Demolition, at the Site. Access to the Site had not been limited, and there were no warning signs posted as to possible asbestos on Site. The group discussed how the clean-up would occur. Patel and Low were informed the demolition waste needed to be wetted, containerized, and properly disposed of and any of the demolition waste on Site would have to be excavated and properly disposed of. Low stated his company would remove the debris piles and then wet the asphalt surface with the remaining debris swept into containers. He stated the company would do personal air monitoring for asbestos and would also do area monitoring for asbestos downwind of the Site. He also stated his company would fence off the area and post the required warning signs.

63. On July 17, 2012, Kacer and Jon Ryk (Ryk), an IDNR Field Office 6 Environmental Specialist, visited the Site. They noted that there were no warning signs and no fence had been installed. Kacer contacted a representative from Kelly Demolition, who stated he would send a crew to cover the piles with plastic and install the fence and signs.

64. On July 19, 2012, Kacer and Ryk visited the Site and noted plastic tarps covered the debris piles, and the fence and signs had been installed.

65. On July 21, 2012, Kacer visited the Site and observed the fence across the access road had been removed from one lane. The fencing around the waste piles and the plastic on the piles were still in place.

66. On July 30, 2012, Kacer visited the Site and observed the piles of demolition waste had been removed and the paved area was dry. Furthermore, the demolition waste from the pit was removed, and Kelly Demolition was in the process of filling the area in with dirt.

67. On July 31, 2012, Tom Wuehr, the IDNR Asbestos Coordinator, notified IDNR Field Office 6 that a notification had not been submitted for the abatement project.

68. On August 1, 2012, Verne Schrunk, with the IDNR underground storage tank section, informed Kacer that no one contacted him about the potential disturbance of the petroleum-contaminated soil at the Site as required in Administrative Order No. 2012-AQ-17/2012-SW-16.

69. Additionally, an emissions control plan for the removal of the buried waste had not been submitted to the IDNR as required by the administrative order, and Kelly Demolition had not received a copy of the administrative order as required.

70. On August 17, 2012, IDNR Field Office 6 sent a Notice of Violation letter to Patel for noncompliance with Administrative Order No. 2012-AQ-17/2012-SW-16. The deficiencies included: 1) the administrative order required that immediate steps be taken to limit access to the Site; fencing and signs were not installed until July 17, 2012; 2) the administrative order required

that immediate steps be taken to wet and containerize the demolition waste; the waste piles were not covered until July 17, 2012; 3) the administrative order required that any asbestos-contaminated soil was supposed to be identified and remediated; this step has not been done; 4) the administrative order required an emissions control plan to be submitted to DNR; a plan was not submitted; 5) the administrative order required that the DNR underground storage tank section be contacted prior to the abatement; this was not done; 6) the administrative order required that landfill receipts for the disposal to be submitted within 10 days of disposal; the disposal occurred on July 30, 2012 and the landfill receipts were not submitted until August 15, 2012; and 7) the administrative order required that a copy of the administrative order be provided to all contractors; a copy of the administrative order was not provided to Kelly Demolition by Patel.

71. The NOV letter stated that Patel was not in compliance with the administrative order and that he must take immediate steps to identify and remediate any contaminated soil. The letter required that the area remained fenced off until the soil is evaluated and remediated if necessary.

72. The IDNR has not received any information indicating Defendants have taken any steps to identify and remediate any contaminated soil.

73. On March 13, 2013, Kacer conducted a follow-up inspection of the Site and met with the manager of the hotel located at the Site. She informed Kacer that Patel intended to demolish two mobile home trailers located on the Site. Kacer informed her that the mobile homes would need to be inspected for asbestos and notice given to the DNR prior to demolition.

74. On March 26, 2013, the DNR received a complaint that two mobile homes located at the Site were being demolished without first being inspected for asbestos.

75. On March 27, 2013, Kacer inspected the Site and spoke with the hotel manager who told the workers to discontinue the demolition, she also informed Kacer that she previously spoke about this matter with Patel.

76. On March 29, 2013, the DNR issued a Notice of Violation letter to Jai Santoshi Ma for beginning the demolition of the two mobile homes without first conducting an asbestos inspection and providing the DNR with notice of the demolition.

77. On April 9, 2013, the DNR received a complaint that Defendants continued demolishing the two mobile homes at the Site. Kacer confirmed that no notice of the demolition had been provided to the DNR.

78. Kacer inspected the Site that same day, and confirmed that demolition of the two mobile homes had continued since his last inspection on March 27.

79. On April 12, 2013, the DNR issued another Notice of Violation to Jai Santoshi Ma continuing to demolish the two mobile homes without first conducting an asbestos inspection and providing the DNR with notice of the demolition.

## **VIOLATIONS**

### **Asbestos Violations**

80. Defendants failed to thoroughly inspect the truck stop and mobile homes for the presence of asbestos prior to commencement of demolition or renovation activities in violation of 40 C.F.R. § 61.145(a).

81. Defendants failed to submit written notification of demolition or renovation activities to the IDNR prior to beginning the demolition activities at the truck stop and mobile homes in violation of 40 C.F.R. § 61.145(b)(1).

82. Defendants failed to remove all RACM from the truck stop 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).

83. Defendants 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).

84. Defendants 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).

85. Defendants disturbed RACM during the demolition 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).

86. Defendants failed to use any means or methods during the demolition 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).

87. Defendants did not dispose of the asbestos-containing waste material as soon as practical, and did not deposit the demolition waste in the portion of the Iowa County landfill that is operated in accordance with the provisions of 40 C.F.R. § 61.154 in violation of 40 C.F.R. § 61.150(b)(1).

88. Defendants 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).

89. Defendants failed to maintain waste shipment records conforming with NESHAP requirements for asbestos-containing waste material in violation of 40 C.F.R. § 61.150(d)(1).

90. Defendants failed to provide a copy of the waste shipment record conforming with NESHAP requirements for asbestos-containing waste material to the disposal site owners or operators at the same time as the asbestos-containing waste material is delivered to the disposal site in violation of 40 C.F.R. § 61.150(d)(2).

91. Defendants failed to retain copies of waste shipment records conforming with

NESHAP requirements for asbestos-containing waste material, including a copy of the waste shipment record signed by the operator of the waste disposal site in violation of 40 C.F.R. § 61.150(d)(5).

92. Defendants failed to furnish upon request, and make available for inspection by the IDNR, waste shipment records conforming with NESHAP requirements for asbestos-containing waste material in violation of 40 C.F.R. § 61.150(e).

93. Defendants violated Administrative Order No. 2012-AQ-17/2012-SW-16 by failing to limit access to the Site before July 17, 2012, failing to cover the demolition piles prior to July 17, 2012, failing to identify and remediate asbestos-contaminated soil, failing to submit an emissions control plan to the IDNR, failing to contact the IDNR underground storage tank section prior to the abatement, failing to submit landfill receipts for the disposal within 10 days of disposal on July 30, 2012, and failing to provide a copy of the administrative order to Kelly Demolition.

#### **Solid Waste Violation**

94. Defendants deposited and permitted the depositing of solid waste at the Site in violation of Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4.

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

- a. assess a civil penalty against Defendants Bhupen Patel and Jai Santoshi Ma, Inc., jointly and severally, for asbestos regulation violations pursuant to Iowa Code section 455B.146 for each day of violation of 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), 61.150(b)(1), 61.150(c), and 61.150(d)(1)-(2), (5), and 61.150(e) adopted by reference in 567 IAC 23.1(3), and Administrative Order No. 2012-AQ-17/2012-SW-16, not to exceed ten thousand dollars (\$10,000.00) per day, per violation, for each day of such violation;
- b. assess a civil penalty against Defendants Bhupen Patel and Jai Santoshi Ma, Inc., jointly and severally, pursuant to Iowa Code section 455B.307(3) for each day of violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order No. 2012-AQ-17/2012-SW-16, not to exceed five thousand dollars (\$5,000.00) per day, per violation, for each day of such violation;

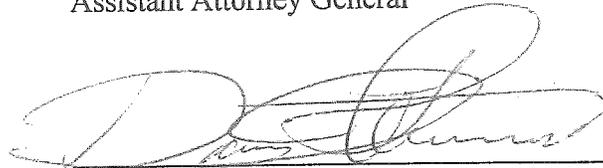
- c. issue a permanent injunction enjoining Defendants from any violation of Administrative Order No. 2012-AQ-17/2012-SW-16, Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, 40 C.F.R. sections 61.145(a), 61.145(b)(1), 61.145(c)(1), 61.145(c)(6)(i), 61.145(c)(6)(ii), 61.145(c)(8), 61.150(a), 61.150(b)(1), 61.150(c), and 61.150(d)(1)-(2), (5), and 61.150(e) 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 Defendants.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER

<p>IN THE MATTER OF:</p> <p>JAI SANTOSHI MA, INC. and BHUPEN PATEL</p> <p>Iowa County, Iowa</p>	<p>ADMINISTRATIVE ORDER NO. 2012-AQ- 17 NO. 2012-SW- 16</p>
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TO: Jai Santoshi Ma, Inc.  
Bhupen Patel, Registered Agent  
1845 Glen Oaks Drive  
West Des Moines, Iowa 50266

Bhupen Patel  
265 62<sup>nd</sup> Court  
West Des Moines, Iowa 50266

I. SUMMARY

Due to the potential environmental and health hazards associated with asbestos, this administrative order requires you to comply 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:

Jimi Kacer, Field Office 6  
Iowa Department of Natural Resources  
1023 West Madison  
Washington, Iowa 52353  
Phone: 319/653-2135

Relating to appeal rights:

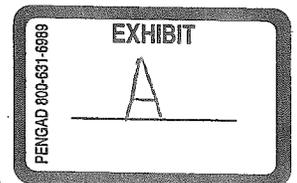
Kelli Book, Attorney  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

Appeal, if any, addressed to:

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

II. JURISDICTION

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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IOWA AIR QUALITY

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promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B; Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part, DNR has jurisdiction to issue this administrative order.

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. Jai Santoshi Ma, Inc. (Jai Santoshi Ma) owns a parcel of land located at 120 Hawkeye Drive; Williamsburg, Iowa. A truck stop was located on the parcel and was formerly operated as the Middle America Truck Stop. The site is designated as a leaking underground storage tank (LUST) site. The truck stop is being demolished by the demolition contractor Ken Odom. Bhupen Patel is acting as the operator of the site in that he is directing the demolition activities on site and is the regulatory contact with state agencies involved in this matter.

3. On May 25, 2012, DNR Field Office 6 received a complaint that Mr. Patel had begun demolition of the truck stop without conducting an asbestos inspection. The complainant stated that Mr. Patel had proposed burying the debris onsite. Further review of DNR's asbestos notifications indicated that the DNR had not received the 10-day asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) notification for the demolition.

4. On May 30, 2012, Jim Kacer, DNR Field Office 6 environmental specialist, investigated the complaint. When Mr. Kacer arrived he spoke to Ken Odom. Mr. Odom explained that he had been hired to demolish the building down to ground level, leaving the lower level of the truck stop intact. Mr. Kacer told Mr. Odom that the complainant had stated that Mr. Patel was going to bury the debris on site. Mr. Kacer explained that burying the debris on site was against the DNR's regulations. Mr. Odom stated that he had not been instructed to bury the debris on site. Mr. Kacer explained that the demolition would have to stop until an asbestos inspection was conducted and a notification was submitted to the DNR. Mr. Kacer also explained that if an asbestos inspection had not been conducted prior to the demolition that all the debris would have to be disposed of as asbestos containing material at the landfill. Mr. Odom provided Mr. Kacer with Mr. Patel's telephone number. Mr. Kacer walked around the site and observed the partially demolished building with piles of demolition waste on the ground as well as demolition debris in a roll-off container. The demolition waste contained dry suspect asbestos containing material including roofing material, drywall, textured ceiling coating, and sealants and adhesives. Mr. Kacer documented his visit through photographs and an inspection report.

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5. On May 31, 2012, Mr. Kacer spoke to Mr. Patel on the telephone. Mr. Patel confirmed that an asbestos inspection had not been conducted at the site prior to the start of the demolition. Mr. Kacer told Mr. Patel that the demolition activities would have to stop until the structure was inspected for asbestos and an asbestos notification was submitted to DNR. Mr. Kacer explained that the debris could not be buried on site. Mr. Patel stated that he had not intended to bury the debris on site and that he wanted to comply with the requirements. He stated that he had already contacted his environmental consultant, Gaylen Heisterman with ATC Associates, for assistance.

6. On June 1, 2012, Mr. Heisterman emailed Mr. Kacer to inform him that someone from ATC was on site collecting samples of suspect material.

7. On June 4, 2012, DNR issued a Notice of Violation letter to Mr. Patel for the asbestos violations discovered by Mr. Kacer during his investigation in May. The letter also provided information about the solid waste and open burning regulations. The letter required Mr. Patel to do the following: 1) immediately cease all demolition activities until the structure and debris are inspected for asbestos and all identified asbestos is abated; 2) if asbestos containing material is found that a notification be submitted to DNR; 3) if asbestos containing material is found in the debris that all debris be disposed of as asbestos containing material at the landfill; and 4) if the demolition waste does not contain asbestos containing material that it be disposed of at the landfill. The letter informed Mr. Patel that the matter may be referred for further enforcement.

8. On June 4, 2012, John Avery, Williamsburg Public Works Director, notified DNR Field Office 6 that the building had been completely demolished, except the lower level, over the weekend.

9. On June 12, 2012, Mr. Heisterman contacted Mr. Kacer and stated that the demolition waste was being buried on site. Mr. Heisterman stated that he told Mr. Patel that burying the demolition waste on site was illegal. Mr. Heisterman also stated that several of the materials sampled were asbestos containing, but that he could not send the results to the DNR until he had permission from Mr. Patel to do so. Mr. Heisterman stated that several roll-off containers of demolition waste had been taken off-site, possibly to the Iowa County Landfill. Following the call from Mr. Heisterman, Mr. Kacer contacted Iowa OSHA and requested that Iowa OSHA investigate possible worker exposure.

10. On June 14, 2012, Mr. Kacer and Brian Lee, DNR Field Office 6 environmental specialist, returned to the truck stop site. Prior to arriving on site, Mr. Kacer spoke to Mr. Avery on the telephone. Mr. Avery and another Williamsburg Public Works employee were on site and stated that Mr. Odom was sorting metal out of the demolition debris. Mr. Avery told Mr. Odom to stop and Mr. Odom refused. Mr. Odom left the site with a load of metal. Mr. Kacer and Mr. Lee located Mr. Odom in town and directed him to return to the site. Mr. Odom returned to the site, wetted the load of metal, and dumped the metal into a small pile of debris, with no visible emissions as he did so. Mr. Odom stated that Mr. Patel did not direct him to stop demolition work at the site and did not tell him the

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debris was asbestos containing material. During the field office visit the wind was blowing from the south and visible clouds of dust were being picked up from the ground surface and the piles of demolition waste. The wind was from the south during the entire visit, blowing toward a commercial area located north of Interstate 80. During the visit, an employee of Windstream who had come to repair a cable that had been cut during excavation was also at the site. Mr. Kacer and the Windstream employee proceeded to the excavation area on the north side of the property. Demolition waste was observed in the excavated area. Mr. Kacer advised the Windstream employee that the area was likely contaminated with asbestos and possibly petroleum and advised him to not enter the excavation area. The Windstream employee then left the area. Mr. Avery stated that Cox Sanitation had transported eight roll-off containers loaded with demolition waste from the site to the Iowa County Landfill. Mr. Kacer documented his visit through photographs and an inspection report. He also collected three samples of suspect material. Two of samples indicated the presence of regulated asbestos containing material. A sample of roofing material with a white powdery substance indicated the roofing material contained less than 1% asbestos, but the white substance contained 10% chrysotile asbestos. A sample of friable textured surfacing material contained 10% chrysotile asbestos.

11. On June 15, 2012, Mr. Kacer spoke to Ron Cox with Cox Sanitation. Mr. Cox stated that his company hauled 8 roll-off containers of demolition waste from the site to the Iowa County Landfill for a total of 51 tons of debris. He stated that he was not told that the debris contained asbestos. Following this conversation, Mr. Kacer contacted the Iowa County Landfill and informed the landfill that the containers contained asbestos materials.

12. On June 18, 2012, DNR issued another Notice of Violation letter to Mr. Patel that included the additional asbestos and solid waste disposal violations discovered during the June 14th investigation. The letter required Mr. Patel to cease demolition activities on site until a notification has been submitted and to conduct further demolition activities at the site in accordance with the regulations. The letter informed Mr. Patel that the matter was being referred for further enforcement.

13. On June 19, 2012, Mr. Kacer spoke to Cory Albers with Active Thermal Concepts who was contacted by ATC Associates to provide an asbestos abatement estimate for the site. By the time Mr. Albers arrived at the site during the week of June 4, the building had been demolished and no estimate was necessary for pre-demolition abatement.

14. On June 19, 2012, Mr. Kacer requested that the University of Iowa Hygienic Laboratory point count the surfacing material sample. The laboratory contacted Mr. Kacer later in the day with the results. The point count method indicated 14% chrysotile asbestos. On June 20, 2012, a revised Notice of Violation letter was sent to Mr. Patel with the revised asbestos results.

15. On June 21, 2012, Mr. Kacer contacted Mr. Avery. Mr. Avery drove by the site and indicated that it did not appear to have changed since the June 14 visit. Mr. Avery did advise the nearby hotel of the potential asbestos exposure from the site.

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16. On June 21, 2012, Mr. Kacer and Dennis Ostwinkle, DNR Field Office 6 supervisor, contacted Mr. Patel. He stated that he received the Notice of Violation and would like guidance from the DNR. The field office personnel told Mr. Patel that the site was a public health hazard and that it was important to abate the area as soon as possible. Mr. Patel stated that he would be out of town until June 25, 2012 and that he would deal with it at that time. The field office personnel stressed that he should start dealing with the site immediately.

17. On June 21, 2012, Mr. Kacer spoke with Peggy Peterson, Iowa OSHA. Ms. Peterson said that on June 15, 2012, Iowa OSHA informed Mr. Patel that he would need to demarcate the contaminated area and limit access to the site.

18. On June 21, 2012, Mr. Kacer spoke to Mr. Hiesterman. Mr. Hiesterman stated that ATC Associates had cut ties with Mr. Patel and that the asbestos reports and other correspondence between ATC Associates and Mr. Patel would have to be provided to the DNR by Mr. Patel.

19. On June 22, 2012, Mr. Kacer spoke to Mr. Avery. Mr. Avery stated that the site had not changed since his visit the prior day.

20. On June 24, 2012, Mr. Kacer visited the site and noted that the site had not changed since the June 14 visit. On June 25, 2012, Mr. Kacer spoke to Mr. Avery who said that a blue tarp had been placed on the debris pile north of the building, but that the remainder of the site remained the same.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the 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.

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 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 NESHAP, found at 40 CFR part 61, subpart M.

3. 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. Patel stated there was not a thorough asbestos inspection prior to the demolition project at the truck stop. The above facts indicate a violation of this provision.

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4. 40 CFR section 61.145(b)(1) requires written notification of demolition to be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. The DNR has not received a notification for the demolition project. The above facts indicate a violation 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 facts in this case indicate that the parties were not in compliance with these provisions when the demolition project occurred.

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 Field Office 6 personnel observed regulated asbestos containing material that had not been removed prior to the demolition project. The facts in this case indicate violations of this provision.

7. 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. DNR Field Office 6 personnel found dry regulated asbestos containing material exposed to the open air at the demolition site. The facts in this case indicate violations of this provision.

8. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless at least one on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the demolition despite the fact regulated asbestos containing material was being disturbed by the demolition activities. The above facts indicate noncompliance with this provision.

9. 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 the parties were not in compliance with these provisions when the demolition project occurred.

10. 40 CFR 61.150(b) states that 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 provisions of 40 CFR 61.154. At least eight roll-off containers of asbestos containing demolition debris was disposed of as construction and demolition debris rather than asbestos containing material at the landfill. The above facts indicate violations of this provision.

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11. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

12. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. Some of the demolition debris from the truck stop has been buried on site rather than being disposed of at a permitted landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered that Jai Santoshi Ma and Bhupen Patel immediately do the following:

1. The remaining demolition debris on site shall not be buried or burned;
2. Immediately take steps to limit access to the site. Only authorized, properly trained personnel shall be allowed access to this site;
3. Under the supervision and guidance of a licensed asbestos abatement contractor, immediately wet the exposed asbestos containing debris, containerize it, and maintain it in a wet condition until properly disposed of as asbestos containing material at permitted landfill. This includes exposed debris in the excavated area;
4. Under the supervision and guidance of a licensed asbestos abatement contractor, immediately begin abatement and proper disposal of the waste piles, debris, asbestos contaminated soil, and asbestos contaminated dust at the site;
5. Until asbestos has been cleaned from the paved areas where demolition waste has been dumped, collect and contain runoff from this area. Asbestos is designated as a priority pollutant pursuant to the Federal Clean Water Act and unpermitted discharges could be subject to additional enforcement action;
6. Determine the applicability of the stormwater permit requirements for soil disturbance related to the waste disposal area. If over 1 acre of soil was disturbed, the site is subject to the requirements of the Iowa General Permit No. 2;
7. Within 5 working days of receipt of this order, submit notification to DNR containing the following information:
  - Scheduled starting and completion dates of excavation of the buried waste.
  - Procedures to be used to control emissions during the excavation, storage, transport, and ultimate disposal of the excavated asbestos-containing waste material. If deemed necessary, the DNR may require changes in the emission control procedures to be used.
  - Procedures to be used to manage petroleum-contaminated soil if encountered during the excavation process, since this is a high-risk LUST site.

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- Location of any temporary storage site and the final disposal site;
- 8. Before initiating excavation activities at the site, contact Verne Schrunk (515-281-6704, DNR LUST Section) to determine if the LUST section has additional requirements regarding excavation at this high risk LUST site;
- 9. Upon DNR approval of the emission control procedures and petroleum-contaminated soil excavation procedures, immediately begin excavating and properly disposing of any demolition waste remaining at the site as asbestos-containing waste at a permitted sanitary disposal project, such as the Iowa County Landfill;
- 10. Provide landfill receipts to DNR within 10 days of disposal to document the proper disposal of the demolition waste;
- 11. All waste must be handled by personnel properly trained and licensed to handle asbestos-containing waste. This includes personnel involved in excavating the buried waste. Questions regarding asbestos licensing and permitting may be referred to Jeff Ellis, Iowa Occupational Safety and Health (IOSH), at [ellis.jeff@dol.gov](mailto:ellis.jeff@dol.gov);
- 12. Because of the potential for petroleum contamination, personnel involved in excavation of the waste may be required to have current hazardous waste operations and emergency response (HAZWOPER) training (29 CFR 1910.120). Contact IOSH at (515) 281-7629 to discuss these requirements; and
- 13. Provide a copy of the administrative order to all contractors and subcontractors who work at this site.

**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 property located at 120 Hawkeye Drive; Williamsburg, Iowa. 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 sections 455B.146, 455B.146A, and 455B.307. 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 sections 455B.146, 455B.146A, and 455B.307 for alleged violation not addressed in this administrative order which may have occurred during the project at the property located at 120 Hawkeye Drive; Williamsburg, Iowa. Additionally, DNR reserves the right to add additional parties to this administrative order or to 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 property located at 120 Hawkeye Drive; Williamsburg, Iowa.

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VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.138 and 567 IAC chapter 7, 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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CHUCK GIPP, DIRECTOR  
Iowa Department of Natural Resources

Dated this 27<sup>th</sup> day of  
June, 2012.

Norma Gentry, AQB; Kelli Book; Jim Kacer, FO 6; Dave Sheridan; EPA; VII.C.4