

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

---

STATE OF IOWA, ex rel., IOWA	)	
DEPARTMENT OF NATURAL	)	
RESOURCES,	)	NO. _____
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<b>PETITION AT LAW</b>
WILLIAM T. SCHMIDT and	)	
ROCKINGHAM-LUNEX CO.,	)	
	)	
Defendants.	)	

---

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

**INTRODUCTION**

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

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

3. A DNR inspection of the Rockingham-Lunex Co. property located at 7551 State Street, Bettendorf, Iowa, revealed asbestos-containing materials in debris of a building demolished by Defendants. Defendants demolished the building without taking any precautions for asbestos,

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

## **PARTIES**

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

5. William T. Schmidt (Schmidt) is the President of Rockingham-Lunex Co., and is a resident of Scott County, Iowa.

6. Rockingham-Lunex Co. f/d/b/a Rockingham Machine Co., (Rockingham) is an Iowa corporation doing business in Scott County, Iowa.

## **DEFINITIONS**

### **Asbestos Definitions**

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

8. “‘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.

9. “‘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.

10. “‘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.

11. “‘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.

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

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

14. “‘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.

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

### **Solid Waste Definitions**

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

shall also include trees.” 567 Iowa Admin. Code 100.2.

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

18. “‘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.

19. “‘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.

20. “‘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**

21. The United States Environmental Protection Agency has established emission standards for asbestos which is a hazardous air pollutant regulated pursuant to Section 112 of the Clean Air Act. *See* 40 C.F.R. §§ 140-157. These standards for asbestos and other hazardous air pollutants are called the National Emission Standards for Hazardous Air Pollutants (NESHAP).

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

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

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

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

26. 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).

27. 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).

28. 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).

29. Each owner or operator of a demolition 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).

30. 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.

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

#### **Solid Waste Regulations**

32. 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.

33. 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.

34. 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).

## **Air Quality Regulations**

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

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

37. The Attorney General is authorized, on request of the DNR, to institute a civil action in district court for injunctive relief to prevent any further violation of any order, permit, or rule of the department, or for the assessment of a civil penalty for each day of violation not to exceed Ten Thousand Dollars (\$10,000.00) for each day of violation, or for both injunctive relief and civil penalties. Iowa Code § 455B.146.

## **FACTS**

38. Defendant Rockingham-Lunex Co., owns property located at 7551 Street, Bettendorf, Iowa (“Rockingham property”).

39. The Rockingham property is a former manufacturing facility containing multiple building structures on 8.397 acres. The manufacturing facility is shut down, and the property is vacant with the exception of a few buildings being rented by other businesses.

40. On March 29, 2011, DNR Field Office 6 received a complaint that open burning was occurring at night at the Rockingham property.

41. On March 31, 2011, DNR environmental specialist, Jon Ryk, inspected the Rockingham property and observed a large pile of demolition and landscape waste burning at the

south end of the property. The demolition waste included wood, fiberglass insulation, asphalt shingles, metal debris, and other building materials.

42. Mr. Ryk met with a Rockingham employee at the property who provided Mr. Ryk with Schmidt's telephone number. The employee also informed Mr. Ryk the adjacent business owner, Sean Terrell, and a renter of a portion of the Rockingham property, was involved with the burning.

43. Mr. Ryk called Schmidt and Mr. Terrell and asked them to meet him at the Rockingham property. Mr. Terrell arrived first and explained he rented some of the buildings on the northeast portion of the property and some open area where mulch is stored.

44. Mr. Terrell explained how he and Schmidt demolished and moved a collapsed building located on the southwest portion of the Rockingham property (Building 19) to the south end of the property. Mr. Terrell stated he did not start the fire, but he added some demolition debris to the pile.

45. Mr. Ryk collected a sample of suspect material from the area where Building 19 had been located. The sample was part of a rock wall (a form of cement wall board) and similar debris was scattered around the building footprint leading to the burn pile. Sample results indicated the material contained 30% Chrysotile asbestos.

46. When Schmidt arrived, he met with Mr. Ryk and explained that Building 19, a 120-foot by 40-foot wood frame building, had deteriorated the pervious winter. Schmidt explained how he and Mr. Terrell demolished the building and moved it to the burn site. Schmidt admitted he started the fire on March 29, 2011.

47. Schmidt confirmed the building was not inspected for asbestos, and no notification was submitted to the DNR prior to the demolition.

48. Schmidt also explained to Mr. Ryk how he collapsed the walls of another building on



the northeast portion of the Rockingham property (Building 15), and most of the demolition debris remained on the ground under the roof of the structure, while some of the debris was disposed of in an 8 cubic yard dumpster on the property.

49. On April 7, 2011, DNR issued a Notice of Violation letter to Schmidt and Rockingham for the asbestos and open burning violations discovered by Mr. Ryk on March 29, 2011. The letter required Schmidt and Rockingham to employ a licensed asbestos abatement contractor to remove the burned and unburned demolition debris associated with the two demolished structures and dispose of the material as regulated asbestos containing material.

50. On June 30, 2011, Mr. Ryk met with Schmidt's contractor and observed that the demolition debris had been removed from the Building 19 footprint, the burn pile, the area between Building 19 and the burn pile, and the Building 15 footprint.

51. On July 25, 2011, DNR Field Office 6 received invoices from the licensed asbestos abatement contractor hired by Schmidt indicating 180 cubic yards of demolition debris was collected and disposed of as asbestos-containing waste.

## **VIOLATIONS**

### **Asbestos Violations**

52. Defendants failed to thoroughly inspect Buildings 15 and 19 for the presence of asbestos prior to commencement of demolition activities in violation of 40 C.F.R. § 61.145(a).

53. Defendants failed to submit written notification of demolition activities to the DNR prior to beginning the demolition of Building 19 in violation of 40 C.F.R. § 61.145(b)(1).

54. Defendants failed to remove all RACM from Building 19 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).

55. 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).

56. 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).

57. Defendants disturbed RACM during the demolition of Building 19 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).

58. Defendants failed to use any means or methods during the demolition of Building 19 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).

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

#### **Solid Waste Violation**

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

#### **Air Quality Violation**

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

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

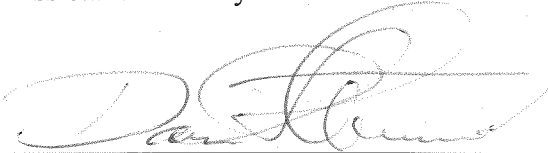
- a. assess a civil penalty against Defendants William T. Schmidt and Rockingham-Lunex Co., jointly and severally, pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 23.2(1), and 40 C.F.R. sections 61.145(a), 61.145(b)(1), 61.145(c)(1), 61.145(c)(6)(i), 61.145(c)(6)(ii),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

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

Respectfully submitted,

THOMAS J. MILLER  
Attorney General of Iowa

DAVID R. SHERIDAN  
Assistant Attorney General



---

DAVID S. STEWARD, AT0007551  
Assistant Attorney General  
Environmental Law Division  
Lucas State Office Building  
321 E. 12<sup>th</sup>, Room 18  
Des Moines, Iowa 50319  
TEL: (515) 281-5351  
FAX: (515) 242-6072  
E-MAIL: david.steward@iowa.gov

ATTORNEYS FOR PLAINTIFF