

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

STATE OF IOWA ex rel. IOWA)	
DEPARTMENT OF NATURAL)	NO. <u>EQCV093367</u>
RESOURCES,)	
)	
Plaintiff,)	
)	
vs.)	PETITION IN EQUITY
)	
ABATEMENT SPECIALITIES, LLC)	
d/b/a ABATEMENT SPECIALTIES,)	
)	
Defendant.)	

COMES NOW Plaintiff State of Iowa ex rel. Iowa Department of Natural Resources (“IDNR”) and for its claims against Defendant 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 during product use, demolition work, building or home maintenance, repair, and remodeling. 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. The Cedar Rapids Community School District (“School District”) owns and operates Washington High School, a public school located at 2205 Forest Drive SE, Cedar Rapids, Linn County, Iowa. In 2014 and 2015, Washington High School was undergoing a multi-year large scale renovation project. Prior to the renovation project, the School District identified multiple locations throughout the school where asbestos-containing material was present. The School District contracted with Abatement Specialities to perform all asbestos abatement

activities during the renovation project. In 2014 and 2015 Abatement Specialities violated multiple asbestos regulations including, but not limited to, failure to thoroughly inspect for the presence of asbestos prior to renovation activities, failure to remove all asbestos-containing material before the material was damaged or disturbed, and failure to use proper methods to remove, collect and dispose of asbestos-containing material. The State of Iowa, therefore, seeks the assessment of civil penalties and the issuance of a permanent injunction against Abatement Specialities for the numerous asbestos violations committed at and in relation to the renovation project.

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. Abatement Specialities, LLC is an Iowa limited liability company doing business in Linn County, Iowa.

DEFINITIONS

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

6. “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.

7. “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.

8. “Facility component means any part of a facility including equipment.” 40 C.F.R. § 61.141.

9. “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.

10. “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.

11. “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.

12. “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.

13. “Strip means to take off RACM from any part of a facility or facility components.” 40 C.F.R. § 61.141.

JURISDICTION

14. 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. These standards for asbestos and other hazardous air pollutants are called the National Emission Standards for Hazardous Air Pollutants (“NESHAP”). 40 C.F.R. Part 61, Subpart M (40 C.F.R. sections 140-157).

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

16. Each 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).

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. When RACM is stripped from a facility component while it remains in place in the facility, each owner or operator of a demolition or renovation activity shall adequately wet the RACM during the stripping operation. 40 C.F.R. § 61.145(c)(3).

19. For all RACM, including material that has been removed or stripped, each owner or operator of a demolition or renovation activity 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).

20. For all RACM, each owner or operator of a demolition or renovation activity shall carefully lower the material to the floor without dropping, throwing, sliding, or otherwise damaging or disturbing the material. 40 C.F.R. § 61.145(c)(6)(ii).

21. Each owner or operator of a demolition or renovation activity shall either discharge no visible emissions to the outside air during the collection, processing, packaging, or transporting of any asbestos-containing waste material generated by the source, or adequately wet the asbestos-containing waste material and, while wet, seal it in leak-tight containers or wrapping. 40 C.F.R. § 61.150(a).

22. 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.

FACTS

23. The School District owns and operates Washington High School, a public education center with a student and staff population of approximately 1,300 people, and it is located at 2205 Forest Avenue Southeast in Cedar Rapids, Linn County, Iowa.

24. The present school structure was constructed in 1957 with additions in 1961, 1971, 1990 and 2003 for a total of approximately 312,000 square feet including a gymnasium, pool, auditorium and full basement.

25. In 2014, the School District began a large scale, multi-year renovation project at Washington High School.

26. Prior to renovation, the School District contracted with Shive-Hattery, Inc. (“Shive-Hattery”) in 2013 to inventory asbestos-containing material in the areas of the renovation project. Shive-Hattery identified and documented asbestos-containing material throughout the school building and provided the School District an Asbestos Survey Report of its findings.

27. The School District contracted with Abatement Specialities for all the asbestos abatement work at the school, and with Shive-Hattery to perform air clearance sampling in the areas where asbestos removal was completed.

28. Abatement Specialities was the renovation contractor that operated, controlled and supervised the asbestos abatement operation at the school.

29. The general contractor for the project was Woodruff Construction, LLC (“Woodruff Construction”). Woodruff Construction oversaw all subcontractors (subcontractors do not include Shive-Hattery or Abatement Specialities).

30. Although asbestos is required under NESHAP to be abated prior to renovation activities, subcontractors documented numerous incidents in which they encountered suspected asbestos and asbestos debris throughout 2014 and 2015. For example, in December 2014, asbestos debris was discovered in the basement area of the school, and asbestos not identified in the Shive-Hattery Asbestos Survey Report was discovered on the pipe hangers.

31. In another incident in April 2015, one of the air clearance tests in the mechanical area below the women’s locker room failed due to high asbestos counts.

32. In May 2015, a subcontractor was allowed to conduct renovation activities in areas prior to asbestos abatement being performed.

33. In May 2015, previously unidentified asbestos-containing material was found on pipe hangars in the boiler room.

34. In May 2015, a substantial amount of asbestos debris was discovered scattered throughout the boiler room floor including a five foot long section of air-cell insulation after Abatement Specialities performed asbestos abatement activities.

35. A subcontractor construction report from Day Mechanical to Woodruff Construction on June 3, 2015, indicated that workers were conducting demolition work in Room

027 that was reported as cleared of asbestos, but during the demolition Day Mechanical found asbestos had not been removed. A similar construction report was filed on June 18, 2015, for the wood shop.

36. On June 5, 2015, employees of the subcontractor, Universal Climate, notified Woodruff Construction of their concerns with suspected asbestos-containing debris in the mechanical room.

37. On June 18, 2015, two employees of Abatement Specialities were hitting transite panels with hammers to break them up to place in 55-gallon barrels in the presence of subcontractor employees and without the use of water, air containment, or personal protective equipment, and the windows and doors to the space were open.

38. In June 2015, a subcontractors complained to both Woodruff Construction and Shive-Hattery that their employees working in areas after Abatement Specialities removed asbestos-containing material regularly discovered suspect asbestos-containing material remained in the area and was often found on the ground, above the ceiling or on the pipes.

39. On or around June 24, 2015, DNR received an anonymous telephone complaint regarding the Washington High School renovation project that stated Abatement Specialities left asbestos debris throughout the school.

40. On June 26, 2015, Tom Wuehr, a DNR environmental specialist, visited Washington High School to investigate the complaint.

41. While at the school, Mr. Wuehr observed dozens of workers at the school along with teachers and students, and he spoke with various workers at the renovation project regarding any concerns they had relating to asbestos.

42. The workers Mr. Wuehr spoke with had concerns with the asbestos removal work that Abatement Specialities was performing and communicated that Abatement Specialities had created an asbestos hazard throughout the school.

43. During his inspection, Mr. Wuehr personally observed dry suspect material throughout the school, and outside of containment.

44. Mr. Wuehr took several photographs of suspected asbestos-containing debris, and he collected a sample of dry, suspect material from the tan ceiling tile debris laying on a man-lift, outside any containment, and over the entrance to Room 104. The aggregate laboratory result showed the material contained several discrete materials which were composed of 7% Chrysotile asbestos and 20% Amosite asbestos.

45. Mr. Wuehr observed air being pumped from an asbestos abatement containment area to the school hallway.

46. On June 30, 2015, an unsupervised Abatement Specialities employee was performing glove-bag removal of asbestos containing fittings without the presence of water in the room.

47. On July 1-2, 2015, Mr. Wuehr returned to Washington High School for a follow-up visit. He took several photographs and collected five samples of dry, suspect material from various areas of the school not within any containment that tested positive for the following amounts of regulated asbestos:

Sample Location	Type of Material Sampled	Laboratory Sample Results
Room 103	Plaster Wrap Debris	10% Chrysotile Asbestos 15% Amosite Asbestos 25% Total Asbestos
Room 101a	Transite Debris	25 % Chrysotile Asbestos

Room 101b	Pipe Wrap Debris	2% Chrysotile Asbestos 3% Amosite Asbestos 5% Total Asbestos
Boiler Room	Insulation Debris	10% Chrysotile Asbestos
Boiler Room	Pipe Joint Debris	10% Chrysotile Asbestos 15% Amosite Asbestos 25% Total Asbestos

48. A July 2, 2015 subcontractor daily construction report from Day Mechanical to Woodruff Construction indicated that pipe insulation was found throughout Mechanical Room 027 and other debris could be seen throughout the school.

49. On July 2, 2015, a large amount of asbestos-containing sealant was discovered on the window openings and on the ground in an office area where Abatement Specialities previously performed abatement work.

50. Also on July 2, 2015, a large amount of asbestos containing transite and debris was discovered in areas of Rooms 104, 104E, 106A, and 106B after Abatement Specialities had performed work.

51. On July 7, 2015, Mr. Wuehr was informed aggressive air testing of areas outside of the containment in the school in July had yielded up to 75 asbestos fibers in a sample taken in the school library.

52. Because Mr. Wuehr's investigation revealed both asbestos debris and airborne asbestos particles outside containment areas in the school, Mr. Wuehr recommended the School District close the school because of an unacceptable risk of asbestos exposure to the school occupants. The School District agreed to close the school to allow for abatement of the asbestos.

53. On July 15, 2015, Mr. Wuehr returned to Washington High School and was informed Abatement Specialities failed to pass visual air clearance inspections on numerous occasions.

54. Mr. Wuehr was informed on July 15 that all subcontractors working for Woodruff Construction either left the school or did not report to the school because of concerns their employees were being exposed to asbestos.

55. On July 16, 2015, employees of Abatement Specialities were observed using a shop vacuum to clean up dry asbestos-containing debris and then dump the contents of the shop vacuum in an asbestos container.

56. On July 17, 2015, Mr. Wuehr contacted Dr. Brad Buck, the School District's superintendent, and requested Abatement Specialities be removed from the project because of continuous failures in the clearance sample protocol and concerns regarding the breach of asbestos containment by the Abatement Specialities workers. The School District removed Abatement Specialities from the project.

57. On July 20, 2015, Notice of Violation letters were issued to the School District and Abatement Specialities for the following violations: failure to remove all regulated asbestos containing material from a facility prior to renovation, failure to keep all asbestos containing material adequate wet until properly collected, and failure to seal all asbestos containing material in leak-tight containers.

VIOLATIONS

58. Abatement Specialities failed to thoroughly inspect the areas where renovation activities would occur in Washington High School for the presence of asbestos prior to commencement of renovation activities in violation of 40 C.F.R. § 61.145(a).

59. Abatement Specialities failed to remove all RACM from Washington High School before activities that would break up, dislodge, or similarly disturb the material in violation of 40 C.F.R. § 61.145(c)(1).

60. Abatement Specialities failed to adequately wet RACM when stripping it from components during the renovation in violation of 40 C.F.R. § 61.145(c)(3).

61. Abatement Specialities 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).

62. Abatement Specialities failed to carefully lower RACM to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material in violation of 40 C.F.R. § 61.145(c)(6)(ii).

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

- a. assess a civil penalty against Abatement Specialities 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(c)(1), 61.145(c)(3), 61.145(c)(6)(i), and 61.145(c)(6)(ii) 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 Abatement Specialities from any violation of 40 C.F.R. sections 61.145(a), 61.145(c)(1), 61.145(c)(3), 61.145(c)(6)(i), and 61.145(c)(6)(ii) adopted by reference in 567 IAC 23.1(3).

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

Respectfully submitted,

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