IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
DELONG CONSTRUCTION, INC. Washington, Iowa	NO. 2008-AQ-09

TO: Dana Delong-Patterson, Registered Agent
DeLong Construction, Inc.
1320 N 8th Avenue
Washington, Iowa 52353

I. SUMMARY

This administrative consent order is entered into between DeLong Construction, Inc., (DeLong) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) violations for a demolition project at Washington County Hospital in Washington, Iowa.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Marion Burnside
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8443

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
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 promulgated and permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess

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administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. The Washington County Hospital & Clinics (hospital) initiated a project that included the demolition of an older portion of the hospital and the construction of a new section of the hospital. The hospital hired Carl A. Nelson & Company as the general contractor for the demolition and construction project. Carl A. Nelson & Company hired subcontractor DeLong for the demolition portion of the project. Pro Environmental Abatement, Inc. was hired by the hospital to remove some but not all of the asbestos containing floor tile.

2. On July 17, 2007, DNR received an asbestos NESHAP notification from Pro Environmental Abatement, Inc. for the removal of approximately 795 linear feet of asbestos containing pipe wrap and 2,900 square feet of asbestos containing transite, floor tile, and mastic from the hospital. The removal was scheduled to be conducted between July 30, 2007 and August 17, 2007.

3. In late August 2007, DNR received an inquiry as to the demolition project at the hospital. On September 5, 2007, Marion Burnside, asbestos NESHAP coordinator for the DNR, conducted an inspection at the hospital based on the inquiry. When Mr. Burnside arrived at the hospital for the inspection, an older part of the hospital had been demolished. Rick Distelhorst from the hospital, Jim Zieglowsky from DeLong and Mike Harris of Carl A. Nelson & Company were on premises during the inspection. Mr. Burnside asked if an asbestos NESHAP notification had been submitted. None of the parties present indicated that a notification had been submitted for the demolition. The concrete pad still had floor tile on it and the pad along with the floor tile was being broken up. Mr. Burnside collected a sample of the floor tile for asbestos content analysis. Mr. Burnside inquired as to whether any inspections or sampling had occurred. The parties indicated that some of the floor tiles had been tested for asbestos, but the results were negative.

4. On September 6, 2007, the DNR submitted the sample collected during the September 5, 2007 investigation to the University of Iowa Hygienic Laboratory for asbestos content analysis. On September 13, 2007, the DNR received the analytical results of the sample. The sample contained a regulated amount of asbestos - 10% chrysotile asbestos.

5. On October 25, 2007, DNR issued a Notice of Violation letter to Delong for several asbestos NESHAP violations. The letter cited the following violations: failure to conduct a thorough asbestos inspection; failure to submit a demolition notification; failure to keep asbestos containing material adequately wet; failure to have a trained supervisor on site; and failure to properly dispose of the asbestos containing waste.

Notice of Violation letters with the same violations were also sent to the hospital and Carl A. Nelson & Company.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 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 asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. Mr. Burnside had been informed that testing had been conducted on the floor tile and no asbestos was present. Mr. Burnside collected a sample of the floor tile on September 5, 2007 and the results of the test indicated the presence of regulated asbestos. The presence of regulated asbestos indicates that a thorough inspection had not been completed. The above facts indicate a violation of this provision

3. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. Proper and timely notification was not given prior to the demolition of portions of the hospital. The above facts indicate a violation of this provision.

4. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that DeLong was not in compliance with these provisions when the demolition project occurred.

5. 40 CFR section 61.145(c)(1) states that the owner or operator of a demolition or renovation shall remove all regulated asbestos containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material. The floor tile was not removed prior to DeLong demolishing the building. The above facts indicate a violation of this provision.

6. 40 CFR section 61.145(c)(3) states when regulated asbestos containing material is being stripped from a facility component while it remains in place in the facility, the regulated asbestos containing material must be adequately wet at the time the

stripping occurs. Water was not being used as the floor tile was being subject to sanding, grinding and abrading.

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. The facts in this case indicate that the general contractor, subcontractors, and the hospital were not in compliance with this provision when the asbestos removal projects occurred. The floor tile that had been subjected to sanding, grinding, and abrading was dry. The above facts indicate a violation 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 when the floor tile was disturbed during the demolition. 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. During an inspection on September 5, 2007, Mr. Burnside found dry asbestos containing material. It had been left by DeLong and was not properly contained. The above facts indicate noncompliance with this provision.

V. ORDER

THEREFORE, the DNR orders and DeLong agrees to do the following:

1. DeLong shall pay a penalty of $3,000.00 within 30 days of the date from which the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to $10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to $10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to

these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is $3,000.00. The administrative penalty is determined as follows:

a. Economic Benefit. Failure to follow the proper asbestos NESHAP regulations for asbestos removal and disposal may have allowed the company to save time and money. However, any economic benefit DeLong received was minimal because the primary beneficiary of the economic benefit was the hospital. Therefore no economic benefit is being assessed.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to follow procedures to properly remove and dispose of the regulated asbestos containing material may create an environmental hazard to the workers and general public through the likely release of asbestos fibers. For these reasons, $2,000.00 is assessed for this factor.

c. Culpability. DeLong has a duty to remain knowledgeable of the DNR's requirements, including requirements of the federal asbestos NESHAP regulations. For this reasons, $1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of DeLong. For that reason, DeLong waives the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in Section "IV. Conclusions of Law" of this administrative consent order. The DNR reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in Section "IV. Conclusions of Law" of this administrative

consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order.

RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 25 day of April, 2008

DeLong Construction, Incorporated

Dated this 14th day of April, 2008

Barb Stock (No asbestos file number); Kelli Book; Marion Burnside; EPA; VII.C.4