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Raymond B. Hunkins
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**BEFORE THE DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING**

**IN THE MATTER OF THE NOTICE OF VIOLATION)
AND ORDER ISSUED TO MR. DELTON TINSLEY,)
OWNER 599 HIGHWAY 26) DOCKET No. 5767-17
WHEATLAND, WY 82001)**

**AMENDED PETITION/REQUEST FOR HEARING
WITH THE ENVIRONMENTAL QUALITY COUNCIL**

COMES NOW Petitioner/Respondent Delton Tinsley and pursuant to Wyo. Stat. §35-11-701(c)(ii) and the Order in the above-captioned matter dated June 23, 2017, and hereby amends his previous petition/request for a hearing before the Wyoming Environmental Quality Council on the Notice of Violation and Order, dated June 23, 2017, attached hereto as Exhibit 1. Pursuant to the Department of Environmental Quality Contested Case Hearing Rules, Chapter 2, Petitioner/Respondent submits the following in support of his Request for Hearing:

Contact Information for Petitioner/Respondent:

Delton Tinsley
599 Highway 26
Wheatland, WY 82201
(307) 259-2062
dlt@wyoming.com

Order Upon Which Hearing is Requested:

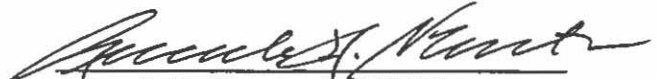
The request/petition for hearing is based upon the Notice of Violation and Order, dated June 23, 2017, set forth in Exhibit 1 hereto as issued by the Wyoming Department of Environmental Quality.

Statement of Specific Allegations on Which Petition is Based:

Section 4(b)(iii) of Chapter 2 (Contested Case Hearings) of the Department of Environmental Quality is not applicable in the case-at-bar as Delton Tinsley is not asserting that a statute, rule or order has been violated but rather the Department of Environmental Quality has ordered that Mr. Tinsley has violated various rules and statutes as set forth in the Notice of Violation and Order. Petitioner/Respondent requests a hearing for the purpose of verifying the facts which constitute the basis for the Notice of Violation and Order, dated June 23, 2017. Petitioner/Respondent also requests a hearing in order to stay the Order as it pertains to remediation efforts and any other finding constituting an order, pursuant to Wyo. Stat. Ann. § 35-11-701(c), while counsel for Petitioner/Respondent investigates the facts constituting the basis of the Department of Environmental Quality's allegations set forth in the Notice of Violation and Order, dated June 23, 2017.

WHEREFORE Petitioner/Respondent Delton Tinsley respectfully requests a hearing with the Wyoming Environmental Quality Council on the matters set forth in the Notice of Violation and Order, dated June 23, 2017.

Dated this 10th day of July, 2017.



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served this 10th day of July, 2017, by placing a true and correct copy thereof in the U.S. Mail, via certified mail return receipt requested, postage prepaid, and addressed to the following:

Todd Parfitt, Director
Department of Environmental Quality
200 W. 17th Street
Cheyenne, WY 82002

James LaRock, Assistant Attorney General (via e-mail service only)
Water and Natural Resources Division
Kendrick Building
2320 Capitol Avenue
Cheyenne, WY 82002

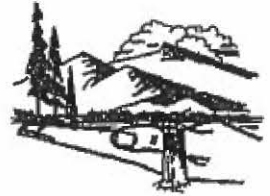


EXHIBIT 1



Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Matthew H. Mead, Governor

Todd Parfitt, Director

CERTIFIED MAIL June 23, 2017

Mr. Delton Tinsley, Owner
599 US Hwy 26
Wheatland, WY 82201

RE: Notice of Violation

Mr. Tinsley:

After the previous Notice of Violation and Order was sent out, it was noted that the signature page of this document did not include a date. Enclosed you will find a corrected Notice of Violation and Order issued to you by the Department of Environmental Quality, Air Quality Division, Water Quality Division, and Solid & Hazardous Waste Division. This document is dated and effective June 23, 2017.

Please disregard the previous undated document.

Should you have any questions or comments regarding this matter, please feel free to contact Ms. Linda Dewitt (307) 777-7394 at your convenience. Please direct legal inquiries to Kelly Shaw, Assistant Attorney General, at (307) 777-5730.

Sincerely,

Linda Dewitt
Asbestos Program Coordinator
Air Quality Division

cc: Lars Lone, Linda Dewitt, Brian Bohlmann, Luke Esch, Robert Breuer, Joel Frost, Kevin Frederick, Kevin Wells, Allison Kvien, Kelly Shaw, James LaRock, Landon Brown, and Ann Shed



Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Matthew H. Mead, Governor



Todd Parfitt, Director

CERTIFIED MAIL June 20, 2017

Mr. Delton Tinsley, Owner
599 US Hwy 26
Wheatland, WY 82201

RE: Notice of Violation

Mr. Tinsley:

Enclosed you will find a Notice of Violation (NOV) and Order issued to you by the Department of Environmental Quality, Air Quality Division, Water Quality Division and Solid & Hazardous Waste Division, for violations noted at a demolition site located at 81 E Whalen St in Guernsey, WY and a waste burial site located at 599 US Hwy 26 Wheatland, WY.

As the Department and the Divisions consider the failure to comply with regulatory requirements to be a serious matter, I have referred this violation to the State Attorney General's office.

If you would like to discuss settlement of this issue prior to referral to the Attorney General's office, please contact Ms. Linda Dewitt, Asbestos Program Coordinator, at 307-777-7394 no later than ten (10) working days after receipt of this letter.

Should you have any questions or comments regarding this matter, please feel free to contact Ms. Linda Dewitt or me at your convenience.

Sincerely,

Nancy E. Vehr
Administrator
Air Quality Division

cc: Mr. Lars Lone, Ms. Linda Dewitt, Mr. Brian Bohlmann, Mr. Luke Esch, Mr. Robert Breuer, Mr. Joel Frost, Mr. Kevin Frederick, Mr. Kevin Wells, Ms. Allison Kvien, Ms. Kelly Shaw, Mr. James Larock, Mr. Landon Brown, and Ms. Ann Shed

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF VIOLATION)
AND ORDER ISSUED TO)
MR. DELTON TINSLEY, OWNER) DOCKET NO. 5767-17
599 HIGHWAY 26)
WHEATLAND, WY 82201)

NOTICE OF VIOLATION AND ORDER

NOTICE IS HEREBY GIVEN THAT:

- 1) The Wyoming Department of Environmental Quality, Division of Air Quality, Division of Water Quality, and Division of Solid & Hazardous Waste have found Mr. Delton Tinsley (Owner) to be in violation of Article 2 (Air Quality), Article 3 (Water Quality), and Article 5 (Solid Waste Management) of the Wyoming Environmental Quality Act (the Act); the Wyoming Air Quality Standards and Regulations (Air Quality Rules); and the Wyoming Water Quality Rules and Regulations (Water Quality Rules) as a result of work activities as part of a demolition project at the Former Commercial Building located at 81 East Whalen Street in Guernsey, WY (demolition site) and subsequent burial of the waste on property located at 599 Highway 26 near Wheatland, WY (burial site). The demolition activity was performed by Mr. Delton Tinsley and Mr. Ben Hilty (Operator).
- 2) Under the direction and supervision of Mr. Delton Tinsley, demolition activity at the demolition site commenced on May 1, 2017.
- 3) At times relevant to the allegations contained in this Notice of Violation, Mr. Delton Tinsley was the owner of the demolition site at 81 East Whalen Street, Guernsey, WY, and the burial site at 599 Highway 26, Wheatland, WY (42°15'07.6N, 104°55'56.4W).
- 4) Mr. Ben Hilty performed demolition and burial activities under the direction and supervision of Mr. Delton Tinsley.
- 5) Prior to Mr. Delton Tinsley's purchase of the demolition site, an asbestos inspection was performed on March 9, 2016 in the building at the demolition site, which revealed the presence of asbestos in the building.
- 6) The asbestos inspection performed on March 9, 2016, prior to Mr. Delton Tinsley's purchase of the property, was not a sufficiently thorough inspection.
- 7) Mr. Delton Tinsley did not properly notify the Wyoming Asbestos Program prior to the start of demolition at the demolition site.
- 8) Mr. Delton Tinsley did not have any asbestos inspection performed by a properly trained inspector prior to engaging in demolition activity at the demolition site.
- 9) All Regulated Asbestos-Containing Material (RACM) required to be removed from the demolition site was not properly removed prior to the start of demolition.
- 10) The demolition activity at the demolition site was not properly supervised by a person who had the required asbestos training.
- 11) Under the direction and supervision of Mr. Delton Tinsley, the burial of RACM from the demolition site began sometime between May 1, 2017 and May 3, 2017, at the burial site.

- 12) RACM at both the demolition site and the burial site was not properly handled; asbestos material was not wet or carefully handled to prevent it from becoming Regulated.
- 13) The burial site was not a proper disposal facility for solid waste.
- 14) The asbestos material from the demolition site was buried in ephemeral drainages on the burial site that drain to the North Platte River, a water of the state.
- 15) Mr. Delton Tinsley did not apply for, or receive, a 404 permit to discharge pollutants into a water of the state prior to burying asbestos material at the burial site.
- 16) Mr. Delton Tinsley did not apply for, or receive, a permit to handle and manage solid waste prior to burying asbestos material at the burial site.
- 17) After receipt of complaint messages on May 1 and 2, 2017, Ms. Linda Dewitt, Asbestos Program Coordinator, visited the demolition and burial sites listed in this Notice on May 3, 2017. Ms. Dewitt was given verbal permission by Mr. Delton Tinsley to access both sites, in order to collect photographs and samples.

AIR QUALITY VIOLATIONS

- 18) The Air Quality article of the Act states, "No person shall cause, threaten or allow the discharge or emission of any air contaminant in any form so as to cause pollution which violates rules, regulations and standards adopted by the council." Wyo. Stat. Ann. § 35-11-201.
- 19) Chapter 3, Section 8 of the Air Quality Rules establishes asbestos emission standards for demolition, renovation, manufacturing, spraying and fabricating that apply to owners and operators of facilities where asbestos renovation and/or demolition activities are taking place.
- 20) Chapter 3, Section 8(i)(i) of the Air Quality Rules states, "To determine which requirements . . . apply to the owner or operator of a demolition or renovation activity and prior to the commencement of the demolition or renovation, thoroughly inspect the affected facility or part of the facility where the demolition or renovation operation will occur for the presence of asbestos, including Category I and Category II nonfriable ACM. The requirements of paragraphs (i)(ii) and (i)(iii) apply to each owner or operator of a demolition or renovation activity, including the removal of RACM . . ."
- 21) Chapter 3, Section 8(i)(ii) of the Air Quality Rules states, "Each owner or operator of a demolition or renovation activity to which this section applies shall: (A) Provide the Administrator with written notice of intention to demolish or renovate . . ."
- 22) Chapter 3, Section 8(i)(iii)(A) of the Air Quality Rules states that each owner or operator of a demolition or renovation activity shall, "[r]emove 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 . . ."
- 23) Chapter 3, Section 8(i)(iii)(F)(I) of the Air Quality Rules states that each owner or operator of a demolition or renovation activity shall, "[a]dequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with paragraph (m)."
- 24) Chapter 3, Section 8(i)(iii)(F)(II) of the Air Quality Rules states that each owner or operator of a demolition or renovation activity shall, "[c]arefully lower the material to the ground and floor, not dropping, throwing, sliding, or otherwise damaging or disturbing the material."

25) Chapter 3, Section 8(i)(iii)(H) of the Air Quality Rules states that each owner or operator of a demolition or renovation activity shall ensure that, “[n]o RACM shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section unless the individuals supervising and performing the operation have been trained in the provisions of this regulation and the means of complying with them”

26) Chapter 3, Section 8(m)(ii) of the Air Quality Rules states that each owner or operator of a demolition or renovation activity shall ensure that, “[a]ll asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at: (A) A waste disposal site operated in accordance with the provisions of paragraph (q)”

27) The acts and omissions described in Paragraphs 1–17 of this Notice of Violation resulted in the following air quality violations:

- a) No adequate asbestos inspection was performed prior to the start of demolition at the demolition site, in violation of Chapter 3, Section 8(i)(i) of the Air Quality Rules. A verbal statement made by the Owner during the visit to the demolition site indicated that he did not arrange for any asbestos inspection prior to the start of demolition activity. The inspection performed on March 9, 2016 by Asbestos & Technical Services was not thorough, because it included only a few select samples with insufficient sampling of all suspect building materials.
- b) No proper written notification was provided to the Wyoming Asbestos Program prior to the start of demolition at the demolition site, in violation of Chapter 3, Section 8(i)(ii) of the Air Quality Rules. Review of the DEQ, Air Quality asbestos database found that no *Notification of Renovation and Demolition* form was submitted to the Wyoming Asbestos Program prior to the start of work.
- c) All RACM required to be removed from the demolition site was not properly removed prior to the start of demolition, in violation of Chapter 3, Section 8(i)(iii)(A) of the Air Quality Rules. Several small pieces of suspect material were collected from the demolition site by Ms. Dewitt to have analyzed for asbestos content. Out of the seven (7) samples collected at the demolition site, four (4) contained levels of asbestos from 5–10%. All of the asbestos-containing materials found to contain asbestos were some form of roofing material. The Platte County Assessors report stated that the building covered 17,495 Square Feet. More than sixty percent (60%) of the demolition debris at the burial site had been made Regulated as part of the demolition, dumping and covering operation.
- d) The demolition activity at both the demolition site and the burial site was not properly supervised in accordance with Chapter 3, Section 8(i)(iii)(H) of the Air Quality Rules. No one associated with this project held any current asbestos training at the time of the work.
- e) The RACM at both the demolition site and the burial site was not properly handled in accordance with Chapter 3, Sections 8(i)(iii)(F)(I) and 8(m)(C) of the Air Quality Rules. During the May 3, 2017 visit, all of the demolition debris at the demolition site and the burial site was dry, without being adequately covered with a fill material.
- f) The RACM at both the demolition site and the burial site was not properly handled in accordance with Chapter 3, Sections 8(i)(iii)(F)(II) of the Air Quality Rules. The RACM at the demolition site was not properly handled in accordance with Chapter 3, Section 8(m) of the Air Quality Rules. Mr. Delton Tinsley reported to Ms. Dewitt that the south wall of the commercial building crumbled onto the sidewalk and into the roadway when the excavator bucket touched it. Based on this information and the examination of the dumping of debris at the burial site, the asbestos-containing material was not treated with care and it was damaged during the demolition and burial process.

- g) The RACM from the demolition site was not deposited at a proper waste disposal site in accordance with Chapter 3, Section 8(m)(ii) of the Air Quality Rules. The RACM was taken to private property and placed in a wash for burial.

28) The Air Quality violations consist of the failure to perform the following: a) complete a thorough inspection of the building to be demolished prior to the start of demolition; b) provide notification of demolition work dates and a description of work practices that would be used to keep the non-friable asbestos-containing material from becoming Regulated to the Wyoming Asbestos Program prior to the start of demolition; c) remove RACM in manner that will not cause the non-friable asbestos to become Regulated prior to demolition; d) use properly trained personnel to remove known asbestos-containing material; e) adequately wet the demolition debris and keep this material wet until it is covered by an acceptable fill material; f) carefully lower the material to the ground without dropping, throwing, sliding, or otherwise damaging or disturbing the material; and, g) deposit the RACM at a proper waste disposal site. These are violations of Chapter 3, Section 8 of the Air Quality Rules.

WATER QUALITY VIOLATIONS

29) Under Article 1 of the Act, the ephemeral drainages at the burial site and the North Platte River are "waters of the state." Wyo. Stat. Ann. § 35-11-103(c)(vi).

30) Under Article 1 of the Act, asbestos material is both "pollution" and "waste." Wyo. Stat. Ann. § 35-11-103(c)(i)-(ii).

31) The Water Quality article of the Act states, "(a) No person, except when authorized by a permit issued by the Department of Environmental Quality, shall: (i) Cause, threaten or allow the discharge of any pollution or wastes into the waters of the state; . . ." Wyo. Stat. Ann. § 35-11-301(a)(i).

32) Chapter 1, Section 14 of the Water Quality Rules states that, "Except as authorized through a 404 permit, solid waste shall not be placed or allowed to remain in surface waters of the state, nor shall solid wastes be placed or allowed to remain in any location which would cause or threaten contamination of Wyoming surface waters."

33) By burying asbestos material in the ephemeral drainage at the burial site without a permit, Mr. Delton Tinsley violated Chapter 1, Section 14 of the Water Quality Rules and W.S. 35-11-301(a)(i).

34) The Water Quality violations consist of: a) placing solid wastes in a location that caused or threatened the contamination of Wyoming surface waters without a permit. This is a violation of W.S. 35-11-301(a)(i) and Chapter 1, Section 14 of the Water Quality Rules.

SOLID & HAZARDOUS WASTE VIOLATIONS

35) The Solid Waste Management article of the Act states "No person, except when authorized under the permit system established pursuant to this act, shall: (i) Locate, construct, operate or close a solid waste management facility; . . ." Wyo. Stat. Ann. § 35-11-502(a)(i).

36) Disposing and managing solid waste, including asbestos material, without a permit, as Mr. Delton Tinsley has done, is a violation of the Solid Waste Management article of the Act. Wyo. Stat. Ann. § 35-11-502(a)(i).

37) The Solid & Hazardous Waste violations consist of the failure to: a) obtain a permit prior to disposal of the asbestos material. This is a violation of W.S. 35-11-502(a)(i).

NOTICES OF VIOLATION AND ORDERS

38) Article 9 of the Act provides that, "any person who violates, . . . any provision of this act, or any rule, regulation, standard or permit adopted hereunder . . . is subject to a penalty not to exceed ten thousand dollars (\$10,000) for each violation for each day during which violation continues, a temporary or permanent injunction, or both a penalty and an injunction . . ." Wyo. Stat. Ann. § 35-11-901(a).

39) This Notice is being sent to Mr. Delton Tinsley pursuant to Article 7 of the Act, which states: "In case of failure to correct or remedy an alleged violation, the director shall cause to be issued and served upon the person alleged to be responsible for any such violation a written notice which shall specify the provision of this act, rule, regulation, standard, permit, license or variance alleged to be violated and the facts alleged to constitute a violation thereof, and may require the person so complained against to cease and desist from the violation within the time the director may determine." Wyo. Stat. Ann. § 35-11-701(c)(i).

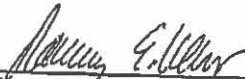
WHEREFORE IT IS HEREBY ORDERED THAT:

1. Within 30 days of receipt of this Notice of Violation and Order, Mr. Delton Tinsley shall schedule removal of the asbestos-contaminated soil from the demolition site under the direction of a trained Asbestos Contractor/Supervisor.
2. Until the removal work is started, the site shall be kept wet and fugitive dust-free using frequent watering and chemical stabilization.
3. Notification of the soil removal project must be sent to the Wyoming Asbestos Program prior to the start of soil removal work. The Notification shall be accompanied by a written plan that explains the steps that will be undertaken to remove the contaminated soil and must include testing and laboratory analysis after soil removal to prove that the soil at this site no longer contains measurable amounts of asbestos. The waste material must be taken to a disposal site that can accept RACM and be packaged/transported in accordance with landfill requirements. Questions related to this requirement may be directed to Linda Dewitt, Asbestos Program Coordinator, at (307) 777-7394 or Linda.Dewitt@wyo.gov.
4. Within 30 days of receipt of this Notice of Violation and Order, Mr. Delton Tinsley shall have made contact with Mr. Robert Doctor, Solid Waste Program Manager of the Wyoming Solid & Hazardous Waste Division, in order to create a protection plan for the waste located at the burial site. Questions related to this requirement may be directed to Mr. Robert Doctor, at (307) 473-3468 or Bob.Doctor@wyo.gov.

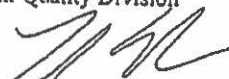
THIS ORDER is final unless, not later than ten (10) days after the date that this Notice of Violation and Order is served, Mr. Delton Tinsley requests, in writing, a hearing before the Environmental Quality Council. If such a request is filed, this Order shall be stayed pending a final determination from the Environmental Quality Council. Wyo. Stat. Ann. § 35-11-701(c)(ii). Staying this Order will not stay any pending deadlines created by federal statutes.

NOTHING IN THIS ORDER shall be interpreted to, in any way, limit or contravene any other remedy available under the Environmental Quality Act, nor shall this Order be interpreted as being a condition precedent to any other enforcement action.


ORDERED this 23rd day of June, 2017.




Nancy E. Vehr
Administrator
Air Quality Division



Luke Esch
Administrator
Solid & Hazardous Waste Division



Kevin Frederick
Administrator
Water Quality Division



Todd Parfitt
Director
Department of Environmental Quality

Please direct all inquiries to Nancy E. Vehr, Administrator, Division of Air Quality,
Department of Environmental Quality, 200 W 17th Street, 3rd Floor, Cheyenne, Wyoming
82002. (Telephone: 307-777-3746)