

FILED

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

FEB 23 1994

Terri A. Lorenzon, Attorney
Environmental Quality Council

IN THE MATTER OF THE NOTICE OF)
VIOLATION AND ORDER ISSUED TO) DOCKET NO. 2543-94
WARREN VOSS, 3 SEMINOE AVENUE,)
NEWCASTLE, WY 82701)

NOTICE OF VIOLATION AND ORDER

NOTICE IS HEREBY GIVEN THAT:

1. The Department of Environmental Quality, Division of Air Quality ("Division") has found Warren Voss to be in violation of Section 35-11-201 of the Wyoming Environmental Quality Act ("Act"), W.S. § 35-11-201, and Section 29¹ of the Wyoming Air Quality Standards and Regulations ("WAQSR") for demolition activities at two former school buildings controlled by Mr. Voss, located at 415 South Seneca Avenue in Newcastle.

2. Section 201 of the Act, W.S. § 35-11-201, states that "[n]o 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." To implement this provision, Section 29 of the WAQSR establishes requirements for the demolition, renovation and spraying of asbestos that apply to owners and operators of facilities where asbestos demolition activities are taking place.

3. Section 29 of the WAQSR defines "owner or operator" as "any person who owns, leases, operates, controls, or supervises a stationary source." WAQSR § 29(b)(xvi).

4. On September 16, 1991, Mr. Voss entered into a contract with Mr. Ancil Jones for the purpose of demolishing the old junior high and shop building located at 415 South Seneca Avenue in Newcastle and transferring the underlying lots to Mr. Jones. Mr. Jones paid \$100.00 for these properties with the balance of \$14,900.00 to be paid from the proceeds of the salvage of the building. The contract obligated Mr. Jones to complete the demolition within two years to the satisfaction of the Newcastle City Engineer. Mr. Voss retained a right of first refusal under the contract to purchase the properties back for \$5,000 following the salvage of the buildings. To date, Mr. Jones has not fulfilled the terms of the contract.

5. Mr. Voss caused the demolition of the buildings at South Seneca Avenue by entering into a contract for that purpose with Mr. Jones, controlled the demolition through the terms of the contract, and retained an interest in the property through his right of first refusal to repurchase the property. As such, Mr. Voss is an owner or operator of the facility at 415 South Seneca Avenue within the meaning of Section 29 of the WAQSR.

6. Section 29(i), outlining the procedures for the prevention of asbestos emissions during demolition and renovation activities, specifies that "[e]ach owner or operator to whom this section applies shall comply with the . . . procedures to prevent emissions of particulate asbestos material to the outside air."

7. On May 5, 1993, Gerald Blackwell, Asbestos Coordinator for the Division, accompanied by Larry Price, Newcastle Building Inspector, inspected the demolition occurring at the two former school buildings located at 415 South Seneca Avenue. Eugene Hardin, who was conducting some demolition activity for Mr. Jones, was at the site when Mr. Blackwell and Mr. Price arrived.

¹ Any cites to Section 29 in this Notice of Violation and Order refer to previous rules and regulations, effective as of May 10, 1988. On October 26, 1993, new Section 29 rules and regulations became effective.

8. During the inspection, Mr. Blackwell discovered that friable asbestos containing material had been removed from the interior of both the main school building and a separate shop building and left loose in the buildings. The buildings were in a state of disrepair, increasing the risk of emission of friable asbestos material.

9. Analysis of samples collected by Mr. Blackwell indicates that aircell pipe insulation from the third floor of the main school building, insulation from the boiler in the basement of the main school building, and ceiling coverings from the shop area and the bandroom in the shop building all are composed of friable asbestos containing material.

10. Section 29(h) of the WAQSR requires each owner and operator to provide the Administrator of the Division with notice "at least 10 days before demolition begins." The Division never received written notice of any demolition activity at the buildings located at 415 South Seneca Avenue.

11. Section 29(i)(iii) of the WAQSR requires owners and operators to "adequately wet friable asbestos materials when they are being stripped from facility components" Based on Mr. Blackwell's observations, Mr. Jones, acting on behalf of Mr. Voss, failed to comply with this requirement by not adequately wetting the asbestos materials during the removal process.

12. Following removal or stripping of asbestos materials, Section 29(i)(v)(A) states that owners and operators must "adequately wet the materials to ensure that they remain wet until they are collected for disposal. . . ." Mr. Blackwell observed dry suspect asbestos containing material that had been removed from building components in both the main school building and the shop building. Thus, Mr. Voss, through the actions of Mr. Jones, violated Section 29(i)(v)(A) by not requiring Mr. Jones to keep the asbestos containing material wet, following removal.

13. Section 29(k) dictates that owners and operators "deposit all asbestos-containing waste material at waste disposal sites operated in accordance with the provisions or paragraph m" Section 29(m) describes the requirements for proper disposal sites. Mr. Blackwell observed asbestos-containing debris disposed throughout the main school building and the shop building. In violation of Section 29(k), Mr. Voss' contractor, Mr. Jones, improperly disposed the asbestos containing waste from the two school buildings.

14. Mr. Voss, by contracting with Mr. Jones, caused a demolition of the buildings containing asbestos that failed to comply with any of the applicable procedures listed in Section 29(i). Mr. Voss' general violations consist of: 1) failure to notify the Administrator of the Division of the demolition of buildings containing asbestos; 2) failure to follow the procedures mandated for asbestos removal during a demolition in Section 29(i) of the WAQSR; (3) failure to properly package the asbestos material in preparation for disposal; and (4) improper disposal.

15. Under Section 901 of the Act, W.S. § 35-11-901, "[a]ny person who violates, or any director, officer or agent of a corporate permittee who willfully and knowingly authorizes, orders or carries out the violation of any provision of [the Environmental Quality Act], or any rule, regulation, standard or permit adopted hereunder or who violates any determination or order of the council pursuant to [the Environmental Quality Act] or any rule, regulation, standard, permit, license or variance is liable to . . . a penalty of not to exceed ten thousand dollars (\$10,000,000) for each day during which violation continues, . . . which may be recovered in a civil action."

16. The Division is issuing this notice pursuant to Section 701(c) of the Act, W.S. § 35-11-701(c), which requires that, in any

case of the failure to correct or remedy an alleged violation, the Director of the Department of Environmental Quality shall cause a written notice to be issued and served upon the person alleged to be responsible.

ORDER

The Department of Environmental Quality, Air Quality Division, having found Warren Voss in violation of Section 29 of the WAQSR for demolition activities at two buildings located at 415 South Seneca Avenue in Newcastle, Wyoming, incorporates the preceding Notice of Violation into this Order by reference. This Order is issued in accordance with Section 701(c) of the Act, W.S. § 35-11-701(c).

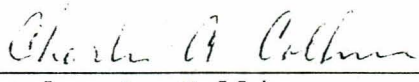
WHEREFORE, MR. WARREN VOSS IS HEREBY ORDERED:

1. To remedy the violations listed in the preceding Notice of Violation by:
 - a. Conducting an asbestos removal operation in accordance with Section 29 of the WAQSR in the Old Junior High Building at 415 South Seneca Avenue;
 - b. Conducting an asbestos removal operation in accordance with Section 29 of the WAQSR for any disturbed or damaged asbestos containing material in the Old Shop Building at 415 South Seneca Avenue; and
 - c. Encapsulating any remaining asbestos in the Old Shop Building at 415 South Seneca Avenue in Newcastle, unless the building is demolished, in which case all asbestos containing material must be removed in accordance with Section 29 of the WAQSR.
2. To provide the Division with a complete and adequate plan by March 11, 1994 for correcting the violations in the Notice of Violation.

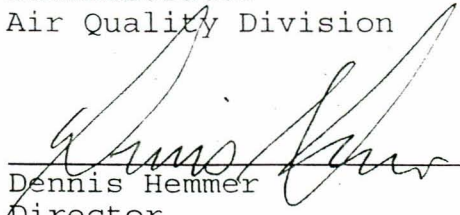
THIS ORDER is final and binding unless, not later than ten days after the day it is served, the person or persons named herein request, in writing, a hearing before the Environmental Quality Council. The request should be mailed to the Chairman of the Environmental Quality Council, Barrett Building--Room 407, 2301 Central Avenue, Cheyenne, Wyoming 82002. A copy of the request should be mailed to Dennis Hemmer, Director, Wyoming Department of Environmental Quality, Herschler Building, 122 W. 25th Street, Cheyenne, Wyoming 82002. Both the original request and the copy should be sent by registered mail, return receipt requested.

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.

Dated this 8 day of February, 1994



Charles A. Collins
Administrator
Air Quality Division



Dennis Hemmer
Director
Dept. of Environmental Quality