



Department of Environmental Quality

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



Matt Mead, Governor

John Corra, Director

January 18, 2011

Mr. James Berve
Registered Agent,
Fisher Construction, Inc.
235 Moore Lane,
Billings, MT 59101

RE: Notice of Violation

Dear Mr. Berve,

Enclosed you will find a Notice of Violation (NOV) issued to Fisher Construction, Inc. by the Department of Environmental Quality, Air Quality Division, for the failure to comply with Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations in the renovation of the Douglas Care Center, LLC located at 1108 Birch Street, Douglas, Wyoming.

As the Department and this Division consider the failure to comply with asbestos requirements to be a serious matter, I am considering recommending that the Department refer this violation to the State Attorney General's office requesting a suit be filed in District Court to recover appropriate penalties.

If you would like to discuss settlement of this issue prior to referral to the Attorney General's office, please contact Ms. Karen Godman, Air Quality Compliance Program Principal, at 307-777-8601 no later than ten (10) days after receipt of this letter.

Should you have any questions regarding this matter, please feel free to contact me or Ms. Karen Godman.

Sincerely,


Steven A. Dietrich
Administrator
Air Quality Division

cc: Chris Hanify
Linda Dewitt
Nancy Vehr
Bob Gill
Keith Guille

Herschler Building · 122 West 25th Street · Cheyenne, WY 82002 · <http://deq.state.wy.us>

ADMIN/OUTREACH (307) 777-7758 FAX 777-7682	ABANDONED MINES (307) 777-6145 FAX 777-6462	AIR QUALITY (307) 777-7391 FAX 777-5616	INDUSTRIAL SITING (307) 777-7369 FAX 777-6937	LAND QUALITY (307) 777-7756 FAX 777-5864	SOLID & HAZ. WASTE (307) 777-7752 FAX 777-5973	WATER QUALITY (307) 777-7781 FAX 777-5973
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**BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING**

**IN THE MATTER OF THE NOTICE OF VIOLATION)
ISSUED TO FISHER CONSTRUCTION, INC.) DOCKET NO. 4795-11
MR. JAMES BERVE, REGISTERED AGENT)
235 MOORE LANE,)
BILLINGS, MONTANA 59101)**

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

- 1) The Department of Environmental Quality, Division of Air Quality has found Fisher Construction, Inc. to be in violation of Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations as a result of the renovation of the Douglas Care Center located at 1108 Birch Street, Douglas, Wyoming.
- 2) Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations establishes asbestos emission standards for demolition, renovation, manufacturing, spraying and fabricating that apply to owners and operators of facilities where renovation/demolition activities are taking place.
- 3) Two site visits were made to the renovation project at the Douglas Care Center located at 1108 Birch Street, Douglas, Wyoming. The first site visit was conducted on October 26, 2010 and the second on January 5, 2011. Findings from both site visits show that the renovation included disturbance/removal of the following suspect materials: mudded pipe joints, spray-on acoustic ceilings, wallboard system walls and ceilings, 9" floor tile with mastic and 12" ceiling tile with glue dots. Sampling of some suspect materials was arranged by Fisher Construction (General Contractor) and results showed the following materials to be positive for asbestos and thereby the materials are Regulated Asbestos Containing Materials (RACM): mudded joint material found to contain 15% chrysotile asbestos and 2% amosite asbestos; spray-on acoustic on ceilings found to contain 2% chrysotile asbestos; wallboard system walls and ceilings found to contain trace amounts of chrysotile asbestos. It was determined that Fisher Construction employees removed and/or disturbed positive materials; proper work practices were not used during this disturbance; employees had not received any asbestos training; the waste was not properly packaged for disposal and the waste was taken to a local landfill which is not approved to accept RACM.
- 4) Chapter 3, Section 8(i)(i) of the Wyoming Air Quality Standards and Regulations states, "To determine which requirements of paragraphs (i)(i), (i)(ii), and (i)(iii) 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 non friable ACM." Based on the site visits, no thorough inspection had been conducted at the site prior to the renovation.
- 5) Chapter 3, Section 8(i)(ii) of the Wyoming Air Quality Standards and Regulations 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." Further requirements in Chapter 3, Section 8(i)(ii) require the notification to be provided to the Division at least ten working days prior to the start date. Based on a review of the Air Quality Division's records, notification was not provided prior to the renovation of this facility.

6) Chapter 3, Section 8(i)(iii)(H) of the Wyoming Air Quality Standards and Regulations states, "No 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...". RACM was removed by employees that had not been properly trained.

7) Chapter 3, Section 8(i)(iii)(F)(I) of the Wyoming Air Quality Standards and Regulations states, "Adequately wet the [regulated asbestos-containing] material and ensure that it remains wet until collected and contained or treated in preparation for disposal ...". Following the site visits, it was determined that the asbestos-containing waste material was removed while dry and was not kept wet until collected and contained for disposal.

8) Chapter 3, Section 8(m)(ii) of the Wyoming Air Quality Standards and Regulations states, "All asbestos-containing 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), or ...". Following the site visits, it was determined that the asbestos-containing waste material, which was removed from the Douglas Care Center, was not deposited appropriately at a proper disposal site.

9) Said violations consist of failing to: 1) thoroughly inspect the facility prior to renovation, 2) provide prior written notification of a demolition/renovation project to the Administrator, 3) use trained individuals to strip, remove, handle or disturb regulated asbestos containing material, 4) adequately wet the RACM in preparation for disposal and 5) properly dispose of asbestos-containing waste material. These are violations of Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations.

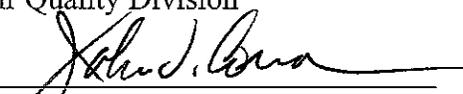
10) Under W.S. 35-11-901(a), any person who violates any provision of Article 2 of (the Environmental Quality Act)... or any rule, regulation, standard or permit adopted pursuant to those provision, or who violates any determination or order of the council pursuant to Article 2 of (the Environmental Quality Act)... is subject to a penalty not to exceed ten thousand dollars for each violation for each day during which the violation continues, a temporary or permanent injunction, or both a penalty and an injunction.

11) This notice is being sent to you pursuant to 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.

Dated this 18th day of JANUARY, 2011.



Steven A. Dietrich
Administrator
Air Quality Division



John V. Corra
Director
Department of Environmental Quality

Please direct all inquiries to Steven A. Dietrich, Administrator, Division of Air Quality, Department of Environmental Quality, Herschler Building, 2nd Floor, 122 West 25th Street, Cheyenne, Wyoming 82002. (Telephone: 307-777-3746)