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

November 19, 2012

Mr. Dan Swaney
Heritage Homes
PO BOX 812
Moorcroft, WY 82721

RE: Notice of Violation

Dear Mr. Green:

Enclosed you will find a Notice of Violation (NOV) issued to Heritage Homes by the Department of Environmental Quality, Air Quality Division, for the failure to: 1) inspect the facility for asbestos containing materials prior to the start of renovation, 2) provide prior written notification of a demolition/renovation project to the Administrator as required, 3) remove all RACM from the facility being renovated, 4) adequately wet the RACM, 5) use trained individuals to strip, remove, handle or disturb regulated asbestos containing material and 6) properly dispose of asbestos containing waste material. These are violations of Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations.

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) working days after receipt of this letter.

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

Sincerely,

Steven A Dietrich

Steven A. Dietrich
Administrator
Air Quality Division

cc: Mr. Robert Gill, Ms. Linda Dewitt, Mr. Tanner Shatto, Ms. Nancy Vehr, Mr. Keith Guille

BEFORE THE
DEPARTMENT OF ENVIRONMENTAL QUALITY
STATE OF WYOMING

IN THE MATTER OF THE NOTICE OF VIOLATION	)
ISSUED TO HERITAGE HOMES,	)
MR. DAN SWANEY	) **DOCKET NO. 5090-12**
PO BOX 812	)
MOORCROFT, WYOMING 82721	)

NOTICE OF VIOLATION

NOTICE IS HEREBY GIVEN THAT:

1) The Department of Environmental Quality, Division of Air Quality has found Heritage Homes to be in violation of W.S. 35-11-201 of the Wyoming Environmental Quality Act and Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations as a result of the renovation of the Holiday Plaza located at 2007 South Douglas Highway, Gillette, Wyoming.

2) W.S. 35-11-201 of the Wyoming Environmental Quality 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.

3) 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 asbestos renovation/demolition activities are taking place.

4) Ms. Linda Dewitt, Asbestos Program Coordinator, conducted a site visit on July 11, 2012 of renovation activity at the Holiday Plaza located at 2007 South Douglas Highway, Gillette, Wyoming. During the initial visit, Ms. Dewitt was unable to enter the building as no General Contractor Representative was available and no employee on site was willing to allow access. However, upon walking to the rear of the building looking for a General Contractor representative, suspect materials were observed in a pile and in a construction dumpster to include visible piles of broken floor tile debris and black mastic. Samples of suspect materials were collected and analyzed, with results finding that the floor tile contained 2-5% chrysotile asbestos and the black mastic contained 2-6% chrysotile asbestos. Phone contact was made with a representative of Heritage Homes (Operator) on July 11, 2012, during which the representative stated that no asbestos inspection had been performed. Phone contact was also made with a representative of Prudential Preferred Properties (Owner) on September 26, 2012, during which the representative stated that no asbestos inspection had been performed. Information gathered from the City of Gillette Planning Office regarding permits for renovation of this building showed approximately 14,360 square feet had been permitted for renovation work. Upon inspection more than 270 square feet became regulated material through renovation activities conducted by Heritage Homes. No thorough inspection for asbestos had been conducted prior to this renovation. No notification for this renovation had been submitted or received by the Division prior to renovation activities. Workers conducting the renovation were not trained to properly remove asbestos materials. Waste from the renovation had not been properly packaged or disposed.

5) 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 investigation conducted by Ms. Dewitt, a thorough inspection of the planned renovation, to include all materials to be disturbed had not been conducted at the site prior to the renovation.

6) 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 the intention to demolish or renovate." Further requirements in Chapter 3, Section 8(i)(ii) require the notification at least ten working days prior to the start of renovation or demolition activity. Based on a review of the Air Quality Division's records, both Prudential Preferred Properties and Heritage Homes failed to submit notification of the renovation of the Holiday Plaza to the Air Quality Division.

7) Chapter 3, Section 8(i)(iii) of the Wyoming Air Quality Standards and Regulations states, "Remove all regulated asbestos-containing material (RACM) from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material...." During the Air Quality Division's inspection asbestos floor tile and black mastic which became RACM was not removed prior to renovation of the Holiday Plaza.

8) 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 ..." Information gathered indicated that asbestos-containing material was removed while dry and was not kept wet until collected and contained for disposal.

9) 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...Evidence that the required training has been completed shall be posted and made available for inspection by the Administrator at the demolition or renovation site." RACM was removed by employees that had not been properly trained.

10) Chapter 3, Section 8 (M)(ii)(A) of the Wyoming Air Quality Standards and Regulations states in part, that all asbestos-containing waste material shall be deposited as soon as is practical by the waste generator at an approved waste disposal site. Asbestos containing waste was not properly disposed as RACM and was instead disposed of as general construction debris.

11) Said violations consist of the failure to: 1) inspect the facility for asbestos containing materials prior to the start of renovation, 2) provide prior written notification of a demolition/renovation project to the Administrator, 3) remove all RACM from the facility being renovated, 4) adequately wet the RACM, 5) use trained individuals to strip, remove, handle or disturb regulated asbestos containing material and 6) properly dispose of asbestos containing waste material. These are violations of Chapter 3, Section 8 of the Wyoming Air Quality Standards and Regulations.

12) 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.

13) 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 19th day of NOVEMBER, 2012.

Steven A. Dietrich
Administrator
Air Quality Division

Todd Parfitt
Director
Department of Environmental Quality

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