



DIVISION OF PUBLIC HEALTH

1 WEST WILSON STREET
P O BOX 2659
MADISON WI 53701-2659

Scott Walker
Governor

Kitty Rhoades
Secretary

State of Wisconsin

Department of Health Services

608-266-1251

FAX: 608-267-2832

TTY: 888-701-1253

dhs.wisconsin.gov

January 14, 2014

Craig Murdock, Owner
Safe Abatement for Everyone DHS #: 1054350
1520 S Sylvania Ave., Ste. 305
Sturtevant, WI 53177

Subject: Close-out of December 9, 2013 Notice of Noncompliance; case # 109772

Dear Mr. Murdock:

On December 9, 2013, the Department of Health Services (DHS) issued a Notice of Noncompliance (NON) to your company for failing to use a properly certified person to conduct a post-renovation clearance and failing to follow clearance work practice standards. The violations were associated with a property located at 1620 Flett Avenue in Racine.

The NON directed you to submit a written plan of correction explaining how you have ensured your future compliance with the lead clearance certification and work practice requirements. In addition, the NON assessed a civil penalty forfeiture of \$750.

On January 13, 2014, we received from you a check for \$750 in full payment of the forfeiture. Your response did not, however, include the written plan of correction.

The department has decided that rather than require you to submit a written explanation, we will accept that you are on notice of your responsibility to comply with the department's requirements for conducting lead clearance activities. We intend to take no further action concerning this issue at this time. The department may, however, include this violation in any additional enforcement action, should you be found in further violation of federal, state, or local lead regulations.

If you have any questions, please contact Miriam Hasan at (608) 228-0178.

Sincerely,

Shelley Bruce, Supervisor
Lead and Asbestos Section
Bureau of Environmental and Occupational Health

c. City of Racine Health Department

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COPY



State of Wisconsin

Department of Health Services

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December 9, 2013

Craig Murdock, Owner
Safe Abatement for Everyone DHS #: 1054350
1520 S Sylvania Ave., Ste. 305
Sturtevant, WI 53177

Notice of Noncompliance
Penalty Imposed: Civil Penalty Forfeiture
Response due: January 3, 2014

Case # 109772

Dear Mr. Murdock:

This notice pertains to your company's failure to use a properly certified person to conduct a post-renovation clearance and failing to follow clearance work practice standards, in violation of state statutes and rules administered by the Department of Health Services (DHS). The complete language of the administrative rules violated is enclosed with this letter.

Basis for Findings

DHS received information from the City of Racine Health Department indicating that, on April 13, 2011, Safe Abatement for Everyone, Inc. (SAFE) conducted clearance for a renovation activity at 1620 Flett Avenue in Racine. An individual clearing a renovation activity is required to hold DHS certification in a lead investigation discipline, at minimum, as a lead sampling technician. The invoice submitted by your company to the City of Racine indicated that you were the individual who conducted the clearance. You were not certified by DHS in any lead investigation discipline.

Upon review of the clearance report provided by SAFE to its client, the City of Racine, it appears that several provisions of the clearance protocol specified under Ch. DHS 163, Wisconsin Administrative Code were not followed.

The report is missing SAFE's lead company certification number, as well as the name, address, telephone number and certification number of each individual conducting the clearance. The report is not signed by a certified lead hazard investigator, inspector, risk assessor or sampling technician.

The specific locations on the property at which dust wipe samples were taken are not identified on the report. There is no floor plan or accompanying key included which explains how the sample numbering system used on the chains of custody and lab reports corresponds to the sample location. Although the number of samples taken exceeded the minimum required for a clearance test, the documentation included within the report is insufficient to show that the sample locations (rooms) were appropriate.

The report indicates that the activity being cleared was a renovation. Information required under DHS 163 to be in renovation clearance reports is missing, including the start and completion dates of the renovation activities, the names and addresses of each company conducting the renovation activities, the name and certification number of the person in charge of the activities, and a description of the renovation activities. Consequently, the report prepared by SAFE is not complete.

Chains of custody and laboratory reports attached to the clearance report indicate that three different laboratories held custody of the samples. Only one of the three laboratories is recognized for this type of testing. The samples were initially relinquished by SAFE to Micro Analytical, Inc. on April 13, 2011, though the chain of custody is not signed by the individual who relinquished them nor by a representative of Micro Analytical, Inc. Later that day, Micro Analytical, Inc. relinquished the samples to AmeriSci Richmond using a new chain of custody that listed

sample areas different than indicated on the initial chain of custody submitted to Micro Analytical, Inc. It is not clear why the sample areas were changed. AmeriSci Richmond then relinquished the samples with the changed sample areas to a third laboratory, Schneider Laboratories, which is accredited to analyze lead dust wipe samples.

Schneider Laboratories calculated the lead concentrations using the changed sample areas provided by its client AmeriSci Richmond. These results were reported by the laboratory on April 15, 2011, and indicate that the renovation activity achieved clearance.

Handwritten notations on the April 15, 2011 Schneider Laboratories report give the appearance that someone noticed the sample area values had been changed and attempted to recalculate the lead concentrations using the original sample areas. However, the sample areas handwritten on the report were not correctly converted to square feet. Consequently, the handwritten lead concentration results were calculated incorrectly.

Included with the clearance report is an amended laboratory report prepared by Schneider Laboratories on April 20, 2011. The report states that new sample areas were submitted to Schneider Laboratories by its client and the lead concentrations were recalculated from those figures. The resubmitted sample areas listed by Schneider Laboratories are identical to those submitted on the chain of custody to Micro Analytical but were converted correctly to square feet. The recalculated results indicate that the wipe samples taken at the renovation site failed clearance.

The sample area error precluded Schneider Laboratories from accurately quantifying the levels of lead detected through sample analysis. This error could have been avoided by following the clearance protocol and submitting samples directly to a recognized laboratory.

Department's Authority to Initiate Enforcement Action

DHS 163.32 Enforcement actions. In addition to issuing letters of inquiry, warning letters and noncompliance statements, which are not appealable, the department may take one or more of the following appealable actions for any reason stated under s. DHS 163.31 against a person performing or offering to perform activities regulated under this chapter:

(3) CIVIL FORFEITURE. The department may impose a daily forfeiture of not less than \$100 nor more than \$1,000 for each violation against any person who violates a provision under this chapter, fails to respond to a letter of inquiry by the time specified in the order, continues to violate or resumes violation of a provision for which notice was previously issued or fails to comply with an order issued under sub. (1) by the time specified in the order if the department provides written notice of the grounds for a forfeiture and an explanation of the process under s. DHS 163.33 for appealing a forfeiture. Each day of continued violation constitutes a separate offense.

Enforcement Action

You are directed to submit, by January 3, 2014, a written plan of correction explaining how you have ensured your future compliance with the lead clearance certification and work practice requirements. In addition, the department has reviewed the nature of these violations and determined that the following civil penalty forfeiture is appropriate:

Failure to be a properly certified individual:	\$200
Failure to collect sufficient samples at proper locations:	\$300
Failure to have samples analyzed by a recognized lab:	\$400
Failure to prepare a complete report within 10 days:	<u>\$100</u>
	Total forfeiture:
	\$1,000
Adjustments	
25% decrease for small company:	<u>-\$250</u>
	Total forfeiture due:
	\$750

Submit, by January 3, 2014, your written plan of correction and your check or money order for \$750 in payment of the forfeiture, payable to **State Treasurer-School Fund**. Send your response and payment to: Dept. of Health Services, Attn: Fred Johnson, Asbestos and Lead Unit, Room 137, P. O. Box 2659, Madison, WI 53701-2659.

Right to Appeal

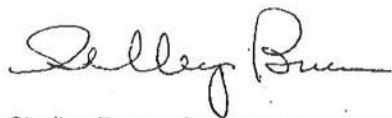
Under chapter 227, Wis. Stats., and s. DHS 163.33, Wis. Admin. Code, you have the right to appeal this Department enforcement action by filing a written request for a hearing with the Division of Hearings and Appeals. If you choose to appeal this decision, your appeal must be received by the Division of Hearings and Appeals no later than 13 working days from the date of this letter. If mailing your appeal, it must be post-marked no later than 13 calendar days from the date of this letter.

You may file the appeal by mailing it to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875; delivering it in person to 5005 University Avenue, Room 201, Madison, WI; or faxing it to 608-264-9885.

A request for a hearing should contain the following information: your name and address; a description of the Department's action you are contesting; a concise statement of the reasons for objecting to the action; the type of relief you are seeking; and a request for hearing.

If you have any questions, please contact Miriam Hasan at (608) 228-0178.

Sincerely,



Shelley Bruce, Supervisor
Lead and Asbestos Section
Bureau of Environmental and Occupational Health

Enclosure

c. City of Racine Health Department

Finding of Noncompliance

The department finds you in violation of the following:

DHS 163.10 Certification of an individual.

(1) REQUIREMENT. Except as provided under par. (d), an individual shall follow work practice requirements and meet all other responsibilities under this chapter and, except as provided under pars. (c) and (d), shall also be certified by the department under this subchapter and shall be associated with a certified lead company or lead-safe company through ownership, employment or contract to do any of the following (emphasis added):

(a) Perform, supervise or offer to perform or supervise a lead abatement activity or lead investigation activity involving one of the following:

1. A child-occupied facility or the real property on which the child-occupied facility stands.
2. Target housing or the real property on which the target housing stands when one of the following applies:
 - a. The individual performing the work does not own the target housing or real property.
 - b. An individual other than the property owner or the property owner's immediate family rents or occupies the target housing or real property.
 - c. A child residing in the target housing has been identified as having an elevated blood lead level.

DHS 163.14 Work practice standards.

(5) CLEARANCE.

(a) *Who may conduct.*

1. A certified lead hazard investigator, inspector or risk assessor may conduct clearance for any lead hazard reduction or renovation activity.
2. A lead sampling technician may conduct clearance for renovation or interim control activities.
3. The certified individual conducting clearance shall be associated with a certified lead company.

(c) *Clearance protocol.* In performing clearance, the certified lead hazard investigator, inspector, risk assessor or sampling technician shall comply with all of the following in an unbiased, objective and impartial manner:

3. *'Location of sampling for work conducted in containment.'*

a. In at least 4 rooms, hallways, stairwells or other living areas within the containment area, collect one dust sample from one interior windowsill or one window trough, if available, and one dust sample from the floor. If there are fewer than 4 rooms, hallways, stairwells or other living areas within the containment area, collect samples from one interior windowsill or one window trough, if available, and one dust sample from the floors of all rooms, hallways, stairwells or other living areas within containment.

b. Collect one dust sample from the floor of a common area within containment for every 2,000 square feet of floor, and one dust sample from the floor of a common area outside containment. The dust sample taken outside containment shall be collected within 10 feet of the containment doorway.

4. *'Location of sampling for work conducted without containment.'*

a. In at least 4 rooms, hallways, stairwells or other living areas in or near the work area, collect one dust sample from one interior windowsill or one window trough, if available, and one dust sample from the floor. If there are fewer than 4 rooms, hallways, stairwells or other living areas within the residential dwelling or child-occupied facility, collect samples from one interior windowsill or one window trough, if available, and one dust sample from the floors of all rooms, hallways, stairwells or other living areas.

b. Collect one dust sample from the floor of a common area for every 2,000 square feet of floor.

7. *'Laboratory analysis.'* Have collected samples analyzed by a recognized laboratory to determine the detectable levels of lead that can be quantified numerically.

9. *'Preparation of report following clearance of activities involving abatement.'* Within 10 working days after clearance of activities involving abatement or within 10 working days after receipt of any required laboratory results, whichever is later, prepare a written clearance report for submission to the person who conducted the activities being cleared and to the property owner or the person who contracted for the clearance. The report shall include all of the following information:

- a. Date and time of the clearance.

- b. Address of the job site, including street address and unit number when applicable.
- c. Name, address, telephone number and certification number of each individual and lead company conducting the clearance and signature of each certified lead hazard investigator, inspector, risk assessor or sampling technician.
- d. The results of clearance testing, the specific locations on the property where clearance samples were taken and, if applicable, all soil analyses and the name, address and telephone number of each recognized laboratory that conducted the analyses.
- e. The results of the visual inspection for the presence of visible dust, debris, residue or paint chips and, when applicable, the presence of deteriorated paint that is not proven to be lead-free.

10. *'Preparation of report following clearance of interim controls or renovation activities.'* Within 10 working days after clearance of interim controls or renovation activities or within 10 working days after receipt of any required laboratory results, whichever is later, prepare a written clearance report for submission to the person who conducted the activities being cleared and to the property owner or the person who contracted for the clearance. The report shall include all of the following information:

- a. All information under subd. 9.
- b. The start and completion dates of the non-abatement lead-based paint activity.
- c. The name and address of each company conducting the interim controls or renovation activities.
- d. The name and department certification number of the person in charge of the work.
- e. A description of the interim controls or renovation activities.