Before the Iowa Department of Public Health

IN THE MATTER OF	Case Number: 2011-11-03
Nate James 70 West Main Cherokee IA 51012	ORDER IMPOSING MITIGATED CIVIL PENALTY

Pursuant to the provisions of Iowa Code Sections 135.105A and 135.105C and Iowa Administrative Code (IAC) 641—69.14(1) and 70.10(1), the Iowa Department of Public Health (Department) is issuing a notice that you have violated Iowa Code Sections 135.105A and 135.105C and Iowa Administrative Code sections 641—69.3, 70.3, and 70.6(11) and is therefore imposing a mitigated civil penalty against you in the amount of \$1,120.

Iowa Code 135.105A (3) states: "Except as otherwise provided in this section, a person shall not perform lead abatement or lead inspections, and shall not perform renovations on target housing or a child-occupied facility, unless the person has completed a training program approved by the department and has obtained certification pursuant to this section. All lead abatement and lead inspections . . . shall be performed and conducted in accordance with work practice standards established by the department."

Iowa Code Section 135.105C states: "A person who performs renovation, remodeling, or repainting services for target housing or a child-occupied facility for compensation shall provide an approved lead hazard information pamphlet to the owner and occupant of the housing or facility prior to commencing the services. The department shall adopt rules to implement the renovation, remodeling, and repainting lead hazard notification process under this section.

IAC section 69.14(1) states: "The department may impose a civil penalty pursuant to Iowa Code section 135.105C and this rule and may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38 when it finds that a person has committed any of the following acts:

a. Failed or refused to comply with any requirements of this chapter."

IAC section 70.10(1) states "When the department finds that the applicant, certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm has committed any of the following acts, the department may deny an application for certification, may suspend or revoke a certification, may prohibit specific work practices, may require a project conducted by persons or firms that are not certified or a project where prohibited work practices are being used to be halted, may require the cleanup of lead hazards created by the use of prohibited work practices, may impose a civil penalty, may place on probation, may require additional education, may require reexamination of the state certification examination, may issue a warning, may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38, or may impose other sanctions allowed by law as may be appropriate.

IAC section 641—69.3 states: "A person who performs renovation, remodeling, or repainting of target housing for compensation, except for emergency renovation, remodeling, or repainting of target housing, and except for minor repair and maintenance activities that disrupt less than 1.0 square feet of painted surface, must do the following prior to commencing the work:

- 69.3(1) Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, to the owner and adult occupant of each dwelling unit where renovation, remodeling, or repainting will be performed. The pamphlet shall be provided no more than 60 days prior to commencing the work.
- 69.3(2) Obtain a signed, dated acknowledgment from the owner and known adult occupant of each dwelling unit where renovation, remodeling, or repainting will be performed affirming that they have received the pamphlet prior to the start of renovation, remodeling, or repainting and are aware of the potential health hazards from remodeling, renovating, or repainting housing containing lead-based paint. The acknowledgment shall be obtained no more than 60 days prior to commencing the work.
- a. The acknowledgment shall include the owner's and occupant's names and the address of the residential dwelling undergoing renovation, remodeling, or repainting.
- b. The acknowledgment shall include the following language:

I have received the pamphlet entitled Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, prior to the start of renovation, remodeling, or repainting and am aware of the potential health risk associated with remodeling, renovating, or repainting housing containing lead-based paint or lead-based paint hazards."

IAC section 641—70.3 states: "A person or a firm shall not conduct lead abatement, clearance testing after lead abatement, lead-free inspections, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after renovation, or interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35 unless the person or firm has been certified by the department in the appropriate discipline. Beginning April 22, 2010, a person or firm shall not conduct renovation unless the person or firm has been certified by the department in the appropriate discipline.

IAC section 641—70.6 (11) states: "All renovations performed in target housing and child-occupied facilities, except for emergency renovations and minor repair and maintenance activities, shall be performed according to the work practice standards in 70.6(11). Renovation activities conducted in housing or on surfaces determined to be free of lead-based paint by a certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall be exempt from all work practice standards except record keeping. All renovations shall be performed by a certified firm under the supervision of a certified lead abatement contractor or a certified lead abatement worker who completes initial certification on or after January 13, 2010, or if certified prior to January 13, 2010, completes a lead abatement worker, lead abatement contractor, or lead-safe renovator refresher course on or after January 13, 2010, or shall be performed by a certified lead-safe renovator in accordance with the requirements below.

- a. A firm shall assign at least one certified lead abatement contractor, a certified lead abatement worker, or a certified lead-safe renovator to each individual renovation project. The certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator assigned to each individual renovation project shall ensure the following:
- (1) A certified lead abatement contractor, a certified lead abatement worker, or a certified lead-safe renovator must be on site during all worksite preparation and during the cleanup of work areas. At all other times when renovation is being conducted, a certified lead abatement contractor, a certified lead abatement worker, or a certified lead-safe renovator shall be on site or available by telephone, pager, or answering service and be able to be present at the worksite in no more than two hours.

- (2) Signs are posted and readable. All signs must be posted before the renovation begins and must remain in place until the postrenovation cleaning verification has been completed.
- 1. To the extent practicable, all signage must be posted in the occupants' primary language.
- 2. The signs must clearly define the work area.
- 3. The signs must warn occupants and other persons not involved with the renovation activity to remain outside the work area.
- 4. The signs must be posted at the entrance(s) to all work areas.
- (3) The work area must be effectively contained before the renovation is begun. To be effective, containment must:
- 1. Isolate the work area so that no dust or debris leaves the work area while the renovation is being performed.
- 2. Be monitored and maintained so that any plastic or other impermeable materials are not torn or displaced.
- 3. Be installed in such a manner that it does not interfere with occupant and worker egress in an emergency.
- (5) For exterior renovations, containment shall include:
- 1. Closing all doors and windows within 20 feet of the renovation. On multistory buildings, all doors and windows within 20 feet of the renovation on the same story as the renovation shall be closed, and all doors and windows on all stories below the renovation that are the same horizontal distance from the renovation shall be closed.
- 2. Ensuring that doors within the work areas that will be used while the renovation is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.
- 3. Covering the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground cover. Exterior ground cover shall include anchors or weights to ensure the covering remains effective even during weather conditions such as high wind.
- 4. Vertical containment. In certain situations, such as where other buildings are in close proximity to the work area, when conditions are windy, or where the work area abuts a property line, the certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall erect a system of vertical containment designed to prevent dust and debris from migrating to adjacent property or contaminating the ground, other buildings, or any object beyond the work area.
- (6) Prohibited practices are not used during the renovation. Prohibited practices include:
- 3. Uncontained water blasting of paint.
- 4. Dry scraping or dry sanding of paint except in conjunction with the use of a heat gun or around electrical outlets.
- (10) All waste generated during renovation activities is contained to prevent the release of dust and debris before the waste is removed from the work area for storage or disposal. Any chutes used to remove waste from the work area shall be covered.
- 1. At the conclusion of each workday and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

On October 3, 2011, the Department received a complaint stating that unsafe work practices had been used at one home in Cherokee, which was built in 1920, and another home in Cherokee, which was built in 1900. On October 5, 2011, Department staff visited these homes and confirmed that paint chips and debris from the work that had been conducted was on the soil around the houses. On October 8, you told Department staff that you had not done the notification required in IAC section 641—69.3, that you were not certified as a lead-safe renovator or a firm, and had dry scraped the paint on the home, did not contain the debris, and that you did not post warning signs. The Department has determined that you should have provided the notification and pamphlet before the work began for the work done at these two addresses. The Department has also determined that you should have been certified as a lead-safe renovator and certified as a firm before you started work on these two houses and that you did not follow the work practice standards in 70.6(11) a (2), (3), (5), (6) and (10).

These actions violate Iowa Code Sections 135.105A and 135.105C and Iowa Administrative Code sections 641—69.3, 70.3, and 70.6(11).

On January 31, 2012, the Department sent you a Notice of Violation and Proposed Penalty. You signed or this letter on February 9, 2012. On February 15, 2012, you submitted a response. The Department has reviewed the information regarding extenuating circumstances that you submitted, and has determined that the penalty should be mitigated. Therefore, the Department is imposing a mitigated civil penalty of \$1,120.

You have the right to request a hearing concerning this order imposing a mitigated civil penalty. A request for a hearing must be submitted in writing to the Department by certified mail, return receipt requested, within twenty (20) days of receipt of this Order Imposing Mitigated Civil Penalty. The written request must be submitted to:

Rita Gergely
Iowa Department of Public Health
Bureau of Lead Poisoning Prevention
321 East 12th Street
Des Moines, Iowa 50319

If the request is made within the twenty (20) day time limit, the proposed action is suspended pending the outcome of the hearing.

If no request for a hearing is received within the twenty (20) day time period, the mitigated civil penalty proposed herein shall become effective and shall be final agency action.

If you fail to pay any civil penalty subsequently determined by the department, unless compromised, remitted, or mitigated, the fee shall be collected by civil action, pursuant to Iowa Code section 135.105A.

Rita Gergely

Executive Officer 2

Bureau of Lead Poisoning Prevention

(515) 242-6340