



The State of Wisconsin, by its attorneys, Attorney General Joshua L. Kaul and Assistant Attorney General Sarah C. Geers, brings this action against Alliance Construction and Design, Inc., Amerco Real Estate Company, and U-Haul Co. of Wisconsin, Inc., at the request of the Wisconsin Department of Natural Resources (DNR) pursuant to Wis. Stat. ch. 285, and alleges as follows:

1. Plaintiff State of Wisconsin is a sovereign state of the United States of America with its principal office at the State Capitol in Madison, Dane County, Wisconsin.

2. DNR has promulgated and implemented asbestos regulations in Wis. Admin. Code ch. NR 447 pursuant to DNR's air pollution control powers and duties provided for in Wis. Stat. §§ 285.11, 285.13, 285.17, and 285.27.

3. Defendant Alliance Construction and Design, Inc. is a domestic corporation with its principal office at 1050 Broadway Street, Wrightstown, Wisconsin 54180. Its registered agent is Todd Parczick at the same address.

4. Defendant Amerco Real Estate Company is a foreign corporation with its principal office at 2727 North Central Avenue, Phoenix, Arizona 85004. Its registered agent is C. T. Corporation System at 301 South Bedford Street, Suite 1, Madison, Wisconsin 53703.

5. U-Haul Co. of Wisconsin, Inc. is a domestic corporation with its principal office at 505 East Capitol Drive, Milwaukee, Milwaukee County,

Wisconsin 53212-1303. Its registered agent is C. T. Corporation System at 301 South Bedford Street, Suite 1, Madison, Wisconsin 53703.

6. At all times relevant to the allegations in this Complaint, Amerco Real Estate Company owned the property at issue located at 900 North Koeller Street, Oshkosh, Winnebago County, Wisconsin 54151 (the Site).

7. The Site currently contains a U-Haul Storage Facility operated by U-Haul Co. of Wisconsin, Inc.

### **DEFINITIONS**

8. Wisconsin Admin. Code § NR 447.02(4) defines "asbestos" as "the asbestiform varieties of serpentinite (chrysotile), riebeckite (crocidolite), cummingtonite-grunerite (amosite), anthophyllite and actinolite-tremolite."

9. Wisconsin Admin. Code § NR 447.02(1) defines "ACM" as "asbestos-containing material."

10. Wisconsin Admin. Code § NR 447.02(11) defines "demolition" as "the wrecking or taking out of any load-supporting structural member of a facility together with any related handling operations or the intentional burning of any facility."

11. Wisconsin Admin. Code § NR 447.02(33) defines "RACM" as "regulated asbestos-containing material," which means "(a) Friable asbestos material; (b) Category I nonfriable ACM that has become friable; (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting

or abrading; or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this chapter."

12. Wisconsin Admin. Code § NR 447.02(30) defines "owner or operator of a demolition or renovation activity" as "any person who owns, leases, operates, controls or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls or supervises the demolition or renovation operation, or both."

13. Wisconsin Admin. Code § NR 447.02(16) defines "friable asbestos material" as "any material containing more than 1% asbestos . . . that, when dry, can be crumbled, pulverized or reduced to powder by hand pressure."

#### **ALLEGATIONS RELEVANT TO ALL VIOLATIONS**

14. On or before March 1, 2018, a representative of Amerco Real Estate Company or U-Haul Co. of Wisconsin, Inc. entered into a verbal agreement with Alliance Construction and Design, Inc. to demolish a building and construct a U-Haul Storage Facility on the Site.

15. Prior to March 1, 2018, no notification of intention to demolish or renovate at the Site was filed with DNR.

16. On or before March 1, 2018, Alliance Construction and Design, Inc. began demolishing the building on the Site.

17. On March 1, 2018, a DNR contract Asbestos Compliance Inspector, Todd Drew (Drew), inspected the Site in response to a complaint regarding asbestos compliance.

18. On March 1, 2018, ceiling tile and drywall at the Site were significantly disturbed.

19. On March 1, 2018, there were demolition activities in progress at the Site.

20. On March 1, 2018, there were piles of debris that were in loose, dry pieces in the building and the dumpster at the Site.

21. On March 1, 2018, there were no water or wetting agents present at the Site and no spraying activities during the inspection.

22. On March 1, 2018, there was no one at the Site trained in proper asbestos removal and control.

23. Following the March 1, 2018, inspection, Alliance hired Asbestos Removal, Inc. (ARI) to conduct an inspection of the Site.

24. On March 5, 2018, ARI conducted a complete inspection of the Site.

25. On March 5, 2018, Drew inspected the Site.

26. On March 5, 2018, there was ACM disturbed throughout the building and in a small dumpster.

27. On March 5, 2018, ARI took samples of suspect ACM at the Site.

28. On March 5, 2018, Alliance's project manager Jon Morehouse (Morehouse) informed Drew that a single vertical load bearing structural beam was to be removed from the exterior west wall.

29. On March 5, 2018, Morehouse informed Drew that workers put suspect ACM in a dumpster at the Site.

30. On March 5, 2018, there were piles of debris that were in loose, dry pieces in the building and the dumpster at the Site.

31. On March 5, 2018, there were no water or wetting agents present at the Site and no spraying activities during the inspection.

32. On March 8, 2018, ARI filed an after-the-fact notification with DNR on behalf of the Defendants for the demolition activities at the Site.

33. The March 8, 2018, notification indicated that the Site contained 25 linear feet, 11,600 square feet, and 405 cubic feet of RACM that had to be removed from the Site prior to demolition.

34. On March 9, 2018, Drew returned to the Site to conduct an inspection of the contents of the dumpster on the east side of the building.

35. On March 9, 2018, Drew observed numerous sections of pipe fitting debris that was suspect ACM in the dumpster at the Site.

36. On March 9, 2018, Drew sampled the suspect ACM in the dumpster and sent it to the Wisconsin Occupational Health Laboratory for analysis, which reported 4% asbestos.

37. On March 9, 2018, there were no water or wetting agents present at the Site and no spraying activities during the inspection.

38. None of the Defendants conducted a pre-inspection of the building for the presence of asbestos prior to the commencement of the demolition, as required by Wis. Admin. Code § NR 447.06(1).

39. On May 9, 2018, Alliance Construction and Design, Inc. signed a written contract with U-Haul Co. of Wisconsin, Inc. and Amerco Real Estate Company for demolition and renovation activities at the Site.

40. The May 9, 2018, contract was signed by Erica Eberhardy as the owner's representative.

41. At all times relevant to this complaint, Erica Eberhardy was a U-Haul employee.

42. Amerco Real Estate Company is an owner or operator of a demolition or renovation activity pursuant to Wis. Admin. Code § NR 447.02(30).

43. U-Haul Co. of Wisconsin, Inc. is an owner or operator of a demolition or renovation activity pursuant to Wis. Admin. Code § NR 447.02(30).

44. Alliance Construction and Design, Inc. is an owner or operator of a demolition or renovation activity pursuant to Wis. Admin. Code § NR 447.02(30).

45. At all times relevant to the Complaint, the activity at the Site was a demolition activity because a single vertical load bearing structural beam was to be removed from the exterior west wall.

**VIOLATION ONE: FAILURE TO THOROUGHLY INSPECT PRIOR TO COMMENCING RENOVATION OR DEMOLITION ACTIVITIES**

1. Wisconsin Admin. Code § NR 447.06(1) provides:

[T]he owner or operator of a demolition or renovation activity . . . shall, 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 nonfriable ACM.

2. The Defendants violated Wis. Admin. Code § NR 447.06(1) when they began renovation and demolition activities on or before March 1, 2018, before completing a thorough inspection of the Site for the presence of asbestos, including Category I and Category II nonfriable ACM.

**VIOLATION TWO: FAILURE TO NOTIFY DNR PRIOR TO RENOVATION OR DEMOLITION ACTIVITIES THAT MAY DISTURB RACM**

3. Wisconsin Admin. Code § NR 447.07 requires “each owner or operator of a demolition or renovation activity” covered under this chapter to:

Provide the department with written notice of intention to demolish or renovate. . . . (3)(a) [a]t least 10 working days before asbestos stripping or removal work or any other activity begins, such as site preparation that would break up, dislodge or similarly disturb asbestos material, if the operation is described in s. NR 447.06(2)(a) or (d)1.



4. Operations described in Wis. Admin. Code § NR 447.06(2)(a)1. include those facilities where the combined amount of removed RACM is: “[a]t least 80 linear meters (260 linear feet) on pipes or at least 15 square meters (160 square feet) on other facility components.”

5. The Defendants violated Wis. Admin. Code § NR 447.07 by failing to notify DNR ten working days before commencing activities on the Site on or before March 1, 2018, that would break up, dislodge, or similarly disturb at least 260 linear feet of RACM on pipes or at least 160 square feet of other facility components.

**VIOLATION THREE: FAILURE TO REMOVE RACM  
BEFORE DISTURBANCE**

6. Wisconsin Admin. Code § NR 447.08(1)(d) provides:

Each owner or operator of a demolition or renovation activity to whom this section applies, according to s. NR 447.06, shall comply with the following procedures: (1) Remove all RACM from a facility being demolished or renovated before any activity begins that would break up, dis-lodge or similarly disturb the material or preclude access to the material for subsequent removal. RACM need not be removed before demolition if any of the following apply: . . . (d) It is Category II nonfriable ACM and the probability is low that the materials will become crumbled, pulverized or reduced to powder during demolition.

7. The Defendants violated Wis. Admin. Code § NR 447.08(1) on March 1, 2018, when they failed to remove all RACM from the Site before any activity began that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal.

**VIOLATION FOUR: FAILURE TO ADEQUATELY WET RACM AND ENSURE THAT IT REMAINED WET UNTIL COLLECTED AND CONTAINED**

8. Wisconsin Admin. Code § NR 447.08(6)(a) provides:

Each owner or operator of a demolition or renovation activity, . . . shall . . . [f]or all RACM, including material that has been removed or stripped, (a) [a]dequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with Wis. Admin. Code § NR 447.13.

9. The Defendants violated Wis. Admin. Code § NR 447.08(6)(a) on or before March 1, 2018, through at least March 9, 2018, when they failed to adequately wet RACM at the Site and ensure that it remained wet until collected and contained or treated in preparation for disposal in accordance with Wis. Admin. Code § NR 447.13.

**VIOLATION FIVE: FAILURE TO HAVE TRAINED ON-SITE REPRESENTATIVE PRESENT WHEN RACM IS HANDLED OR DISTURBED**

10. Wisconsin Admin. Code § NR 447.08(8) provides:

No RACM may be stripped, removed or otherwise handled or disturbed at a facility regulated by this chapter unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of this chapter and the means of complying with them, is present.

11. On March 1, 2018, Defendants violated Wis. Admin. Code § NR 447.08(8) by failing to ensure that a representative trained in the control

of asbestos emissions was present during the removal, handling, or disturbance of RACM.

### **PENALTY PROVISIONS**

12. Wisconsin Admin. Code § NR 447.19(1) states that DNR “may take appropriate enforcement action against any owner or operator of a demolition or renovation activity . . . that violates [Wis. Admin. Code ch. NR 447]. Appropriate enforcement action includes . . . referrals to the Wisconsin department of justice.”

13. Wisconsin Stat. § 299.95 authorizes the Attorney General to enforce Wis. Stat. ch. 285 and all rules promulgated under that chapter, subject to exceptions not applicable to this case. Under Wis. Stat. § 299.95, the circuit court for Dane County or the county where the violation occurred has jurisdiction to enforce Wis. Stat. ch. 285 and all rules promulgated under that chapter “by injunctive and other relief appropriate for enforcement.”

14. Wisconsin Stat. § 285.87(1) states that “any person who violates this chapter or any rule promulgated . . . under this chapter shall forfeit not less than \$10 or more than \$25,000 for each violation. Each day of continued violation is a separate offense.”

### **RELIEF REQUESTED**

WHEREFORE, Plaintiff asks the Court to enter judgment as follows:

1. Forfeitures as to each Defendant as provided for in Wis. Stat. § 285.87(1);
2. The 26 percent penalty surcharge pursuant to Wis. Stat. § 814.75(18), the 20 percent environmental surcharge pursuant to Wis. Stat. § 814.75(12), the 1 percent jail surcharge pursuant to Wis. Stat. § 814.75(14), \$25.00 in court costs pursuant to Wis. Stat. § 814.63(1), the \$13.00 crime laboratories and drug law enforcement surcharge pursuant to Wis. Stat. § 814.75(3), the \$68.00 court support services surcharge under Wis. Stat. § 814.75(2), and the \$21.50 justice information system surcharge under Wis. Stat. § 814.75(15);
3. The costs and disbursements of this action; and,
4. Such other relief as the court may deem appropriate.

Dated this 15th day of January, 2021.

JOSHUA L. KAUL  
Attorney General of Wisconsin

Electronically signed by Sarah C. Geers

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