

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: Manufacturers Bank & Trust Company & Rognes Bros. Excavating Inc. Worth County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2013-AQ- 06 NO. 2013-SW- 05
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TO: Harvey Rognes, President
Rognes Bros. Excavating Inc.
P.O. Box 86
Lake Mills, IA 50450

Manufacturers Bank & Trust Company
Attn: Scott Drexler
106 West Main,
Lake Mills, IA 50450

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department), Manufacturers Bank & Trust Company (MBT) and Rognes Bros. Excavating Inc. (Rognes Bros.) for the purpose of resolving air quality and solid waste disposal violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Cindy Garza, Environmental Specialist
Field Office 2
2300 15th St. S.W.,
Mason City, Iowa 50401
Phone: 641/424-9342

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR

Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: Manufacturers Bank & Trust Company & Rognes Bros. Excavating Inc.

promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

Current Violations

1. MBT is the deed holder to property located in Worth County, Iowa at Section 15 T99N R22W, (Bristol Township) which is locally known as 4328 Dove Avenue, Joice, Iowa (the site). This site is currently for sale. To assist in the selling of this property MBT hired several contractors to clean up the site; Rognes Bros. was one of these contractors.
2. On July 27, 2012, the Department received a complaint alleging that thick, black smoke was coming from the site. That same day Cindy Garza, an Environmental Specialist with the Department, conducted an investigation. Once on site, she observed two pits (A and B) both of which contained burning debris. In pit A Ms. Garza observed the remnants of a trailer home, railroad tires, and the beads from nine tires. In pit B she observed wood, a 55 gallon drum and several metal items that could not be identified. Additionally, at the site, Ms. Garza observed used oil, approximately 100 tires and stacks of wood pallets. Ms. Garza met with Jerry Rognes of Rognes Bros. who informed her that he had excavated the two pits and then used a frontend loader to push the waste material into them. He also said that the heat from the burning material ignited the tires which were in a pile next to the pits. To contain the fire from the tires Mr. Rognes pushed the burning tires into the pit. Mr. Rognes stated that although he knew it was illegal to burn tires, he did not know it was illegal to burn the other material.
3. On August 2, 2012, a Notice of Violations (NOV) was sent to MBT and Rognes Bros. regarding the above discussed violations. This NOV informed the parties that the matter was referred to the Department's Legal Services Bureau for enforcement.

Past Violations

4. On March 19, 1987 Administrative Order 87-AQ-06 was issued to Rognes Bros. for the illegal burning of tires.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: Manufacturers Bank & Trust Company & Rognes Bros. Excavating Inc.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The parties allowed the burning of various solid wastes. The above stated facts demonstrate noncompliance with this provision.
3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.
4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and MBT and Rognes Bros. agree to do the following:

1. Immediately discontinue the practice of illegal disposal of solid waste and in the future properly dispose of all solid waste;
2. Immediately cease illegal open burning and do not engage in this activity in the future;
3. MBT and Rognes Bros. shall be jointly and severally liable for the payment of a penalty in the amount of \$5,000.00 to the Department within 30 days of the date the Director signs this order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$5,000.00 penalty. The administrative

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: Manufacturers Bank & Trust Company & Rognes Bros. Excavating Inc.

penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." It is estimated that it would have cost approximately \$25.35 a ton to properly dispose of the solid waste at a landfill, and it is estimated that approximately 15.77 tons of waste was burned. Further it is estimated that the fee to have roll-offs delivered to the site and the waste transported to a landfill for disposal would have cost \$1,300.00. Therefore, it is estimated that \$1,700.00 has been saved by not properly disposing of the waste. Therefore, that amount is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$800.00 is assessed for this factor.

Culpability – Rognes Bros and MBT have a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that their conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Rognes Bros. was issued an administrative order in the past for illegal open burning. Thus, Rognes Bros. had actual knowledge that the open burning was in violation of the law. Based on the above considerations, \$2,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of MBT and Rognes Bros. For that reason, these parties waive their right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

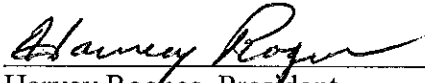
ISSUED TO: Manufacturers Bank & Trust Company & Rognes Bros. Excavating Inc.

consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



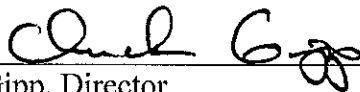
Manufacturers Bank & Trust Company

Dated this 29th day of
January, 2013.



Harvey Rognes, President
Rognes Bros. Excavating Inc.

Dated this 29th day of
January, 2013.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 11th day of
February, 2013.

Carrie Schoenebaum; DNR Field Office 6; EPA; VI.C and VII.C.1.

