

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

<p>IN THE MATTER OF:</p> <p>WASHINGTON COMMUNITY SCHOOL DISTRICT</p> <p>Washington, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align:center">NO. 2009-AQ- <b>06</b></p>
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TO: Eric Turner, School Board President  
Washington Community School District  
404 West Main  
Washington, Iowa 52353

**I. SUMMARY**

This administrative consent order is entered into between the Washington Community School District (WCSD) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) violations for a renovation project at the Stewart Elementary School in Washington, Iowa.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Marion Burnside  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8443

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office 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 promulgated and permits issued pursuant thereto; and Iowa Code section 455B.109 and

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567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. On March 9, 2007, Marion Burnside, DNR asbestos coordinator, visited the WCSD as part of an outreach visit. While there were no violations observed, Mr. Burnside did observe several classrooms in Stewart Elementary School (school) with floor tile in poor condition. Mr. Burnside informed John Trier, WCSD's Building and Grounds supervisor, of the floor tiles. Mr. Trier was told that due to the condition of the tiles, they would be considered regulated asbestos material when the tiles were removed.

2. On April 27, 2007, DNR received an asbestos NESHAP notification from Affordable Hazards Removal, Inc. (Affordable) for an emergency removal of 172 square feet of asbestos containing floor tile in several classrooms at the school. This was the same floor tile that Mr. Burnside observed on March 9, 2007.

3. DNR received complaints from parents concerning floor tile removal at the school. On May 8, 2007, Mr. Burnside conducted a complaint investigation at the school and discovered that WCSD had hired Frank Baxter General Contractor, Inc. (Baxter) to conduct renovation work at the school. As part of this project, on May 5, 2007, Baxter removed a stage in an area of the school that was being renovated. The stage is a facility component. The load supporting structural member of the stage was removed. This is defined as demolition; therefore the removal required an asbestos NESHAP notification. Neither WCSD nor Baxter submitted a notification prior to demolition. On June 26, 2007, DNR issued a Notice of Violation letter to WCSD for its failure to submit an asbestos NESHAP notification for the removal of the stage. A Notice of Violation letter was also issued to Baxter for the same violation.

4. Sometime prior to July 7, 2007, Baxter hired A'Hearn Plumbing and Heating, Inc. (A'Hearn) as a subcontractor to remove pipes at the school. WCSD informed A'Hearn that Affordable was hired to remove all asbestos containing material (ACM) and gave specific instructions to A'Hearn not to disturb ACM.

5. On July 17, 2007, A'Hearn informed Mr. Trier that it identified pipe insulation as ACM and requested Affordable to come and remove the material. Will Anders of Affordable arrived to make a cost assessment. During the assessment, Mr. Anders and Mr. Trier discovered pipe insulation already removed. In response to their inquiry, A'Hearn confirmed that it had to remove a portion of the pipe in order to install new pipes. Mr. Anders and Mr. Trier further discovered 150-200 feet of already removed pipe in the dumpster nearby, and reported the incident to the DNR.

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6. On July 17, 2007, Marion Burnside conducted a complaint investigation at the school. Mr. Burnside observed that pipe sections were in the dumpster. Will Anders of Affordable, who was on site preparing to remove asbestos containing floor tile, had covered the dumpster with plastic and put signs on it warning of asbestos. Mr. Burnside observed that A'Hearn had removed approximately 150 linear feet of pipe with pipe wrap from the tunnels at the school. A'Hearn had placed the dry uncontained pipe wrap and pipes in the dumpsters outside of the school. Mr. Burnside collected two samples of the suspect material, a middle joint and a portion of the pipe, for asbestos content analysis. At the time of the inspection, no one from Baxter or A'Hearn was present at the school.

7. On July 18, 2007, the DNR submitted the samples collected during the July 17 inspection to the University of Iowa Hygienic Laboratory for asbestos content analysis. On July 23, 2007, the DNR received the analytical results of the samples. The sample of the middle joint contained a regulated amount of asbestos – 20% chrysotile asbestos. The sample of the pipe portion also contained a regulated amount of asbestos – 10% chrysotile asbestos.

8. On September 12, 2007, the DNR issued a Notice of Violation letter to WCSD for several asbestos NESHAP violations. The letter cited the following violations: failure to notify of the pipe removal; failure to keep asbestos containing material adequately wet; failure to have a trained supervisor on site; and failure to properly dispose of the asbestos containing waste. Notice of Violation letters with the same violations were also sent to Baxter and A'Hearn.

#### IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission (Commission) to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. Proper and timely notification was not given prior to the demolition of the stage and the removal of the pipes. The above facts indicate a violation of this provision.

3. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply

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with the procedures. As the owner for the project, WCSD is liable for the actions of its general contractor and subcontractor. The facts in this case indicate that WCSD was not in compliance with these provisions when the pipe removal project occurred.

4. 40 CFR section 61.145(c)(1) states that the owner or operator of a demolition or renovation shall remove all regulated asbestos containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material. As the owner for the project, WCSD is liable for the actions of its general contractor and subcontractor. The asbestos-containing pipe was not removed from the facility prior to conducting a demolition operation. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(c)(4) states when regulated asbestos containing material has been taken out of the facility as a unit or in sections pursuant to paragraph (c)(2) of the section, it shall be stripped or contained in leak-tight wrapping, except as described in paragraph (c)(5) of the section. As the owner for the project, WCSD is liable for the actions of its general contractor and subcontractor. The sections of pipe that had been removed were not wrapped in a leak-tight wrap. The above facts indicate a violation of this provision.

6. 40 CFR 61.145(c)(8) provides that effective one year after promulgation of this regulation, no regulated asbestos containing material shall be stripped, removed, or otherwise handled or disturbed at a facility regulated by this section 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 regulation and the means of complying with them, is present. As the owner for the project, WCSD is liable for the actions of its general contractor and subcontractor. The facts in this case indicate there was not a trained supervisor on site during the pipe removal. The above facts indicate noncompliance with this provision.

7. 40 CFR 61.150(a)(1) states in order to properly dispose of the regulated asbestos containing material the material must be adequately wet, placed in labeled leak-tight containers or wrapping. As the owner for the project, WCSD is liable for the actions of its general contractor and subcontractor. The pipe sections were dry and not sealed in a leak-tight wrap or container. The above facts indicate a violation of this provision.

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**V. ORDER**

THEREFORE, the DNR orders and WCSD agrees to do the following:

1. WCSD shall pay a penalty of \$4,000.00 within 30 days of the date from which the Director signs this administrative consent order.

**VI. PENALTY**

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty. The administrative penalty assessed by this administrative consent order is \$4,000.00. The administrative penalty is determined as follows:

a. Economic Benefit. Failure to follow the proper asbestos NESHAP regulations for asbestos removal and disposal allowed WCSD to save time and money. WCSD saved money by not properly removing asbestos from the pipes prior to removal and by not notifying of the demolition and removal projects. An economic benefit of \$1,000.00 is being assessed for this factor.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to follow proper procedures to properly remove and dispose of the regulated asbestos containing material may create an environmental hazard to the workers and general public through the likely release of asbestos fibers. Failure to notify the DNR of removal and demolition projects prevent the DNR from being able to inspect the project to ensure compliance with the asbestos NESHAP regulations. For these reasons, \$2,000.00 is assessed for this factor.

c. Culpability. WCSD has a duty to remain knowledgeable of the DNR's requirements, including requirements of the federal asbestos NESHAP regulations.

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WCSD is responsible for the actions of its general contractor and subcontractor. For these reasons, \$1,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

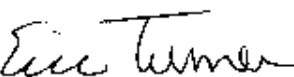
This administrative consent order is entered into knowingly by and with the consent of WCSD. For that reason, WCSD waives the right to appeal this administrative consent order or any part thereof.

**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 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 section 455B.191.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 17 day of  
March, 2009

  
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Washington Community School District

Dated this 18th day of  
February, 2009

Barb Stock (No asbestos file number); Kelli Book; Marion Burnside; EPA; VII.C.4