

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

IN THE MATTER OF:

Gunder Road Holdings, LLC
Fayette County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2009-AQ-11

TO: Jeff Cahill
Gunder Road Holdings, LLC
1555 Southcross Drive West
Burnsville, MN 55306

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Gunder Road Holdings, LLC (Gunder Road) for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP), open burning, and solid waste disposal violations in connection with a demolition project at the Lilac Hotel in West Union, Iowa. 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:

Marion Burnside
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, IA 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:

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

II. JURISDICTION

This administrative consent order is issued pursuant to 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 or permits issued pursuant to that part; the rules 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

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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.

III. STATEMENT OF FACTS

1. On June 23, 2008, the DNR received a complaint alleging a motel in West Union, Iowa was being demolished. The complainant stated the demolition debris was being taken to an old meat packing plant on the southeast side of town and was being burned. The complainant stated that Kevin Cline was performing the demolition and burning.

2. On June 25, 2008, Marion Burnside, DNR asbestos NESHAP coordinator, conducted a NESHAP inspection at the Lilac Motel located at 310 Highway 150 North in West Union. During the inspection, Mr. Burnside determined that Mr. Cline's company Cline's Construction had demolished the motel and burned part of the debris and Mr. Burnside was told by Jerry Blue that he was the owner of the motel. The remaining debris had been taken to the Fayette County Landfill as regular construction and demolition waste. Waste shipment records indicate that approximately 29 tons had been taken to the landfill as regular construction and demolition waste. Mr. Burnside discovered dry suspect material in the form of transite at the burn site. Smoke was observed coming from the burn pile. Mr. Burnside discovered dry suspect material in the form of floor tile, linoleum, dry wall, textured paint, and vermiculite at the demolition site. Mr. Burnside collected samples for asbestos content analysis. Following the inspection, Mr. Burnside determined that a thorough asbestos inspection had not been conducted prior to demolition and that the required notification had not been submitted to the DNR.

3. On July 3, 2008, Mr. Burnside submitted the samples collected on June 25, 2008 to the University of Iowa Hygienic Laboratory for asbestos content analysis. On July 9, 2008, the DNR received the analytical results for the samples submitted to the University of Iowa Hygienic Laboratory on July 3, 2008. The analytical results revealed the following: transite contained 20% Chrysotile asbestos, linoleum contained 12% Chrysotile asbestos, floor tile contained 19% Chrysotile asbestos, 12 % Chrysotile asbestos and 22% Chrysotile asbestos, and vermiculite contained 2% Actinolite asbestos.

4. On July 9, 2008, DNR issued Notice of Violation letters to Cline's Construction and Mr. Blue for several violations in connection with the June 25, 2008 inspection. The violations included: failure to conduct a thorough inspection, failure to submit a proper notification, failure to remove all asbestos containing material prior to demolition activities, failure to keep all asbestos containing material adequately wet, failure to have a trained supervisor on site during demolition activities, failure to remove all asbestos containing material prior to intentional burning, failure to seal all asbestos containing material in leak tight containers, failure to dispose of asbestos containing material at a proper landfill, and failure to follow the state's open burning regulations. The letters required Mr. Blue and Cline's Construction to obtain the services of an asbestos abatement contractor to conduct and direct the cleanup of the demolition and burn sites.

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5. On July 28, 2008, DNR received cleanup notifications for the demolition and burn sites. On July 29, 2008, Active Thermal Concepts, Incorporated started to remove all asbestos containing material from the demolition site and the burn site and dispose of it at the landfill as asbestos containing waste material.

6. On February 8, 2009, the DNR was notified that Jerry Blue was not the owner of the property and never had been. The owner of the property is Gunder Road.

7. On February 20, 2009, Cline's Construction submitted pictures and a letter explaining that some of the materials from the hotel had been recycled prior to the demolition and any burning.

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. 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 61, subpart M.

2. 40 CFR 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. The above facts demonstrate non-compliance with this provision.

3. 40 CFR 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 hotel. The above facts demonstrate non-compliance with this provision.

4. 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 with the procedures. The facts in this case indicate that Gunder Road was in compliance with these provisions when the demolition project occurred.

5. 40 CFR section 61.145(e)(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. The facts in this case indicate that the regulated asbestos containing material was not removed prior to demolition and burning of the demolition debris. The above facts demonstrate noncompliance with this provision.

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6. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. The facts in this case indicate that the demolition debris was dry. The above facts demonstrate noncompliance with this provision.

7. 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 onsite 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. The facts of this case indicate that the required trained supervisor was not on site during the demolition of the motel. The above facts demonstrate noncompliance with this provision.

8. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a) provides that there is to be no discharge of visible emissions to the outside air during the collection, processing (including incineration), packaging, or transporting of any asbestos containing waste material generated by the source, or use of one of the emission control and waste treatment methods specified in paragraphs (a)(1) through (4) of this section. The facts in this case indicate that the demolition debris was burned and smoke was still rising from the demolition debris at the time of inspection. The above facts demonstrate noncompliance with this provision.

9. 40 CFR 61.150(a)(1)(iii) provides that after all asbestos containing waste material is wet, it must be sealed in leak-tight containers while still wet; or, for materials that will not fit into containers without additional breaking, materials must be put into leak-tight wrapping. The facts in this case indicate that the demolition debris was not sealed in a leak-tight container and it was dry. The above facts demonstrate noncompliance with this provision.

10. 40 CFR 61.150(b) states that all asbestos containing waste material shall be deposited as soon as is practical by the waste generator at a waste disposal site operated in accordance with the provisions of 40 CFR 61.154. The facts in this case indicate that the waste was not taken to a landfill operated in accordance with 40 CFR 61.154. The above facts demonstrate noncompliance with this provision.

11. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

12. 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 above facts demonstrate noncompliance with this provision.

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13. 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.

14. 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. A portion of the demolition debris from the motel was taken off-site and burned rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, the DNR orders and Gunder Road agrees to do the following:

1. Pay a penalty of \$5,000.00 in accordance with the following payment plan:

\$216.00 due April 10, 2009;	\$208.00 due April 10, 2010;
\$208.00 due May 10, 2009;	\$208.00 due May 10, 2010;
\$208.00 due June 10, 2009;	\$208.00 due June 10, 2010;
\$208.00 due July 10, 2009;	\$208.00 due July 10, 2010;
\$208.00 due August 10, 2009;	\$208.00 due August 10, 2010;
\$208.00 due September 10, 2009;	\$208.00 due September 10, 2010;
\$208.00 due October 10, 2009;	\$208.00 due October 10, 2010;
\$208.00 due November 10, 2009;	\$208.00 due November 10, 2010;
\$208.00 due December 10, 2009;	\$208.00 due December 10, 2010;
\$208.00 due January 10, 2010;	\$208.00 due January 10, 2011;
\$208.00 due February 10, 2010;	\$208.00 due February 10, 2011; and
\$208.00 due March 10, 2010;	\$208.00 due March 10, 2011

If any of the above-mentioned payments are not made in accordance with the schedule, the remaining balance of the penalty shall be due immediately.

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) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal 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 at 567 IAC chapter 10. Pursuant to this rule, 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 a \$5,000.00 penalty. The administrative penalty assessed by this order is determined as follows:

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Economic Benefit - Failure to follow the proper asbestos NESHAP regulations and solid waste disposal regulations by the improper open burning and disposal of the buildings creates a potential cost savings. In this case, the buildings had already been demolished therefore the DNR bases its estimates on motels of similar size. Based on a similar size motel, it is estimated that 50-60 asbestos samples would have been required. The estimated cost would be \$1,300.00 to \$1,500.00. The DNR estimates that the hotel debris would have equaled 100 tons. Cline's Construction disposed of 29 tons of the debris at the Fayette County Landfill as regular construction and demolition waste. It is estimated that \$3,850.00 was saved in landfill fees by burning a portion of the debris. Based on the above-mentioned information, \$1,500.00 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 pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition and burning of the structures. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above-mentioned information, \$2,500.00 is assessed for this factor.

Culpability - Gunder Road has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The open burning rules and the NESHAP violations were significant in this demolition operation, both sets of regulations have been in place for over 30 years. Gunder Road has the responsibility to know and follow the regulations that are designed to prevent public exposure to environmental hazards. Therefore, \$1,000.00 is assessed for this factor.

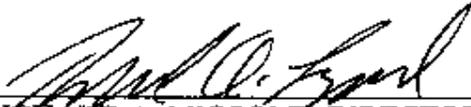
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Gunder Road. For that reason, Gunder Road waives its 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 sections 455B.146 and 455B.307.

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RICHARD A. LEOPOLE, DIRECTOR
Iowa Department of Natural Resources

Dated this 27 day of
March, 2009.



GUNDER ROAD HOLDINGS, LLC

Dated this 20th day of
March, 2009.

No Asbestos Number (through Barb Stock); Kelli Book; Marion Burnside; DNR Field Office 1; EPA; VI.C,
VII.C.1, and VII.C.4