

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TIM VOGL, DBA ARCADIA COUNTRY STORE L L C.
and TIM VOGL TRUCKING INC

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; 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; 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. Tim Vogl is the owner of property located at 320 Division Street in Arcadia, Carroll County, Iowa. This property was formerly the location of the Arcadia Country Store L.L.C. The Arcadia Country Store L.L.C., building was located on the property when Tim Vogl purchased the property in February 2006. Tim Vogl also is the owner of Tim Vogl Trucking Inc, located at 19501 Eagle Ave., in Arcadia. Arcadia Limestone Co also is located in Arcadia.

2. On December 16, 2008, Dan Stipe of DNR Field Office 4 was driving through Arcadia en route to another destination, when he observed that the Arcadia Country Store had been demolished and the debris had been hauled away. Mr Stipe took pictures of the site, documenting that the building had been removed.

3. Marion Burnside, DNR asbestos inspector, was notified by Mr. Stipe. Mr. Burnside determined that the required asbestos NESHAP demolition notification had not been filed with DNR.

4. On December 17, 2008, Mr. Burnside contacted Tim Vogl. Mr. Burnside determined from talking to Mr. Vogl that Arcadia Limestone Co. helped Mr. Vogl demolish the Arcadia Country Store building and haul the debris to another location, where the building debris was burned. The site where the demolition debris was burned is property owned by Tim Vogl at 19501 Eagle Avenue in Arcadia. This property is the main office of Tim Vogl Trucking. No asbestos removal contractor was on site during the demolition, asbestos NESHAP removal

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requirements were not followed, and DNR was not notified of the removal of the demolition debris or the burning of the demolition debris at the new location.

5. A January 7, 2009, Notice of Violation letter (NOV) was sent by Mr. Burnside to Tim Vogl at Tim Vogl Trucking, citing Mr. Vogl for the asbestos NESHAP-related violations that occurred in connection with the demolition of the Arcadia Country Store building. A January 7, 2009, NOV also was sent to Tom Eich at Arcadia Limestone Co. The letters required that Tim Vogl Trucking and Arcadia Limestone Co. obtain the services of an asbestos abatement contractor to conduct and direct the cleanup of the demolition and burn sites.

6. A January 16, 2009, letter was sent by Dan Stipe of DNR Field Office 4 to Tim Vogl at Tim Vogl Trucking and to Tom Eich at Arcadia Limestone Co., citing these entities for violations of the solid waste disposal and open burning laws. This letter reiterated the requirement in Mr. Burnside's January 7, 2009, letter that Tim Vogl Trucking and Arcadia Limestone Co. were required to obtain the services of an asbestos abatement contractor to conduct and direct the cleanup of the demolition and burn sites.

7. DNR has evidence that both the January 7 and January 16 letters were received by the entities to whom they were addressed. To date, no further action has been taken by Tim Vogl, Tim Vogl Trucking, or Arcadia Limestone Co.

8. Tim Vogl has a previous history of violation of DNR rules. On October 31, 2000, Administrative Order No. 2000-WW-37 was issued to Tim Vogl for wastewater violations.

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.

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 above facts demonstrate violations of this provision.

3. 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

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portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR Part 61, subpart M.

4. 40 CFR section 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 the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the buildings. The above facts indicate a violation of this provision.

5. 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. DNR has no record of receiving the required notification for the demolition of the building. The above facts indicate a violation of this provision.

6. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

7. 567 IAC 100.4 prohibits a private or public agency 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 non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and Tim Vogl and Tim Vogl Trucking agree to the following:

1. Tim Vogl and Tim Vogl Trucking shall pay a penalty of \$4,500.00 within 45 days of the date this order is signed by the Director;

2. Tim Vogl and Tim Vogl Trucking shall comply in the future with the regulations concerning disposal of solid waste, open burning and asbestos NESHAP compliance; and

3. Tim Vogl and Tim Vogl Trucking shall remove all remaining solid waste from the Tim Vogl Trucking property located at 19501 Eagle Ave. in Arcadia and shall dispose of it at a permitted sanitary disposal project and shall submit landfill receipts to DNR Field Office No. 4 by no later than 45 days from the date this order is signed by the Director. The waste being removed shall be treated as Asbestos Containing Material.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
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VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$4,500.00 is assessed by this administrative consent order. The penalty must be paid within 45 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

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 through 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 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Tim Vogl and Tim Vogl Trucking have achieved an economic benefit from open burning and improper waste disposal. Tim Vogl and Tim Vogl Trucking also have achieved an economic benefit by failing to comply with the asbestos NESHAP requirements. The Carroll County Sanitary Disposal Project charges \$50.00 per ton for in-county Construction and Demolition (C & D) wastes containing friable Asbestos Containing Material (ACM). A conservative estimate of the size of the building that was demolished would be 20' by 25', or 500 square feet. It is estimated that there would have been approximately 50 pounds of solid waste per square foot. This would equal 25,000 pounds of C & D waste or 12.5 tons of C & D waste. Due to the lack of an asbestos NESHAP-required inspection, all the solid waste remaining must be treated as ACM. 12.5 tons multiplied by \$50.00 per ton equals \$625.00. Therefore, \$625.00 is assessed for this factor.

Gravity of the Violation – DNR has determined at this time that the most equitable and efficient means of resolving this matter is through the issuance of an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to properly dispose of solid waste and properly abate asbestos contaminated materials threatens the integrity of the regulatory program. Tax dollars were expended to investigate, document, and respond to this violation. Improper solid waste disposal and open burning, especially when the solid

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waste may contain asbestos, can degrade water quality and contribute contaminants to land, water, and the air, as well as threaten public health. \$1,000.00 is assessed for solid waste violations, and an additional \$1,000.00 is assessed for air quality violations. Therefore, a total of \$2,000.00 is assessed for this factor

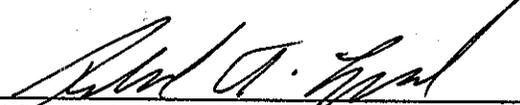
Culpability – Tim Vogl and Tim Vogl Trucking have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's requirements. Also, Tim Vogl has a previous history of DNR rules. Administrative Order No. 2000-WW-37 was issued against Tim Vogl on October 31, 2000, for wastewater violations. Therefore, \$1,875.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Tim Vogl and Tim Vogl Trucking. For that reason, Tim Vogl and Tim Vogl Trucking waive their rights to appeal this order or any part thereof.

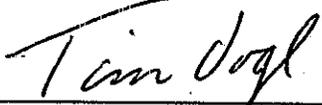
VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 14 day of
April, 2010.



Tim Vogl, dba Arcadia Country Store L.L.C.

Dated this 7 day of
April, 2010.

no agent

AUTHORIZED AGENT
Tim Vogl Trucking Inc

Dated this _____ day of
_____, 2010

Carroll County Air Quality file; Anne Preziosi; DNR Field Office 4; VII.C.2