

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

<p>IN THE MATTER OF:</p> <p>ACTIVE THERMAL CONCEPTS, INC. Linn County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align:center">NO. 2010-AQ-01</p>
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IO: Terry Beard, Owner
Active Thermal Concepts, Inc.
1110 Industrial Avenue
Hiawatha, IA 52233

David T. Reisner, Registered Agent
Active Thermal Concepts, Inc.
1110 Industrial Avenue
Hiawatha, IA 52233

I. SUMMARY

This administrative consent order is entered into between Active Thermal Concepts, Inc. (Active Thermal) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) violations in connection with an asbestos removal project at the Old Grain Elevator at 401 Gordon Street in Masonville, Iowa. In the interest of avoiding litigation the parties have agreed to the provisions below.

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
Windsor Heights, Iowa 50324
Phone: 515/281-8443

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
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

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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 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, 2009, DNR received an original asbestos NESHAP notification from Active Thermal for the removal of 8,600 square feet of asbestos containing transite panels from the Old Grain Elevator in Masonville, Iowa. The notification indicated the removal would occur between March 23, 2009 and March 26, 2009.

2. On March 30, 2009, DNR received a revised notification from Active Thermal for the same project mentioned in Paragraph 1. The revision extended the end date of the removal project until March 28, 2009.

3. On March 31, 2009, Marion Burnside, DNR asbestos NESHAP coordinator, conducted a routine inspection at the Masonville grain elevator. Active Thermal was in the middle of the asbestos removal at the time of the inspection, but no one from Active Thermal was on site at the time of the inspection. During the inspection, Mr. Burnside observed dry suspect material in the form of friable transite. The suspect material was found on the ground and on the side of the building in an area where Active Thermal had been removing asbestos. Mr. Burnside took pictures and collected a sample of the dry suspect material.

4. On April 1, 2009, DNR received a second revised notification from Active Thermal for the same project mentioned in Paragraph 1. The revision extended the end date of the removal project until April 10, 2009.

5. On April 1 and 2, 2009, Mr. Burnside spoke with Active Thermal's site supervisor by telephone. In these conversations Mr. Burnside explained the definition of regulated asbestos containing material and how it applied to transite. This supervisor then found the remaining pieces of transite on the ground around the facility and properly disposed of the debris with the other debris from the project.

6. On April 8, 2009, Mr. Burnside submitted the sample collected on March 31, 2009 to the University of Iowa Hygienic Laboratory for asbestos content analysis. On April 13, 2009, DNR received the analytical results of the sample. The test results showed that the sample contained 25% Chrysotile asbestos.

7. On May 7, 2009, DNR issued a Notice of Violation to Active Thermal for emission control procedure and asbestos management violations. A similar Notice of Violation was sent to the City of Masonville.

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8. Active Thermal has previous knowledge of the asbestos NESHAP regulations and has been cited for a past violation. On September 10, 2008, DNR conducted a NESHAP inspection at an Iowa Department of Transportation demolition project in Clinton, Iowa. Active Thermal was the asbestos abatement contractor for the project, completing asbestos removal from a house and apartment building. DNR found dry pieces of transite on the buildings and on the ground around the buildings. Sample testing showed that the debris was 20% Chrysotile asbestos. On November 6, 2008, DNR issued a Notice of Violation to Active Thermal for emission control procedure and asbestos management violations.

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 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. During the inspection on March 31, 2009, Mr. Burnside discovered dry asbestos containing material on the ground. The above facts indicate a violation of this provision.

3. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. During the inspection on March 31, 2009, DNR found pieces of dry asbestos containing material that was not properly contained. The above facts indicate noncompliance with this waste disposal provision.

V. ORDER

THEREFORE, the DNR orders and Active Thermal agrees to do the following:

1. Active Thermal shall pay a penalty of \$2,000.00 in accordance with the following payment schedule. If any of the payments are not made in accordance with the schedule, the remaining penalty shall be due immediately:

\$1,000.00 due May 1, 2010 and \$1,000.00 due May 1, 2011.

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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 \$2,000.00. The administrative penalty is determined as follows:

a. Economic Benefit. Upon notification Active Thermal properly cleaned up the dry asbestos containing material, so any economic benefit was minimal. Therefore, no economic benefit amount has been assessed.

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 that 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 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. Wetting and sealing asbestos-containing waste material into leak-tight containers are the main preventive measures emphasized by NESHAP as ways to control asbestos emission and prevent exposure to asbestos fibers. Within a period of seven months, DNR has found the same emission control and asbestos management violations by Active Thermal on two different projects. For these reasons, \$1,500.00 is assessed for this factor.

c. Culpability. Active Thermal has a duty to remain knowledgeable about the DNR's requirements, including requirements of the federal asbestos NESHAP regulations. Active Thermal has been notified of the asbestos requirements in the past and had been issued a Notice of Violation less than five months before the events cited in this administrative consent order. Active Thermal is a licensed asbestos abatement contractor with a thorough knowledge of proper asbestos removal techniques. Leaving asbestos containing transite debris exposed in a dry condition demonstrates a disregard of NESHAP. For these reasons, \$500.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

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

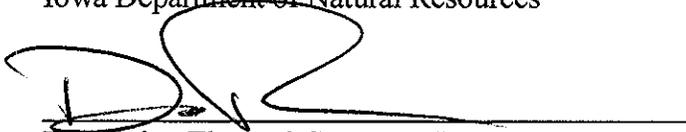
VIII. NONCOMPLIANCE

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.146.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 19 day of
Feb., 2010



For Active Thermal Concepts, Inc.

Dated this 8th day of
February, 2010

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