

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

IN THE MATTER OF:

**RANDY BACHMAN dba BACHMAN
TILING & EXCAVATING**

Calhoun County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AQ- 24

NO. 2010-SW- 21

TO: Randy Bachman
502 E. Scuyler Street
Pomeroy, Iowa 50575

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Randy Bachman dba Bachman Tiling & Excavating (Bachman Tiling) for the purpose of resolving the air quality and solid waste disposal violations which occurred during the demolition and disposal of a commercial building in Pomeroy, 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:

Brandon Miner, Field Office 3
Department of Natural Resources
1900 N. Grand Ave.
Spencer, Iowa 510301
Phone: 712/262-4177

Marion Burnside
Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8443

Relating to Legal Requirements:

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

Payment of Penalty to:

Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This 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. Pomeroy Rental, L.L.C. owned an old dry cleaning building on property located on Ontario Street in Pomeroy, Iowa. Pomeroy Rental, L.L.C. hired Bachman Tiling & Excavating to demolish the building.
2. On August, 14 2009, the DNR Field Office 3 received a complaint alleging that a building was being demolished and burned in Pomeroy.
3. On August 14, 2009, Brandon Miner, DNR Field Office 3 environmental specialist, investigated the complaint. From conversations with city officials, Mr. Miner determined that Bachman Tiling had demolished the building, dumped the debris into a pit on a neighboring piece of property, and burned it. The burn pit was still smoldering when Mr. Miner conducted his inspection. Mr. Miner took photographs of the area. Mr. Miner spoke with Randy Bachman and instructed him to put the fire out, leave the pit open, and to put a fence around it until an asbestos check could be done.
4. On September 8, 2009, Marion Burnside, DNR asbestos coordinator conducted an inspection at the building site in Pomeroy. Mr. Burnside discovered dry transite material in the demolition debris and collected a sample of the debris. The sample was submitted to the University of Iowa Hygienic Laboratory for asbestos analysis. The laboratory results indicated the transite contained 20% Chrysotile asbestos. After discussing the situation with Mr. Miner, Mr. Burnside determined that the building had not been inspected for asbestos-containing material prior to demolition and that the DNR had never been properly notified prior to the demolition.
5. On October 27, 2009, DNR issued a Notice of Violation letter to Bachman Tiling for the violations discovered by Mr. Burnside and Mr. Miner. The violations included failure to conduct a thorough inspection, failure to submit a demolition notification, failure to remove asbestos containing material prior to demolition, failure to have a licensed contractor on site, failure to remove all asbestos containing material prior to burning, failure to discharge no visible

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emissions, failure to seal asbestos containing material in leak tight containers, and open burning. A Notice of Violation letter was also issued to the building owner.

6. In October 2009, Midwest Construction Services cleaned up the site of ashes and building debris and took an estimated 150 cubic yards of asbestos containing material to the North Central Iowa Regional Solid Waste Agency. An Asbestos Containing Materials Manifest Waste Shipment Record, documenting the clean-up and disposal of the material, was filed on October 5, 2009.

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 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. 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. 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). Bachman Tiling demolished the building and burned it in a pit in Pomeroy. When Mr. Miner arrived on site in August 2009, the demolition debris was still smoldering. The above facts demonstrate a violation of this provision.

3. 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. Bachman Tiling demolished the building and burned it in a pit rather than disposing of it at a landfill. The above facts demonstrate noncompliance with this provision.

4. 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 facts in this case indicate no testing was performed prior to the demolition of the building. The above facts demonstrate noncompliance with this provision.

5. 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. The specific requirements for notification are contained in the subsection. Proper and timely notification was not

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given prior to the demolition of the building. The above facts demonstrate noncompliance with this provision.

6. 40 CFR 61.145(c) details the procedure for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The above facts demonstrate noncompliance with this provision.

7. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. During an inspection on September 9, 2009 Mr. Burnside found that the asbestos containing material, in the form of transite, had not been removed prior to the demolition. The facts in this case indicate a violation of this provision.

8. 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 an inspection on September 9, 2009, Mr. Burnside found dry asbestos containing material, in the form of transite. The facts in this case indicate a violation of this provision.

9. 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 the provisions of this regulation and the means of complying with them, is present. There was not a trained supervisor on site when the demolition occurred and the asbestos was disturbed. The above facts demonstrate noncompliance with this provision.

10. 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 in a pit in the center of Pomeroy and, as a result, asbestos contaminated smoke blew into the town of Pomeroy. These facts demonstrate noncompliance with this provision.

11. 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 an inspection on September 8, 2009, Mr. Burnside found dry asbestos containing

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material that had not been contained. The above facts indicate noncompliance with this provision.

V. ORDER

THEREFORE, DNR orders and Bachman Tiling agrees to do the following:

1. Bachman Tiling shall pay a penalty of \$4,800.00 in accordance with the following payment schedule. If any of the payments are not received in accordance with the payment schedule, the remaining portion of the penalty shall be due immediately.

\$200.00 due May 15, 2010;	\$200.00 due May 15, 2011;
\$200.00 due June 15, 2010;	\$200.00 due June 15, 2011;
\$200.00 due July 15, 2010;	\$200.00 due July 15, 2011;
\$200.00 due August 15, 2010;	\$200.00 due August 15, 2011;
\$200.00 due September 15, 2010;	\$200.00 due September 15, 2011;
\$200.00 due October 15, 2010;	\$200.00 due October 15, 2011;
\$200.00 due November 15, 2010;	\$200.00 due November 15, 2011;
\$200.00 due December 15, 2010;	\$200.00 due December 15, 2011;
\$200.00 due January 15, 2011;	\$200.00 due January 15, 2012;
\$200.00 due February 15, 2011;	\$200.00 due February 15, 2012;
\$200.00 due March 15, 2011;	\$200.00 due March 15, 2012;
\$200.00 due April 15, 2011;	\$200.00 due April 15, 2012;

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 order with an administrative penalty of \$4,800.00. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that the DNR 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

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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." Failure to follow the proper asbestos NESHAP regulations and solid waste disposal regulations by the improper open burning and disposal of the building has allowed Bachman Tiling to save time and money. Bachman Tiling was able to avoid the cost of an asbestos inspection and saved time by not notifying the DNR of the demolition. The estimated cost of an inspection and possible cost of asbestos abatement that Bachman Tiling avoided is \$1,000.00. Significant savings was achieved by burning the building rather than taking it to the landfill. It is estimated that the burning reduced the landfill fees by at least \$800.00. Both the contractor and owner are liable for the violations; therefore the estimated economic benefit is divided evenly between the Pomeroy Rental L.L.C. and Bachman Tiling. Based on the above considerations, \$900.00 is assessed for this factor.

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 decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The open burning of solid waste releases hazardous air pollutants, particulate matter, and other pollutants. These air pollutants pose a health risk, particularly to persons with pre-existing respiratory problems. Further, the pollutants resulting from open burning may pollute groundwater, and pose a risk to both human health and the environment. Asbestos, in particular, has been known to cause cancer and is a hazardous air pollutant. Failure to properly dispose of solid waste and failure to properly abate asbestos containing materials threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Compliance with proper solid waste disposal practices is expected of all persons in the state. Improper solid waste disposal and open burning, especially when the solid waste may contain asbestos, can degrade water quality and contribute contaminants to land, water, and the air as well as threaten public health. Based on the above considerations, \$3,000.00 assessed for this factor.

Culpability – The asbestos, open burning and solid waste regulations have been in place for at least 20 years. Bachman Tiling has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that it is subject to DNR's rules. Therefore, \$900.00 is assessed for this factor.

VII. APPEAL RIGHTS

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

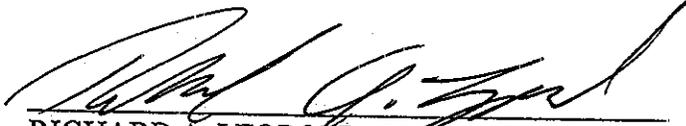
APR 26 2010

Director's Office

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VIII. NONCOMPLIANCE

Compliance with Section V of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in this order. Failure to comply with this order 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.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 20th day of
April, 2010.



Randy Bachman

Dated this 20th day of
April, 2010.

Con 10-6 Calhoun County (through Barb Stock); Kelli Book; DNR Field Office 3;
VI.C, VII.C.1, and VII.C.4