

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**JAMES BAILEY dba JAMES D.
BAILEY CONSTRUCTION
Van Buren County, Iowa**

ADMINISTRATIVE ORDER

NO. 2010-AQ- **35**
NO. 2010-SW- **30**

TO: James Bailey
James D. Bailey Construction
16729 Yak Blvd.
Douds, Iowa 52551

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

Relating to technical requirements:

Aaron Pickens, Field Office #6
Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Relating to appeal rights:

Kelli Book, Attorney
Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Appeal, if any, addressed to:

Director, Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

Penalty of payment to:

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

I. 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 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 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, DNR has jurisdiction to issue this Order.

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III. STATEMENT OF FACTS

1. On July 15, 2009, DNR Field Office 6 environmental specialist, Aaron Pickens received a call from the Davis County Sanitarian regarding hazardous material that had been discovered in a District building that was being demolished in Bloomfield, Iowa. The sanitarian informed Mr. Pickens that Jim Bailey was the contractor and that the demolition debris was being taken to a different location in town that the District owned. The sanitarian stated the debris was being burned at this location.

2. On July 16, 2009, Mr. Pickens contacted Sam Miller, District Superintendent. Mr. Miller told Mr. Pickens that the building being demolished was used by the maintenance staff and was being torn down as part of a new high school building project. Mr. Miller confirmed that Jim Bailey was the contractor who had been hired to perform the demolition. Mr. Miller stated that there had been no asbestos testing done on the storage building prior to the demolition.

3. On July 16, 2009, Mr. Pickens visited the demolition site and noted the foundation of a building approximately 20' x 30' in size. Most of the demolition waste had been removed from the site. Mr. Pickens then visited the other site in town where the demolition debris had allegedly been disposed of. Mr. Pickens observed fill dirt along the sides of the driveway and ashes in the ground around the fill, as well as a burned metal cattle panel and small amounts of unburned wood around the area. Mr. Pickens noted that the fill dirt and the ash indicated that the area had recently been covered up. He observed a dump truck owned by Jim Bailey and a skid loader on the property. Mr. Pickens spoke to a District school bus mechanic who indicated the demolition debris had been hauled to the site and burned on either July 13 or July 14, 2009 and Mr. Bailey covered it up on the morning of July 16, 2009.

4. On July 17, 2009, Mr. Pickens spoke to a District maintenance employee who was working on the clean-up of the project. The employee confirmed that the building had been demolished and hauled off site to be burned. He stated the District had been unaware that the demolition debris had been burned. The employee did not know if an asbestos inspection had been conducted prior to the demolition.

5. On July 17, 2009, Mr. Pickens spoke to Jim Bailey. Mr. Bailey stated he had demolished the building, transported the demolition debris off site, and burned the debris. Mr. Bailey indicated he was not aware of an asbestos inspection prior to the demolition.

6. On July 27, 2009, DNR issued a Notice of Violation letter to Mr. Bailey for the following violations: failure to conduct a thorough inspection prior to

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demolition, failure to submit a demolition notification, improper solid waste disposal, and open burning. The letter informed Mr. Bailey the matter was being evaluated for further enforcement. A Notice of Violation letter was also issued to the District for the same violations. The District submitted a letter and the disposal receipts indicating the area had been cleaned up and the material had been disposed of at the landfill.

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). Mr. Bailey confirmed that he had taken the demolition debris from the District demolition site to another property owned by the District and burned the demolition debris. The above facts demonstrate noncompliance with this provision.
3. Iowa Code section 455B.133 provides for the 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 federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 Code of Federal Regulations (CFR) part 61, subpart M.
4. 40 CFR section 61.145(a) requires 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 building. The above facts indicate a violation of this provision.
5. 40 CFR section 61.145(b) requires 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 such rules at 567 IAC chapters 100-123.

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7. 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. The demolition debris from the building was taken to another property owned by the District. The demolition debris was burned and buried rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, the DNR orders Mr. Bailey to do the following:

1. Pay a penalty of \$3,500.00 within 60 days of receipt of this Order.

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 that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste 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, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a \$3,500.00 penalty. The administrative penalty assessed by this administrative consent 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 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." Mr. Bailey was able to save time and money by disposing of the demolition debris by burning it rather than disposing of it at a regulated landfill. He saved tipping fees and transportation costs. It is estimated that the burning reduced the landfill costs by at least \$1,000.00. Based on the above-mentioned considerations, \$1,000.00 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

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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. The violation threatens 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. Additionally, compliance with proper solid waste disposal practices is expected of all entities in the 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 considerations, \$1,500.00 is assessed for this factor.

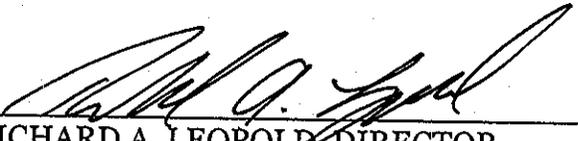
Culpability – Mr. Bailey has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. As the contractor of the project, Mr. Bailey should have been aware of the asbestos and solid waste disposal requirements. Based on the above considerations, \$1,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.138 and 455B.308 and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

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



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 29 day of
July, 2010.

Barb Stock (Con 10-6 Davis County); Kelli Book; Aaron Pickens (FO6); EPA; VI.C, VII.C.1, and VII.C.4