

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

IN THE MATTER OF: RUTHVEN FIRE DEPARTMENT, Inc.	ADMINISTRATIVE CONSENT ORDER NO. 2016-AQ-05
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TO: Ruthven Fire Department, Inc.
Dave Smith, Registered Agent
1202 Rolling Street
Ruthven, Iowa 51358

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Ruthven Fire Department, Inc. for the purpose of resolving air quality violations. 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:

Michelle Sabatini
Amber Wolf
Iowa Department of Natural Resources
Field Office No. 3
Gateway North Mall
1900 North Grand Avenue
Spencer, Iowa 51301
Phone: 712-262-2901

Relating to legal requirements:

Anne Preziosi
Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515-725-9551

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 consent order is issued 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

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Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that division; 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. Mark A. Klein and Beverly R. Klein, and Mark J. Miller and Lisa R. Miller, are the owners of property located at 3252 335th Avenue, Ruthven. This property (the site) is located on Lost Island Lake, Clay County. The Clay County, Iowa assessor parcel ID is 973536452003.

2. On August 26, 2015, DNR Field Office No. 3 received a complaint that a cabin on Lost Island Lake had been demolished with the intent to burn it later on the same day. DNR Field Office No. 3 Environmental Specialist Amber Wolf received the complaint.

3. DNR Field Office No. 3 Environmental Specialist Michelle Sabatini visited the site at approximately 4:00 pm on August 26. She observed that the cabin had been demolished, but the demolition debris had not been burned. Ms. Sabatini observed the following materials in the demolition debris pile: asphalt shingles, insulation, life jackets, wiring, a barrel, and other non-structure materials. Since there was no one at the site during her visit, Ms. Sabatini left her business card in the door window of the excavator located approximately 10 feet from the demolition debris pile, in an effort to contact the owners prior to any illegal open burning.

4. On August 26 at approximately 6:30 pm, while driving on Highway 18, Ms. Sabatini observed black smoke emanating from the site. She returned to the site, and observed that the demolition debris pile from the cabin was burning. Upon arriving at the site, Ms. Sabatini met with Mr. Miller and Fire Chief Al Grange of Ruthven Fire Department, Inc. Mr. Klein was not available at the time. Mr. Miller told Ms. Sabatini that Mr. Klein had moved the excavator prior to igniting the fire. Mr. Miller stated that he, therefore, had not seen Ms. Sabatini's business card that had been placed in the window of the excavator and so he had not contacted Ms. Sabatini prior to the fire.

5. Fire Chief Al Grange was present at the site representing Ruthven Fire Department, Inc. Fire Chief Grange told Ms. Sabatini that the fire department was responsible for keeping the burn under control. The Ruthven Fire Department, Inc., was present at the site solely to assist in the event that the fire would burn out of control and threaten nearby properties. The Ruthven Fire Department, Inc., had not given permission for the open burn to occur.

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6. Property owner Mr. Miller was at the site, along with Fire Chief Grange, watching the burn take place. Ms. Sabatini explained to Mr. Miller and Mr. Grange that it is illegal for individuals to burn a residence without the assistance of a local fire department, and that the local fire department, as well as other parties involved, must comply with DNR rules when conducting either training fires or controlled burns. Ms. Sabatini explained that a building must be structurally intact in order to conduct a training fire. She also explained that controlled burns require approval from a city council. Further, in both instances, an asbestos inspection must be conducted and the DNR must be notified prior to the fire.

7. On October 13, 2015, DNR Field Office No. 3 sent Notice of Violation letters to Mark J. Miller, Mark A. Klein, and Fire Chief Al Grange at the Ruthven Fire Department. The Notice of Violation letters explained the requirements for training fires conducted by fire departments and for the controlled burn of a demolished building conducted by a fire department.

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 illegal open burning of demolition debris from the cabin in this case demonstrates a violation of this provision. The property owners - Mark A. Klein, Beverly R. Klein, Mark J. Miller, and Lisa R, Miller - were responsible for appropriate disposal of the building.

3. Iowa Code section 455B.133(9) provides that Commission shall adopt rules allowing asphalt shingles to be burned in a fire set for the purpose of bona fide training of public or industrial employees in firefighting methods only if a notice is provided to the director containing testing results indicating that the asphalt shingles do not contain asbestos. The Commission has adopted 567 IAC 23.2(3)"g", which provides, in partial summary, that for a fire to be considered a training fire:

- The building must be structurally intact.
- The purpose of the fire must be for a bona fide training of public or industrial employees in firefighting methods.
- The DNR must be notified and the "Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building" DNR Form 542-

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9-8010 must be postmarked or delivered to the director at least 10 days prior to the proposed burn date.

- Notification must be made to the DNR in accordance with 40 CFR 61.145, the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP).
- An asbestos inspection must be conducted. All asbestos containing material must be removed prior to the fire.
- During each calendar year, only two building fires (both training fires and the controlled burning of a demolished building) containing asbestos-free asphalt roofing may be conducted by each fire department.

Additional requirements are present in the statute and rules. Ruthven Fire Department, Inc., did not follow the appropriate protocol for either a certified training fire, or a controlled burn of a demolished building.

4. Iowa Code section 455B.133(9) provides that Commission shall adopt rules allowing a city to conduct a controlled burn of a demolished building subject to the requirements that are in effect for the proper removal of all asbestos-containing materials prior to demolition and burning. The Commission has adopted 567 IAC 23.2(3)"j". Iowa Code section 455B.133(9) and 567 IAC 23.2(3)"j" provide, in partial summary, that in order to burn a demolished building:

- The burn must have the approval of the city council with appropriate documentation and the city must ensure that all air quality rules are followed.
- The city fire department or a city official, on behalf of the city, shall submit to the DNR a completed notification postmarked at least 10 working days prior to commencing demolition.
- The "Notification of an Iowa Training Fire- Demolition or a Controlled Burn of a Demolished Building" DNR Form 542-9-8010 must be postmarked at least 30 days before the proposed controlled burn commences.
- An asbestos inspection must be conducted. All asbestos containing material must be removed before the building to be burned is demolished. Only two building fires containing asbestos-free asphalt roofing may be conducted.
- All non-structural materials must be removed prior to demolition and burning.
- The city must schedule and control the burn to ensure burning is completed by 6:00 p.m.

Additional requirements are present in the statute and rules. Ruthven Fire Department, Inc., did not follow the appropriate protocol for either a certified training fire, or a controlled burn of a demolished building.

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5. 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 NESHAP for asbestos found at 40 CFR Part 61, Subpart M.

6. 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 the commencement of demolition or renovation. The DNR has no evidence that any parts of the asbestos NESHAP were complied with, including thorough inspection, sampling for asbestos, asbestos removal, and department notification. The above facts indicate violations of these provisions. The cabin was demolished and burned without a required asbestos inspection conducted.

7. 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. DNR has no evidence of receiving the required notification for the demolition of the structures at the site. The above facts indicate a violation of this provision. The cabin was demolished without the required asbestos notification to the DNR prior to the demolition.

8. 40 CFR 61.145(c)(10) provides that if a building is demolished by intentional burning, then all asbestos containing material must be removed prior to burning in accordance with the provisions of the asbestos NESHAP. Mr. Meyer intentionally demolished and burned demolition debris from the structures at the site without identifying or removing any asbestos containing material. Further, Iowa law specifically recognizes that asbestos-containing asphalt shingles shall be removed from buildings prior to the burning of any demolition debris. See Iowa Code section 455B.133(10) and 567 IAC 23.2(3)(g)(6). The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, DNR orders and Ruthven Fire Department, Inc., agrees to the following:

1. Ruthven Fire Department, Inc., shall pay a penalty of \$1,500.00 within 30 days of the date this order is signed by the Director; and

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2. Ruthven Fire Department, Inc., shall cease all illegal open burning of combustible materials in the State of Iowa, and shall comply in the future with Iowa law concerning open burning; and

3. Within 90 days of the date of this order, Ruthven Fire Department, Inc., shall hold a training session so that its personnel may become familiar with the requirements for certified training fires and controlled burns of demolished buildings prior to conducting future burns. Also within 90 days of the date of this order, Ruthven Fire Department, Inc., shall provide to DNR in writing the schedule of the training sessions. In the future, Ruthven Fire Department, Inc., shall direct questions regarding training fires and controlled burns of demolished buildings to DNR Field Office No. 3.

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.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 administrative consent order with a \$1,500.00 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit –Ruthven Fire Department, Inc., received little, if any, economic benefit in this matter. Therefore no economic benefit penalty is assessed.

Gravity of the Violation –Illegal open burning can degrade air and water quality and contribute contaminants to both land and water resources as well as threaten public health. Open burning results in emission of particulates to the ambient air. Particulate matter from the open burning releases toxic substances into the air and threatens the integrity of the regulatory program. Therefore, \$750.00.00 is assessed to Ruthven Fire Department, Inc., for the gravity of the violations.

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Culpability – The prohibition against illegal open burning has been in
has existed in Iowa for over 35 years. It is the responsibility of Ruthven Fire
Department, Inc., to know and abide by these rules. Moreover, DNR provided
information to those involved in this matter that the burning of the demolished
cabin was a violation of Iowa law, yet the property owners and Ruthven Fire
Department, Inc., chose not to contact the DNR for assistance. Furthermore,
Ruthven Fire Department, Inc., should be knowledgeable of applicable burning
regulations when assisting civilians, and should refer questions to the DNR.
Therefore, \$750.00 is assessed to Ruthven Fire Department, Inc., for culpability.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the
consent of Ruthven Fire Department, Inc. For that reason, Ruthven Fire
Department waives its right 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 section 455B.146. 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.

Chuck Gipp
Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 6th day of
June, 2016.

Kevin Bates
Fire Chief ~~Al George~~, Ruthven Fire Department, Inc.
Kevin Bates

Dated this 6 day of
May, 2016.

DNR Field Office 3; Anne Preziosi; VII.C.2