

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

<p>IN THE MATTER OF:</p> <p>CEDAR RAPIDS COMMUNITY SCHOOL DISTRICT Linn County, Iowa</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align:center">NO. 2021-AQ- 15</p>
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TO: Noreen Bush, Superintendent
Cedar Rapids Community School District
2500 Edgewood Road NW
Cedar Rapids, Iowa 52405

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the Cedar Rapids Community School District (CRCSD) for the purpose of resolving asbestos violations which occurred during a renovation project at Kennedy High School in Cedar Rapids, Iowa. This administrative consent order requires CRCSD to do the following: 1) comply with all asbestos regulations during future restoration, renovation, or construction projects; 2) require future contractors and subcontractors to submit a full scope of work for each project being conducted at property owned by CRCSD; and 3) pay an administrative penalty in the amount of \$4,500.00.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: Relating to legal requirements:

Tom Wuehr, DNR Air Quality
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/725-9576

Kelli Book, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/210-3408

Payment of penalty to:

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

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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 prevent a violation of Iowa 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, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Kennedy High School is part of the CRCSD and is located at 4545 Wenig Road NE, Cedar Rapids, Iowa. CRCSD owns Kennedy High School and is responsible for the repair and renovation projects at the high school. The present school was constructed in 1967 with two main structures. Additions were constructed in 1990 and 2005. The total school has over 290,000 square feet of floor space. The building is a two-story split level with a partial basement, consisting of mainly a swimming pool and a boiler room. The school also houses a gymnasium and an auditorium. The student and staff population of Kennedy School is approximately 1,950.

2. On August 10, 2020 a severe weather event struck the Cedar Rapids area. All school buildings within the school district received varying degrees of damage. The roof system at Kennedy High School was severely damaged and resulted in significant water damage to the building.

3. On October 2, 2020, Jon Galbraith, CRCSD's Building and Grounds Manager, left a telephone message for Tom Wuehr, DNR Air Quality environmental specialist senior. Mr. Galbraith informed Mr. Wuehr there had been an asbestos disturbance at Kennedy High School. Jamie Pappion, Alliance Environmental Services, also notified Mr. Wuehr of the asbestos disturbance on October 5, 2020. District hired Perfection Property Restoration as the general contractor for the restoration work after the August storm damage and Alliance Environmental Services was hired by Perfection Property Restoration to monitor potential asbestos issues.

4. On October 6, 2020, Mr. Wuehr visited Kennedy High School to investigate the asbestos disturbance. Mr. Wuehr spoke with Mr. Pappion and later with Mr. Galbraith and Chris Gates, CRCSD's asbestos designee for the school district. Through these conversations, Mr. Wuehr learned that Perfection Property Restoration was hired by CRCSD to restore, repair, and cleanup storm damage at Kennedy High School. Room 251 had extensive water damage and floor tiles had buckled.

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5. Approximately a month before CRSCD notified DNR of the asbestos disturbance, Perfection Property Restoration personnel were directed by their management to remove asbestos containing floor tile in Room 251. CRSCD provided Perfection Property Restoration information about all known asbestos containing material in Kennedy High School prior to the start of the restoration project. The school plan listed the tiles as containing 4% Chrysotile asbestos and the room was listed at 731 square feet. Both CRSCD and Perfection Property Restoration had copies of the school plan prior to the project. The building was without power and was very warm. The Perfection Property Restoration personnel used large fans in the room to help ventilate and keep themselves cool. No precautions were taken in regards to asbestos and no asbestos regulations were followed for the removal. CRSCD did not become aware of the disturbance until a month later when Mr. Galbraith contacted DNR.

6. Mr. Wuehr inspected areas of the school where the wipe and air tests revealed asbestos fibers. Mr. Pappion had conducted the wipe and air tests. He notified DNR and CRSCD of the findings of the test results. Mr. Wuehr noted that Room 251 was estimated to be approximately 800 square feet and he observed suspect floor tile debris in Room 251 and the adjacent hallway. The material was in a dry and friable. Mr. Wuehr collected samples of the suspected material. The laboratory sample result indicated the suspect material contained 4% Chrysotile asbestos. The majority of people in the area over the prior month was Perfection Property Restoration personnel but some teachers and custodial staff may have been in the area during the same time.

7. Following the inspection, Mr. Wuehr directed Mr. Galbraith to close the school to everyone and only allow asbestos cleanup personnel in the area. Mr. Galbraith agreed and Mr. Wuehr stated he would return the following day.

8. On October 7, 2020, Mr. Wuehr returned to Kennedy High School observed that containment had been set up around the impacted area. Mr. Wuehr, Mr. Pappion, and Mr. Galbraith agreed to the proper cleanup procedures for the impacted area. Mr. Wuehr met with representatives of Perfection Property Restoration. They confirmed that their employees had removed the floor tile. Mr. Wuehr explained to both Perfection Property Restoration and CRSCD that Notice of Violation letters would be issued for the asbestos violations.

9. On October 27, 2020, DNR issued a Notice of Violation letter to CRSCD for the asbestos violations observed during the October 2020 investigation. The letter informed CRSCD that the matter was being referred for further enforcement.

10. On November 19, 2020, CRSCD responded to the Notice of Violation letter and stated that for future projects all contractors and subcontractors will be required to provide a full review of the scope of work.

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11. CRCSD has past knowledge of the asbestos regulations and has previous asbestos violations similar to those included in this administrative consent order. In 2015, CRCSD was issued a Notice of Violation letter for asbestos violations that occurred during a renovation project at Washington High School. The violations were referred to the Iowa Attorney General's Office in 2016. These violations were settled between the state of Iowa and CRCSD with a Supplemental Environmental Project. The project involved CRCSD developing and producing a series of asbestos informational videos made available for educational purposes for other school districts.

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. 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 CFR part 61, subpart M.

3. 40 CFR section 61.145(b)(1) requires written notification to be submitted to the DNR prior to beginning renovation. The specific requirements for this notification are contained in the subsection. The DNR has no evidence that a notification was submitted prior to the renovation at the school. The above facts indicate a violation of this provision.

4. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that CRCSD, as the owner of the building, was not in compliance with these provisions when the renovation occurred.

5. 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. Mr. Wuehr observed regulated asbestos containing material that had not been removed prior to renovation activities in Room 251 at Kennedy High School. The facts in this case indicate a violation of this provision.

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6. 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. Proper asbestos abatement did not occur prior to the renovation project. Mr. Wuehr found dry regulated asbestos containing material in Room 251 and the adjacent hallway in Kennedy High School. The facts in this case indicate a violation of this provision.

7. 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 on-site representative, such as a foreman or management level person or other authorized representative, trained in the provisions of this regulation and the means of complying with them, is present. The facts in this case indicate there was not a trained supervisor on site during the renovation of the building. The above facts indicate noncompliance with this provision.

8. 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. Mr. Wuehr found dry regulated asbestos containing material in Room 251 and the adjacent hallway in Kennedy High School. The facts in this case indicate a violation of this provision.

V. ORDER

THEREFORE, it is hereby ordered and CRCSD agrees to do the following:

1. Comply with all asbestos regulations during future restoration, renovation, or construction projects;
2. Require future contractors and subcontractors to submit a full scope of work for each project being conducted at property owned by CRCSD; and
3. Pay an administrative penalty in the amount of \$4,500.00.

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.

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-

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cited violations is the issuance of an administrative consent order with a \$4,500.00 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.” CRCSD saved the cost of proper asbestos abatement of the floor tile prior to removal of tile. The cost of proper abatement of floor tile is estimated to be between \$2,800.00 and \$4,000.00. Based on this information \$3,000.00 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. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to notify prior to the renovation and failure to comply with the proper asbestos removal and disposal procedures has likely caused asbestos fibers to be released into the air during the renovation. Numerous people were in the building while the asbestos was left uncontained for a month before it was discovered by CRCSD. These violations threaten the integrity of the regulatory program because compliance with the asbestos regulations is required of all persons in this state. Based on the above considerations, \$750.00 is assessed for this factor.

Culpability – CRCSD has a duty to remain knowledgeable of DNR’s requirements and to be alert to the probability that its conduct is subject to DNR’s rules. As a result of prior violations, CRCSD created asbestos training videos for other school districts and yet repeated the same violations that previously resulted in a referral to Iowa Attorney General’s Office. Based on the above considerations, \$750.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of CRCSD. For that reason, CRCSD waives the rights 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

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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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this _____ day of _____, 2021.



CEDAR RAPIDS COMMUNITY SCHOOL DISTRICT

Dated this 30 day of November, 2021.

Kelli Book; Tom Wuehr; DNR Field Office 6; EPA; VII.C.4