

**IOWA DEPARTMENT OF NATURAL RESOURCES**

**ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:  AMERICAN BATH GROUP, LLC	ADMINISTRATIVE CONSENT ORDER  NO. 2022-AQ- 06
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To: American Bath Group, LLC  
Kris Lusk  
EHS Director and Responsible Official  
435 Industrial Road  
Savannah, Tennessee 38379

American Bath Group, LLC  
Kris Lusk  
EHS Director and Responsible Official  
2908 N Court Street  
Ottumwa, Iowa 52501

American Bath Group, LLC  
CT Corporation System  
400 E. Court Avenue  
Des Moines, Iowa 50309

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and American Bath Group 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:**

Lucas Tenborg  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515-443-9508

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515-238-3429

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**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 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. American Bath Group, LLC., (American Bath Group) has removed existing permitted equipment and has placed new emission points at its facility in Ottumwa, Iowa. The facility plans to manufacture hot tubs and swim spas. Three Resin Booths (Emission Points (EPs) 101, 102, 103) and Spa Assembly Operations (EP 104) were installed without the required construction permits. This is in violation of 567 Iowa Administrative Code (IAC) 22.1(1), which prohibits the construction, installation or alteration of any equipment or control equipment without first obtaining a construction permit from the DNR.

2. American Bath Group (DNR Facility No. 90-01-023) has previously held construction permits under the name Praxis Companies and Praxis Mid-America. The facility ceased operation November 1, 2009, but retained the construction permits. In addition to construction permits, Praxis Mid-America (DNR Facility No. 90-01-023) was issued Title V Operating Permit No. 00-TV-038R1, with an expiration date of May 3, 2012. Praxis-America submitted a Title V renewal application on September 7, 2011, prior to the expiration date.

3. On April 14, 2021, American Bath Group informed DNR of its intention to restart the facility and requested guidance regarding construction activities that would require construction permits. A DNR Construction Permit Engineer responded on April 15, 2021, with guidance and requirements concerning construction permitting.

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4. On June 11, 2021, DNR and American Bath Group participated in a conference call regarding the need for construction permits and how to apply for construction permits. A follow up email was also provided by DNR.

5. On September 23, 2021, DNR Field Office 6 (FO6) conducted a site visit; however, no representative from the facility was available. FO6 contacted American Bath Group and was informed the facility was planning to open by the end of 2021.

6. Beginning on October 15, 2021, American Bath Group and DNR exchanged emails, and DNR again stated the need for American Bath Group to submit construction permit applications. DNR also informed American Bath Group of the need for it to apply for a Title V operating permit from DNR.

7. On November 11, 2021, American Bath Group informed DNR it was working on the permit applications.

8. On December 10, 2021, FO6 conducted a compliance visit to verify the operational status of the facility. FO6 observed the original permitted equipment had been removed and new equipment was being installed or already in place. The facility was advised to halt all construction until construction permits are issued.

9. On December 14, 2021, FO6 was informed by the American Bath Group Environmental Health Specialist that the facility was working on obtaining construction permits for the new equipment.

10. A January 11, 2022, Notice of Violation letter was issued to American Bath Group for violations of 567 IAC 22.1(1), which prohibits the construction, installation or alteration of any equipment or control equipment without first obtaining a construction permit from the DNR. The January 11 Notice of Violation letter required the facility to give written information to DNR by January 26, 2022, describing what actions would be taken to bring the facility into compliance.

11. On January 12, 2022, American Bath Group submitted construction permit applications to DNR. The construction permit applications were for three Resin Booths (EP 101, EP 102, and EP 103). These construction permit applications were assigned Project No. 22-015.

12. On January 21, 2022, DNR requested additional information from American Bath Group regarding the permit applications in Project No. 22-105. An amended permit application was submitted to include Spa Assembly Operations (EP 104). Emissions estimates included with the applications indicate that the facility will emit greater than 100 tons per year of VOCs and greater than 10 tons

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per year of a single HAP and greater than 25 tons per year of combined HAPs. Thus, the facility remains subject to the Title V requirements.

13. Also, on January 21, 2022, American Bath Group sent an email to DNR requesting to rescind construction permits for the following 9 emission points:

- 78-A-063-S1-R – Glass Booth 1 – EP 03
- 78-A-064-S1-R – Glass Booth 2 – EP 04
- 78-A-065-S1-R – Glass Booth 3 – EP 05
- 78-A-066-S1-R – Glass Booth 4 – EP 06
- 78-A-067-S1-R – Gel Booth 2 – EP 02
- 78-A-068-S1-R – Gel Booth 1 – EP 01
- 78-A-069-S1-R – Mold Repair – EP 11
- 78-A-070-S1-R – Grind Shack – EP 07
- 99-A-042-R – Mix Room – EP 09

American Bath Group informed DNR that the equipment associated with the above emission points has been removed from the facility.

14. On January 27, 2022, DNR toured the facility with an American Bath Group representative and documented that further construction had occurred since the December 10, 2021, site visit. Construction had continued to occur without the required construction permits.

#### 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.134(3) provides that the director of DNR shall grant, modify, suspend, terminate, revoke, reissue or deny permits for the construction or operation of new, modified, or existing air contaminant sources and for related control equipment.

3. 567 IAC 22.1(1) states unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph “c” of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit. As stated above, American Bath Group has installed equipment without first obtaining the required construction permits.

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4. 567 IAC 22.3(3) states that a permit may be issued subject to conditions which shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting.

**V. ORDER**

THEREFORE, DNR orders and American Bath Group agrees to the following:

1. Prior to operation of its Ottumwa facility, American Bath Group shall obtain all required construction permits; shall comply with construction permits once issued, including completion of any changes required to conform with issued construction permits and achieve compliance; and shall comply with all state and federal applicable air quality requirements;

2. In the future, American Bath Group shall obtain construction permits timely, in accordance with the provisions of 567 IAC 22.1(1), which states no person shall construct, install, reconstruct or alter any equipment, control equipment without first obtaining a construction permit;

3. Pursuant to the provisions of 567 IAC 22.113(4), within 90 days of startup of any of the equipment associated with Construction Permit Project No. 22-105, American Bath Group shall submit to DNR an application for a significant modification to its Title V operating permit; and

4. Within 30 days of the date this order is signed by the director, American Bath Group shall pay a penalty of \$10,000.00.

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the director to assess administrative penalties, a penalty of \$10,000.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the director. The administrative penalty is determined as follows:

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.

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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, 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 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – 567 IAC chapter 10 requires that 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, DNR 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.”

American Bath Group has gained an economic benefit by failing to timely obtain the required construction permits. On December 10, 2021, FO6 discovered that American Bath Group was constructing emission units without the required construction permits. American Bath Group did not submit construction permit applications until January 12, 2022. American Bath Group will be able to begin production sooner than if the facility had complied with the requirement to apply for and obtain construction permits prior to initiating construction.

The actual amount of product that American Bath Group will be able to produce during this period and the amount of profit is not known to DNR, but it is likely American Bath Group profited at least \$6,500.00 from the production days gained by constructing without the required permits.

For these reasons, \$6,500.00 is assessed for economic benefit.

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, DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter.

American Bath Group chose not to follow the DNR instructions and rule requirements to obtain construction permits prior to construction, which allowed American Bath Group to avoid potential permit restrictions and requirements. American Bath Group’s actions did not allow DNR to review the planned



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construction to determine the applicability of applicable air quality regulations, potential emission impacts, operating conditions, monitoring requirements, and whether the installation of control equipment is necessary. American Bath Group's actions threaten the integrity of the DNR's air quality program.

For these reasons, \$500.00 is assessed for gravity.

Culpability – American Bath Group was made aware of the requirements to obtain construction permits prior to commencing construction on the following dates: April 15, 2021; June 11, 2021; October 15-19, 2021; and December 10, 2021. American Bath Group did not submit permit applications until January 12, 2022, which is eight months after DNR informed American Bath Group of the requirement. Instead of obtaining construction permits, American Bath Group knowingly removed the existing equipment and reconstructed the facility.

DNR FO6 documented construction without the required permits on December 10, 2021, and instructed the facility to halt construction until construction permits were obtained. In a phone call with American Bath Group on December 14, 2021, FO6 advised the facility again to halt the construction occurring that is in violation of Iowa law. On January 27, 2022, FO6 conducted a follow-up site visit documenting further construction had occurred after the December 10, 2021, site visit. American Bath Group reported construction had been halted once the January 11, 2022, Notice of Violation letter was received. Prior to that time, American Bath Group continued construction against DNR instruction.

Prior to initiating construction, American Bath Group was aware construction permits were required before constructing, installing, reconstructing, or altering any equipment or control equipment. Upon DNR's discovery of the unpermitted construction American Bath Group continued to construct. American Bath Group's actions threaten the integrity of DNR's air quality program.

For these reasons, \$3,000.00 is assessed for culpability.

## **VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of American Bath Group. For that reason, American Bath Group 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.

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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.

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Kayla Lyon, Director  
Iowa Department of Natural Resources

Kris Lusk EHS Director  
American Bath Group, LLC

Dated this 4<sup>th</sup> day of  
MARCH, 2022.

DNR Air Quality Bureau; Field Office 6; Anne Preziosi; VII.A.1, VII.A.2.