

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

<p>IN THE MATTER OF:</p> <p>JACOB WAGONER dba WAGONER CONSTRUCTION, LLC Page County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2022-AQ- 07</p>
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TO: Jacob Wagoner
Wagoner Construction, LLC
822 N. 12th Street
PO Box 172
Clarinda, Iowa 51631

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jacob Wagoner dba Wagoner Construction, LLC for the purpose of resolving asbestos violations which occurred during a demolition project at the former Wilson Meat Packing Plant in Clarinda, Iowa. This administrative consent order requires Mr. Wagoner to: submit a demolition and cleanup plan and pay an administrative penalty in the amount of \$6,000.00.

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. Jacob Wagoner owns the former Wilson Meat Packing Plant located at 400 Leperla Street in Clarinda, Iowa. The facility, constructed in 1968, is situated on 5.27 acres and is approximately 55,000 square feet.

2. On August 21, 2021, DNR received an anonymous complaint stating the Wilson Meat Packing Plant was being demolished.

3. On August 23, 2021, Tom Wuehr, DNR Air Quality Environmental Specialist Senior, investigated the complaint. When Mr. Wuehr arrived, he observed the building demolition was in process and approximately 80% of the building had already been demolished. The demolition debris was still on site. The demolition debris was dry and much of the material was in a friable condition. The loading dock area of the building remained and Mr. Wagoner was using the area for storage of large equipment. Mr. Wagoner was on-site operating the demolition equipment when Mr. Wuehr arrived. Mr. Wuehr spoke to Mr. Wagoner during the investigation and Mr. Wagoner stated that no asbestos inspection occurred prior to the demolition activities and no notification had been submitted prior to the demolition activities. Mr. Wuehr surveyed the area and collected two samples of roofing tar and one sample of tar paper from the debris piles. The roofing tar samples contained 15% asbestos. Mr. Wuehr asked Mr. Wagoner to stop work; Mr. Wagoner agreed to halt the demolition and fence off the property.

4. On September 8, 2021, DNR issued a Notice of Violation letter to Mr. Wagoner for the asbestos violations observed during the August 2021 investigation. A similar letter was also sent to the City of Waverly. The letter required that Mr. Wagoner provided a written response as to how the asbestos regulations would be complied with after the project continued and how the asbestos containing demolition debris on site would be disposed of. The information was to be submitted within 14 days.

5. On September 28, 2021, Mr. Wagoner contacted Mr. Wuehr and informed him that he had received the Notice of Violation letter. He had not

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submitted the response, but planned to by October 1, 2021. Later in October 2021, Mr. Wagoner submitted a letter indicating he was planning to take the asbestos contractor course and would clean the property up himself. At this point, the demolition debris has not been removed.

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(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. Mr. Wagoner stated that no asbestos inspection was completed prior to the demolition project. The above facts indicate a violation of this provision.

4. 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. Mr. Wagoner stated that a notification was not submitted prior to the demolition project. The above facts indicate a violation of this provision.

5. 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 Mr. Wagoner was not in compliance with these provisions when the demolition occurred.

6. 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's inspection indicated that the regulated asbestos containing material that had not been removed prior to demolition activities. The facts in this case indicate a violation of this provision.

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7. 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 demolition project. Mr. Wuehr observed dry asbestos containing demolition debris during his investigation. The facts in this case indicate a violation of this provision.

8. 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 demolition activities. The above facts indicate noncompliance with this provision.

9. 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 observed dry asbestos containing demolition debris during his investigation. The facts in this case indicate a violation of this provision.

V. ORDER

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

1. Provide the information requested in the Notice of Violation letter regarding the demolition project and removal of existing demolition debris within 30 days of the date the Director signs this administrative consent order; and
2. Pay an administrative penalty in the amount of \$6,000.00.

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

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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 \$6,000.00 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. Wagoner avoided the cost of an asbestos inspection prior to demolition activities. He has also been able to delay the cost of asbestos abatement and proper disposal of the asbestos containing demolition debris. It is estimated Mr. Wagoner has received an economic benefit of at least \$1,000.00 and that amount is being 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 inspect and notify prior to the demolition 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 demolition. 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, \$3,000.00 is assessed for this factor.

Culpability – Mr. Wagoner 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. Based on the above considerations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

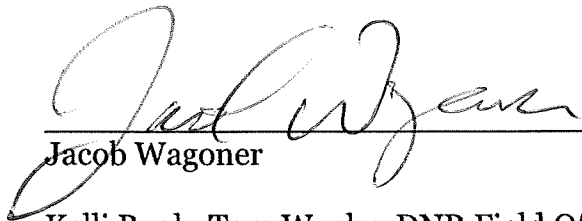
VIII. NONCOMPLIANCE

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

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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



Jacob Wagoner

Dated this 4th day of
March, 2022.

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