

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

<p>IN THE MATTER OF:</p> <p><b>GUTHRIE CENTER FIRE DEPARTMENT</b></p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align:center">NO. 2022-AQ-08</p>
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TO: Tom Langgaard, Fire Chief  
Guthrie Center Fire Department  
101 State Street  
Guthrie Center, Iowa 50115

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the Guthrie Center Fire Department for the purpose of resolving the air quality violations which occurred during the burning and disposal of a former church building in Guthrie Center, Iowa. This administrative consent order requires the Guthrie Center Fire Department to do the following: 1) develop and submit a written protocol for future training fires and 2) pay an administrative penalty in the amount of \$1,500.00. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

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

**Relating to legal requirements:**

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

**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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: GUTHRIE CENTER FIRE DEPARTMENT

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. The Guthrie Center Fire Department is a volunteer fire department that serves the city of Guthrie Center and the surrounding areas.

2. On July 2, 2021, DNR received a Notification of an Iowa Training Fire for an old church in Guthrie Center by the Guthrie Center Fire Department. The burning was scheduled to take place on July 13, 2021 or July 14, 2021. On July 23, 2021, DNR Field Office 4 received a complaint that a building at 1507 State Street in Guthrie Center, Iowa had been burned by the Guthrie Center Fire Department without addressing the necessary asbestos NESHAP requirements. The complaint was forwarded to Tom Wuehr, Air Quality Environmental Specialist Senior and Asbestos Coordinator.

3. The building noted in the complaint was an old church located at 1507 State Street in Guthrie Center. The building was constructed in 1980 as a church and had been used as an office for Country View Estates. The building was 2,058 square feet and was located on 1.2 acres. The building had a cement basement and was made mostly of wood with tar shingles. The property is currently owned by Guthrie County Quality Meats, LLC, and the Iowa Secretary of State identifies the registered agent as Grant Sheeder. Mr. Sheeder is also listed as a volunteer fire fighter for the Guthrie Center Fire Department.

4. On July 26, 2021, Mr. Wuehr spoke to Laura Wolff at the Guthrie Center city clerk's office. Ms. Wolff verified that the Guthrie Center Fire Department had burned the church during a training fire. On July 27, 2021, Mr. Wuehr visited the property in Guthrie Center. The building had been burned to the foundation with only an empty basement remaining. Mr. Wuehr noted the remaining debris had been hauled away to a farm property in rural Guthrie Center. Although most of the debris had been removed, Mr. Wuehr collected two samples of suspect asbestos containing material from the site. The samples did not indicate the presence of regulated amounts of asbestos. Mr. Wuehr was unable to contact anyone with the Guthrie County Fire Department, but he was able to speak to Robert Secoy, Guthrie Center Maintenance Coordinator. Mr. Secoy informed Mr. Wuehr that he had collected 20 samples from the former church building and all samples were negative for asbestos.

5. Mr. Secoy emailed the asbestos survey report to Mr. Wuehr. The report indicated that 14 samples were taken and were all negative for the presence of asbestos. Mr. Secoy explained that the flooring sample was wood with carpet

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: GUTHRIE CENTER FIRE DEPARTMENT

covering the floor. The survey did not include any samples of the insulation. Mr. Wuehr checked the Iowa OSHA database for asbestos licenses and Mr. Secoy was not listed as a licensed asbestos inspector. Mr. Secoy may have been EPA certified, but that only would authorize him to conduct asbestos inspections of properties owned by the city of Guthrie Center.

6. On September 1, 2021, DNR issued a Notice of Violation letter to the Guthrie Center Fire Department for the open burning of the old church building. The letter included asbestos violations and open burning violations. The letter went unclaimed by the Guthrie Center Fire Department. On October 8, 2021, Mr. Wuehr emailed a copy of the letter to the Guthrie Center mayor and a hard copy of the letter was mailed to the mayor on October 12, 2021.

**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 Guthrie Center Fire Department burned the old church building located at 1507 State Street in Guthrie Center, Iowa. The above facts demonstrate noncompliance with this provision.

3. 567 IAC 23.2(3)"g" provides an exemption to the open burning regulations and allows bona fide training fires conducted for training of public or industrial employees in firefighting methods. A notification to the DNR is required to conduct a training fire and all asbestos containing material must be removed from the structure prior to the training fire. The notification submitted by the Guthrie Center Fire Department did not include the correct dates for the burning of the old church building. The fire department failed to update the notification with the correct dates of the burning of the old church. Therefore, the burning of the old church building by the Guthrie Center Fire Department was not exempt under the training fire exemption.

4. 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.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: GUTHRIE CENTER FIRE DEPARTMENT

5. 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. The DNR has no evidence that a thorough asbestos inspection was completed prior to burning the building. The samples did not include flooring material or insulation and the inspector was not certified by Iowa OSHA. The above facts indicate a violation of this provision.

**V. ORDER**

THEREFORE, DNR orders and the Guthrie Center Fire Department agrees to do the following:

1. The Guthrie Center Fire Department shall develop and implement a written protocol detailing how the Guthrie Center Fire Department shall comply with the asbestos NESHAP regulations and the Iowa administrative rules for opening burning and solid waste disposal during training fires. The protocol shall be submitted to the DNR for approval within 30 days of the date the Director signs this administrative consent order and
2. The Guthrie Center Fire Department shall pay an administrative penalty in the amount of \$1,500.00 within 30 days from the date the Director signs this administrative consent 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 administrative consent order with a \$1,500.00 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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: GUTHRIE CENTER FIRE DEPARTMENT

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. It does not appear the Guthrie Center Fire Department gained an economic benefit from burning the old church building since the building was owned by Guthrie County Quality Meat, LLC. Any economic benefit would have been recognized by Guthrie County Quality Meat, LLC. Therefore, no economic benefit is being assessed.

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. Open burning 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 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 burning of the structure. These violations threaten the integrity of the regulatory program because compliance with the open burning and asbestos regulations is required of all persons in this state. Therefore, \$1,000.00 is assessed for this factor.

Culpability – The Guthrie Center Fire Department 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. The regulations have been in place for more than 20 years. Based on the above considerations, \$500.00 is assessed for this factor.

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

This administrative consent order is entered into knowingly and with the consent of the Guthrie Center Fire Department. For that reason, the Guthrie Center Fire Department waives the right to appeal this administrative consent order or any part thereof.

## **VIII. NONCOMPLIANCE**

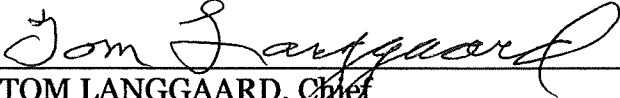
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: GUTHRIE CENTER FIRE DEPARTMENT

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.

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KAYLA LYON, DIRECTOR  
Iowa Department of Natural Resources

  
TOM LANGGAARD, Chief  
Guthrie Center Fire Department

Dated this 3 day of  
March, 2022.