

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>STEVE NELSON dba NELSON CONSTRUCTION, LLC Woodbury County, Iowa</p>	<p style="text-align:center">ADMINISTRATIVE ORDER</p> <p style="text-align:center">NO. 2023-AQ-01</p>
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TO: Steve Nelson
Nelson Corporation, LLC
2805 West 4th Street
Sioux City, Iowa 51103

I. SUMMARY

This administrative order (Order) requires Steve Nelson dba Nelson Construction, LLC to comply with the provision in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this 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

Appeal and Payment of penalty to:

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

II. JURISDICTION

This 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 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 Order.

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III. STATEMENT OF FACTS

1. The Benson Building is located at 705 Douglas Street in Sioux City, Iowa. The Benson Building is a six-story mixed office and industrial structure, constructed mostly of cement, brick, and steel in 1920. The building also has a basement. The building has two heavy-grade industrial elevators used to transport vehicles. The building approximately 120,00 square feet in size. At the time of the investigation Steve Nelson owned the building¹.

2. In mid-September 2021, Tom Wuehr, DNR Air Quality Environmental Specialist Senior, received an anonymous complaint alleging that work had occurred in the Benson Building over past years and there had been recent work but no work was in progress at the time of the complaint.

3. On October 7, 2021, Mr. Wuehr attempted to inspect the Benson Building, but was unable to gain access to the interior of the building. Mr. Wuehr contacted Steve Nelson and arranged to meet him the following day.

4. On October 8, 2021, Mr. Wuehr met Mr. Nelson at the building and walked through the entire building and basement. Mr. Wuehr noted a large amount of disturbed building material throughout the building. Mr. Nelson stated that he allowed unsupervised salvagers to come into all parts of the building. Mr. Nelson said his company, Nelson Construction, LLC, did work on the first floor of the building in January 2021. The work included demolition of walls on the former showroom floor. Mr. Wuehr collected four samples of suspect material during his walk through with Mr. Nelson. The samples came from the first floor of the building. One of the samples indicated it contained 10% regulated asbestos. Mr. Nelson stated he did not notify the DNR of the renovation work. Mr. Nelson informed Mr. Wuehr that Terracon had conducted asbestos inspections in 2019 and 2020 on the 2nd through 6th floors of the building. The tests indicated that asbestos containing material was located throughout the building. Mr. Wuehr explained to Mr. Nelson that the material should not have been disturbed and the salvagers should not have been allowed into the building until the asbestos was removed. The back of the first

floor was largely empty space that office employees used to traverse from the parking lot to their front offices. The businesses themselves were not part of the renovation work. The areas on the first floor, where most samples were taken, appear to have been the least trafficked. Mr. Wuehr asked that the building be locked and to restrict access to the first floor businesses only. Mr. Nelson agreed to do so.

5. Following the inspection and after confirming the Terracon inspection reports, Mr. Wuehr contacted Mr. Nelson and informed him that asbestos decontamination and abatement work would need to be completed prior to any further renovation activities.

¹ In December 2021, Mr. Nelson sold 80% of his ownership in the Benson building to Harkay Development LLC.

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6. On November 3, 2021, DNR issued a Notice of Violation letter to Nelson Construction, LLC for the violations discovered during Mr. Wuehr's inspection. The letter required Nelson Construction, LL to submit a plan for decontaminating the building. On November 15, 2021, Mr. Nelson emailed a response that included decontamination and abatement projects prior to any further renovation.

7. On November 29, 2021, Mr. Nelson submitted a copy of Terracon's asbestos survey report of the first floor and basement of the building. The survey indicated that at least 14 of the samples were positive and containing between 4% and 70% asbestos.

8. On December 29, 2021, Earth Services and Abatement (ESA) submitted an Emergency Renovation Notification for the decontamination of the building. The work was to begin on December 30, 2021 and was to be completed on January 5, 2022. Additionally, the notification indicated ESA was scheduled to do asbestos abatement at the building between February 4, 2022 and March 18, 2022.

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. The DNR has no evidence that an asbestos inspection was ever completed prior to the renovation of the first floor of the Benson Building. 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. The DNR has no evidence that a

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notification was submitted prior to the renovation of the first floor of the Benson Building. 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 Nelson Construction, LLC was not in compliance with these provisions when the renovation 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. During the DNR inspection, Mr. Wuehr noted that regulated asbestos containing material had not been removed prior to renovation activities. The facts in this case indicate a violation of this provision.

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 renovation project. During the DNR inspection, Mr. Wuehr noted that regulated asbestos containing material had not been removed prior to renovation activities. The material was dry and not properly contained. 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 renovation of the building. 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. During the DNR inspection, Mr. Wuehr noted that regulated asbestos containing material had not been removed prior to renovation activities. The material was dry and not properly contained. The facts in this case indicate a violation of this provision.

V. ORDER

THEREFORE, the DNR orders Mr. Nelson to do the following:

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1. Send at least one primary employee to a three-day Asbestos Inspector course and submit proof of completion within 60 days of the date the Director signs this Order; and
2. Pay an administrative penalty in the amount of \$6,000.00 within 60 days of the date the Director signs this 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.

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 Order with a \$6,000.00 penalty. The administrative penalty assessed by this 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.” Nelson Construction, LLC spent over \$140,000 in asbestos decontamination; therefore, any economic benefit received through not properly removing the asbestos containing material prior to the renovation project was negated by the expense of the decontamination. Therefore, no economic benefit 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 inspect and 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. 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.

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Culpability – Mr. Nelson and Nelson Construction, LLC 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. Based on the above considerations, \$3,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 IAC Chapter 7.

VIII. NONCOMPLIANCE

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