

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

IN THE MATTER OF:

**PRO PLATINUM
CONSTRUCTION AND
REMODELING, LLC**

Jones County

ADMINISTRATIVE CONSENT
ORDER

NO. 2023-AQ- 18

TO: Mike Moulds
Pro Platinum Construction and Remodeling, LLC
3361 Black Hawk Avenue NW
Oxford, Iowa 52322

William N. Toomey, Registered Agent
Pro Platinum Construction and Remodeling, LLC
321 E. Market Street
Iowa City, Iowa 52245

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Pro Platinum Construction and Remodeling, LLC (Pro Platinum) for the purpose of resolving the air quality violations which occurred during the demolition and disposal of several mobile homes at the Fawn Creek mobile home court located in Anamosa, Iowa. This administrative consent order requires Pro Platinum to do the following: 1) send at least one primary employee to a three-day asbestos inspector course; 2) comply with all asbestos regulations; and 3) pay an \$4,000.00 administrative penalty. 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:

Levi Fisher, Air Quality Bureau
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/343-7063

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

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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 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; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules adopted 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, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Kodiak Property Management, Inc.¹ manages, and its affiliate, Fawn Creek MHC, owns the Fawn Creek mobile home court located in Anamosa, Iowa with 226 units divided into eight parcels. The mobile home court began with two parcels and approximately 86 units in 1960. More parcels and units were added in 1988, 1990, 1992, 1997, 1999, and 2001.

2. On June 14, 2022, the DNR Air Quality asbestos program received a complaint regarding the demolition of several mobile homes at the Fawn Creek mobile home court.

3. On June 15, 2022, Levi Fisher, DNR Air Quality environmental specialist, conducted an inspection at the mobile home court. Mr. Fisher noted that several mobile homes had already been removed from the site. Heavy equipment was onsite along with several piles of debris. The piles contained mostly metal and wood. Mr. Fisher did not collect any samples from the piles. While onsite Mr. Fisher spoke with the demolition contractors from Pro Platinum. The contractors claimed the mobile homes did not contain asbestos, but they did not have inspection reports. None of contractors were certified asbestos inspectors. Mr. Fisher also spoke to Derrick Tatro from Kodiak Property Management and explained that since multiple residential structures within a block were demolished that the project was considered subject to the asbestos NESHAP

¹Kodiak Property Management, Inc. is now Ignite Management, Inc. However, throughout the administrative consent order Kodiak Property Management, Inc. is used as it was the company's name at all times noted in this administrative consent order.

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regulations. Mr. Fisher asked that the demolition work be halted until samples could be taken of the remaining mobile homes and the piles were properly disposed of.

4. On June 20, 2022, DNR issued a Notice of Violation letter to Pro Platinum for the asbestos NESHAP violations noted during the June 2022 inspection. The letter instructed Kodiak Property Management to halt work until the remaining mobile homes are inspected and the debris piles have been tested for asbestos.

5. On October 20, 2022, Mr. Fisher returned to the mobile home court and noted that more mobile homes had been demolished, eight in total, and all the debris that was onsite during the June visit had been removed without complying with the asbestos regulations.

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. No asbestos inspections were conducted prior to removing the mobile homes from their foundations. The above facts indicate violations of this provision.

4. 40 CFR section 61.145(b)(1) requires written notification to be submitted to the DNR prior to beginning a renovation or demolition. The specific requirements for this notification are contained in the subsection. No notifications were submitted prior to removing the mobile homes from their foundations. The above facts indicate violations of this provision.

V. ORDER

THEREFORE, DNR orders and Pro Platinum agrees 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 to DNR within 60 days of the date the Director signs this administrative consent order;
2. Comply with all asbestos regulations in the future; and
3. Pay an \$4,000.00 administrative penalty within 30 days of 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 an \$4,000.00 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.” The average cost of an asbestos inspection is \$200.00 and the notification fee to DNR is \$100.00. Pro Platinum was the contractor on site and any fees for the inspections and notifications would be the responsibility of the owner. 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. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to submit a notification and inspect a structure for asbestos prohibits the removal of potential asbestos containing material prior to demolition. These violations threaten the integrity of the regulatory program because compliance with the asbestos

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regulations is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Pro Platinum has a duty to remain knowledgeable of DNR's asbestos rules. The actions of Pro Platinum endangered the health and safety of both its workers and the residents of the mobile home park. DNR notified the company of the asbestos regulations and informed the company that notifications and inspections were required prior to removal of the mobile homes. Pro Platinum disregarded the regulations and DNR's instructions and continued with the removal project without notifications and inspections. Based on the above considerations, \$2,000.00 assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Pro Platinum. For that reason, Pro Platinum 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 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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Pro Platinum construction *by Mike Moulds*
PRO PLATINUM CONSTRUCTION AND
AND REMODELING, LLC

Dated this 8-23 day of
August, 2023.

