

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:	ADMINISTRATIVE ORDER
JAMES ZIEBELL	No. 2023-AQ-19 No. 2023-SW-08
Clinton County	

TO: James Ziebell
6014 Drake Drive
PO Box 22
Maple Plain, Minnesota 55359

I. SUMMARY

This administrative order (Order) requires Mr. Ziebell 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:

Tom Wuehr, 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

Appeal or 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,

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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 Order.

III. STATEMENT OF FACTS

1. James Ziebell and Chanchai Sooksawan own a former school complex located at 100 Winter Street in Lost Nation, Iowa. The complex consists of a three-story main building, a gymnasium, and several other buildings.

2. On October 10, 2022, DNR Field Office 6 received a complaint from Larry Morey regarding solid waste disposal and possible asbestos contamination at the former school complex in Lost Nation. The complaint alleged that building material from the school and tires were being disposed of and buried at the school complex location.

3. On October 14, 2022, Jeremiah Kaufmann, Environmental Specialist with DNR Field Office 6, visited the school complex and met with Mr. Morey. Mr. Kaufmann noted that building materials had been buried at the site. Mr. Kaufmann also noted partially buried tires, along with several piles of tires on the property.

4. On October 19, 2022, DNR issued a Notice of Violation letter to Mr. Ziebell regarding the solid waste and waste tire violations. The letter informed Mr. Ziebell that the asbestos violations were referred to the DNR asbestos program. The letter also required Mr. Ziebell to properly dispose of the solid waste and tires at a permitted landfill. The letter informed Mr. Ziebell that the continued improper disposal of solid waste or tires at the property may result in a monetary penalty.

5. On October 24, 2022, Mr. Ziebell contacted Mr. Kaufmann to discuss the Notice of Violation letter. Mr. Ziebell confirmed that he had buried building material from the school building and dug a trench with the intent to bury carpet and other building materials. Mr. Ziebell also stated that he had purchased tires from an ambulance company in Minnesota and transported the tires to the property. He stated that only 30-40 tires had been buried with remaining tires in a trailer on the property. Mr. Kauffman told Mr. Ziebell to stop all renovation activities at the property.

6. On October 27, 2022, Mr. Kaufmann and Tom Wuehr, DNR Air Quality environmental specialist senior, conducted an inspection at the school complex. They noted that building material was buried or partially buried in the trench. Mr. Wuehr collected four samples of the material and the laboratory analysis indicated each of the samples had asbestos concentrations greater than 1%. During a tour of the school complex with Mr. Morey, Mr. Kaufmann and Mr. Wuehr noted that the building was being renovated and the material in the trench came from the renovation.

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7. During and following the inspection the DNR personnel spoke with Mr. Sooksawan and Mr. Ziebell. Both parties indicated the renovation and disposal was being done by the other party. While it is unclear as to which owner conducted the renovation and disposal, it appears that it was done by or with the knowledge of one or both of the owners.

8. On November 21, 2022, DNR issued Notice of Violation letters to Mr. Ziebell and Mr. Sooksawan for the asbestos violations observed during the inspection.

9. On March 28, 2023, Mr. Kauffman returned to the property and noted that the number of tires being stored at the property had increased. On March 28, 2023, DNR issued Mr. Ziebell a Notice of Violation for the continued improper disposal of tires. The letter informed Mr. Ziebell the violations were being referred for further enforcement. In August 2023, Mr. Kauffman confirmed that the tires had 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. No asbestos inspections were conducted prior to the start of the renovation at the school complex. 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 a renovation or demolition. The specific requirements for this notification are contained in the subsection. No notifications were submitted prior to the start of the renovation at the school complex. The above facts indicate a violation of this provision.

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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. Ziebell was not in compliance with these provisions when the renovation activities 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. DNR Air Quality personnel observed regulated asbestos containing material that had not been removed prior to the 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. DNR personnel noted dry asbestos containing material floor tiles that had been disposed of. 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 floor tile removal. The above facts indicate noncompliance with this provision.

9. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

10. Iowa Code section 455B.307 and 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. During the DNR's inspection of the school complex, improper disposal of building materials and tires were observed. The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, DNR orders James Ziebell to do the following:

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1. Obtain the services of a permitted asbestos abatement company to supervise, remove, and dispose of the asbestos containing material at the property. The material must be disposed of as asbestos containing material at a permitted landfill and the removal and disposal shall be completed within 60 days of the date the Director signs this Order. The landfill receipts must be submitted to the DNR within 10 days of completion of the work;
2. Prior to any further renovation work at the property, a licensed asbestos inspector must be conducted a thorough asbestos inspection;
3. Prior to any further renovation work property, all asbestos regulations must be followed; and
4. Pay an \$10,000.00 administrative penalty within 30 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. 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 Order with an \$10,000.00 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.” Mr. Ziebell avoided the cost of proper removal of the floor tile in the building, including the costs of complying with the asbestos regulations. The average cost of an asbestos inspection is \$200.00 and the notification fee to DNR is \$100.00.

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Approximately 1,000 square feet of floor tile was removed with an estimated cost of proper asbestos removal of \$4.00 per square foot. Therefore, Mr. Ziebell avoided an asbestos removal cost of at least \$4,000.00. Based on these factors, Mr. Ziebell has obtained an economic benefit of at least \$4,300.00 and that amount 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 submit a notification and inspect a structure for asbestos prohibits the removal of potential asbestos containing material prior to renovations. These violations threaten the integrity of the regulatory program because compliance with the asbestos regulations is required of all persons in this state. Therefore, \$2,700.00 is assessed for this factor.


Culpability – Mr. Ziebell has a duty to remain knowledgeable of DNR's asbestos and solid waste 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 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 sections 455B.146 and 455B.307.



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KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources