

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

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| <p>IN THE MATTER OF:</p> <p>NORTH LINN COMMUNITY SCHOOL DISTRICT Linn County, Iowa</p> | <p style="text-align: center;">ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align: center;">NO. 2024-AQ- 02</p> |
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TO: Leisa Breitfelder, Superintendent
North Linn Community School District
3033 Lynx Drive
Coggon, Iowa 52218

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and North Linn Community School District (North Linn) for the purpose of resolving asbestos violations which occurred during a renovation project at the school building located in Coggon, Iowa. This administrative consent order requires North Linn to do the following: 1) comply with all asbestos regulations during future restoration, renovation, or construction projects; and 2) 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

North Linn neither admits nor denies the Statements of Facts and enters into this administrative consent order for settlement purposes and to avoid the costs of litigation.

1. The North Linn school building contains the elementary, middle, and high schools and is located at 3033 Lynx Drive, Coggon, Iowa. The school structure was built in 1967 as the high school with at least seven other connected structures including additions for the middle and elementary schools. The school structure was under an ongoing renovation project. North Linn hired SitelogIQ, Inc. (SitelogIQ) as the Construction Manager and Tricon General Construction, Inc. (Tricon) as the general contractor for the renovation project at the school. For purposes of this administrative consent order, Commercial Flooring was the subcontractor that was installing flooring. Commercial Flooring was subcontracted by Tricon to install flooring in parts of the building, including Room 115. Tricon had notified Commercial Flooring of the presence of asbestos in the flooring material and instructed Commercial Flooring to not disturb the flooring material.

2. Despite this instruction to not disturb the asbestos containing flooring material, on August 24, 2022, Chris Meis of SitelogIQ, contacted the DNR Air Quality Bureau about an asbestos fiber release by a flooring contractor. Mr. Meis stated that there was an asbestos exposure in Room 115 at the school due to a subcontractor using a grinder to prepare the floor for new carpet. Mr. Meis stated work was immediately halted and Room 115 was sealed off from the rest of the building. The asbestos consultant, Hawkeye Environmental, was contacted immediately for guidance and testing.

3. On August 25, 2022, Tom Wuehr and Levi Fisher, DNR Air Quality environmental specialist and asbestos inspectors, talked with David Hoeger, North Linn superintendent, on the telephone. They discussed the potential asbestos issues at the school. Mr. Wuehr asked that the school be closed and no one enter the building until the impacted area of the school had been decontaminated by a permitted asbestos abatement contractor. Mr. Hoeger did not commit to closing the building. After Mr. Hoeger spoke with DNR, he asked Josh Evenson, with SitelogIQ, to call DNR. Later in the day, Mr. Wuehr told Mr. Evenson that the school needed to

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remain closed until decontamination had occurred. Mr. Evenson did not commit to closing the building.

4. On August 26, 2022, Mr. Wuehr and Mr. Fisher traveled to the school and met with several contractors, along with Mr. Hoeger and Mr. Meis. Despite the request to close the building, numerous contractors and school employees were in the building, but outside of the area that had been disturbed when Mr. Wuehr and Mr. Fisher arrived. DNR confirmed that there had been an asbestos disturbance and that asbestos fibers had been found on surfaces beyond Room 115.

5. During the inspection, DNR learned that Mr. Meis, under the direction of Mr. Evenson, decided to issue a waiver to allow contractors to enter the building. The waiver was titled "Waiver of Liability" and stated the following: "I understand the Iowa Department of Natural Resources is recommending I do not work in this area due to the possibility of contaminated air with asbestos fibers. I am choosing to disregard the recommendation and continue working." At least ten employees signed the waiver. DNR obtained the original signed waivers several days after the inspection. DNR also believed there to be at least ten more people in the building that had not signed the waivers and it is unclear if they were aware of the asbestos issue.

6. Mr. Wuehr recommended that Mr. Hoeger evacuate and lock the building. Mr. Hoeger and the contractors agreed to the recommendation. Once the building had been cleared out and locked, Mr. Wuehr and Mr. Fisher concluded the inspection.

7. North Linn hired Environmental Property Solutions to conduct the decontamination. The asbestos abatement and cleanup were completed on August 28, 2023. On August 31, 2022, DNR representatives met with Mr. Hoeger and multiple contractors and approved the decontamination protocol. Hawkeye Environmental had performed additional sampling and had found fibers beyond Room 115. DNR provided guidance as to the level of decontamination needed to remediate the asbestos.

8. On September 13, 2022, Mr. Wuehr and Mr. Fisher returned to the school. They intended to collect a floor tile/mastic sample in the area that had been disturbed, but the area had already been abated by Environmental Property Solution, the asbestos abatement company hired to remove the asbestos. On September 19, 2022, DNR obtained a sample from the company, which contained a regulated amount of asbestos. Through further investigation, DNR learned that Iowa Environmental, the school's AHERA inspector, had tested the mastic in Room 115. The school's asbestos management plan indicated the mastic contained 2.3% regulated asbestos.

9. Following the disturbance, Steve Henneberry with Hawkeye Environmental took original wipe samples in the area immediately around Room 115. The area around Room 115 was decontaminated by Environmental Property

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Solutions. Mr. Wuehr asked Mr. Henneberry to test further out until no asbestos fibers were found. Mr. Henneberry carried out additional tests and found that asbestos fibers had migrated outside of Room 115. DNR requested all horizontal surfaces be cleaned given the widespread nature of the contamination. Environmental Property Solutions concluded the remediation of the asbestos cleanup on August 28, 2022.

10. On November 16, 2022, DNR issued a Notice of Violation letter to North Linn for asbestos violations discovered in August 2022. The letter informed the school the violations were being referred for further enforcement.

IV. CONCLUSIONS OF LAW

North Linn neither admits nor denies the Conclusions of Law and enters into this administrative consent order for settlement purposes and to avoid the costs of litigation. North Linn specifically denies that it bears any responsibility or obligations relating to the renovations project relative to the alleged violations set forth in the administrative consent order.

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(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 notification was submitted prior to the renovation of the school building. The above facts indicate a violation of this provision

4. 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 as the owner of the building, North Linn was not in compliance with these provisions when the renovation occurred.

5. 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

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would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. During the DNR inspection, it was 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.

6. 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, it was 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.

7. 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.

8. 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, it was 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, it is hereby ordered and North Linn agrees to do the following:

1. Comply with all asbestos regulations during future restoration, renovation, or construction projects; and
2. Pay an administrative penalty in the amount of \$6,000.00 within 30 days of the date the Director signs this administrative consent order.

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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 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.” North Linn spent over \$100,000 in asbestos decontamination; therefore, any economic benefit received through not properly removing the asbestos containing material 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 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. There were people in the building when the fiber was released and people were allowed in the building after the fiber release. 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, \$1,000.00 is assessed for the violation noted in Section IV, Paragraph 3; \$2,000.00 is assessed for the violations noted in Section IV, Paragraphs 6 and 8; and \$2,000.00 is assessed for the violations noted in Section IV, Paragraphs 7 and 9 for a total of \$5,000.00 being assessed for this factor.

Culpability – North Linn 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, \$1,000.00 is assessed for this factor.

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VII. WAIVER OF APPEAL RIGHTS

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

John R. Brown

North Linn Community School District

Dated this 17th day of
January, 2024.