

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

IN THE MATTER OF: AMES BUSINESS GROUP, LLC	ADMINISTRATIVE CONSENT ORDER NO. 2024-AQ-08
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TO: Ames Business Group, LLC
2416 340th Street
Keokuk, Iowa 52632

Ames Business Group, LLC
Wesley Ames, Owner
2200 River Road
Keokuk, Iowa 52632

Ames Business Group, LLC
Kevin J. Kuckelman, Registered Agent
401 Main Street, Suite 5
Keokuk, IA 52632

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Ames Business Group, LLC (Ames Business Group) for the purpose of resolving the air quality violations which occurred during the demolition of three buildings located on the same site in Keokuk, Iowa. This administrative consent order requires Ames Business Group to pay a \$2,000.00 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:

Anne Preziosi, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-238-3429

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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 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. On June 27, 2023, DNR received an anonymous complaint regarding demolition taking place at the site of the former Midwest Academy at 2416 340th Street in Keokuk, Lee County, Iowa (the site). The site is owned by Ames Business Group, LLC (Ames Business Group). Prior to demolition, three buildings were located on the site, approximately 28,503 square feet. Kurt Levetzow and Anthony Kerker of DNR Field Office 6 traveled to the site on June 28, 2023, and confirmed that much of the debris remained on the site in a large debris pile and that there was suspect asbestos containing material on the site.

2. On June 29, 2023, DNR asbestos inspector Levi Fisher traveled to the site. Mr. Fisher spoke to Wesley Ames, owner of Ames Business Group, regarding the federal asbestos NESHAP requirements. Mr. Ames told Mr. Fisher that he didn't demolish boiler room because he thought it could contain asbestos. The boiler room, according to Mr. Ames, was not a part of the demolition project. Mr. Ames stated that the remainder of that building had previously been abated in the early to mid-2000s and that his company had done the mid-2000s renovation following abatement. Mr. Fisher asked Mr. Ames if he had inspection reports for the facilities. Mr. Ames stated that he had disposed of the records seven years following the work.

3. Mr. Fisher informed Mr. Ames that in absence of inspection reports, asbestos must be assumed to be present and that the DNR considered the site to be contaminated. Mr. Ames was informed that all debris would have to be disposed of as asbestos-containing debris, and that an EPA-trained asbestos site supervisor would need to be on the site to supervise the decontamination and sorting of any recyclable brick, cement, and metal. Mr. Ames agreed to stop work until he could get a trained asbestos supervisor on the site, as required. Mr. Fisher took seven samples of suspect asbestos debris. The samples were sent to SHL for analysis on July 3, 2023, and

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results were provided to DNR on July 12, 2023. None of the seven samples contained asbestos.

4. Mr. Fisher returned the site on July 13, 2023, and observed that the debris remained on the site. While at the site, Mr. Fisher was informed by Mr. Ames that REW Services Corporation would be working at the site and would have an asbestos site supervisor present to complete decontamination activities. Mr. Fisher collected six additional samples of building debris. The samples were sent to SHL for analysis on July 14, 2023, and results were provided to DNR on July 24, 2023. One sample of cementitious debris taken from the demolition debris tested positive for asbestos at 15%, which is Regulated Asbestos Containing Material according to the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations.

5. Mr. Ames informed Mr. Fisher that during the demolition process, approximately 8-10 employees of Ames Business Group worked at the site during demolition for at least a week. Since the demolition occurred in a dry and dusty environment, there was potential inhalation of asbestos fibers by people located in and around the site.

6. DNR sent a Notice of Violation letter to Mr. Ames on July 27, 2023. The violations of the asbestos NESHAP cited in the Notice of Violation letter were: 1) failure to inspect the facility prior to demolition; 2) failure to notify prior to demolition; 3) failure to ensure emission control during demolition; 4) failure to keep Regulated Asbestos Containing Material adequately wet; and 5) failure to ensure a trained supervisor was onsite during demolition where asbestos was present. The Notice of Violation letter included information regarding the sample results. The Notice of Violation letter was sent by certified mail.

7. DNR did not get confirmation that the July 27, 2023, Notice of Violation letter was delivered to Mr. Ames by certified mail. The Notice of Violation letter and sample results sent to Mr. Ames by certified mailed again on August 23, 2023. Again, DNR did not receive confirmation of receipt. Therefore, Mr. Fisher emailed a copy of the Notice of Violation letter and sample results to Mr. Ames on September 19, 2023, and requested a status update on the site. Mr. Ames responded to the email on September 19, 2023, and stated he has not been able to clean up the site.

8. On January 3, 2024, Ryan Stouder and Mark Heiderscheit of DNR Field Office 6 visited the site to assess and document whether any solid waste material had been disturbed or removed since the last time DNR staff had visited the site. Mr. Stouder and Mr. Heiderscheit spoke with two of Mr. Ames employees that were on site to repair a truck that had stopped running. While that discussion was occurring, Mr. Ames arrived at the site.

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9. Wes Ames introduced himself to Mr. Stouder and Mr. Heiderscheit and asked why they were visiting the site. Mr. Stouder explained that the purpose of the visit was to verify the current status of the site. Mr. Ames indicated that he has not moved anything but rebar and metal to be recycled and some larger pieces of concrete. He said that he has tried to contact an asbestos abatement contractor out of Des Moines, but asbestos abatement contractor had not called him back. Mr. Ames also stated that he was concerned with the cost of the cleanup. Mr. Ames stated that he is moving piles to get the metal and locating the material in rows for easy sampling for asbestos and for removal to the Fort Madison Landfill. Mr. Ames stated that the cleanup process was moving very slowly. Mr. Ames stated that he had not disturbed the boiler room, which he believed would have asbestos. Movement of material without an EPA-trained asbestos supervisor on the site does not comply with the June 2023 information given to Mr. Ames by Mr. Fisher, when Mr. Ames was informed that all debris would have to be disposed of as asbestos-containing debris, and that an EPA-trained asbestos site supervisor would need to be on the site to supervise the decontamination and sorting of any recyclable brick, cement, and metal.

10. In February 2024, Mr. Ames took the Asbestos Contractor/Supervisor 40-hour Class, which will allow him to decontaminate the site and dispose of the demolition materials contained at the site. On February 20, 2024, DNR asbestos inspector Tom Wuehr visited the site and reviewed the site with Mr. Ames, to discuss the appropriate treatment of and removal of demolition materials at the site.

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 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 inspection was conducted prior to the demolition of the buildings located at the site. The above facts indicate a violation of this provision.

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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 notification was submitted prior to the demolition of the buildings at the site. The above facts indicate a violation of this provision.

5. 40 CFR 61.145(c)(1) requires that each owner or operator of a demolition or renovation activity shall remove all Regulated Asbestos Containing Materials from a facility being demolished or renovated, according to asbestos NESHAP regulations. The above facts indicate a violation of this provision. The debris at the site contains Regulated Asbestos Containing Material, according to the provisions of 40 CFR section 61.141.

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 demolition project. During the DNR inspection, it was noted that Regulated Asbestos Containing Material had not been removed prior to demolition 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 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 demolition of the buildings.

V. ORDER

THEREFORE, DNR orders and Ames Business Group agree to do the following:

1. Mr. Ames has taken the Asbestos Contractor/Supervisor 40-hour Class and become certified. Therefore, Mr. Ames, on behalf of Ames Business Group, shall clean up and decontaminate the site (a) by appropriately disposing of non-suspect material (i.e., cement or cement rubble, brick or brick rubble, and metal); and (b) by delivering all asbestos-containing materials to a landfill as asbestos-containing waste; and (c) by dealing with all other demolition materials based on Mr. Ames Contractor/Supervisor Certification; and

2. Ames Business Group shall complete cleanup of the site within 90 days of the date the Director signs this Administrative Consent Order; and

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3. Ames Business Group shall submit asbestos-containing material landfill receipts and recycling receipts to DNR within 15 days of completing the cleanup; and

4. Ames Business Group shall pay an administrative penalty in the amount of \$2,000.00 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 a \$2,000.00 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." Mr. Ames avoided costs associated with inspection, notification, and professional abatement of Regulated Asbestos Containing Material. However, the cost of the cleanup of the site is likely to exceed any cost savings. Asbestos decontamination at the site would most likely have been expensive as well, and could have, conceivably, exceeded the cost of the current cleanup. Exact numbers are unavailable because of the extent of the demolition.

Therefore, no 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

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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 regulations is required of all persons in this state.

Therefore, \$1,000.00 is assessed for this factor.

Culpability – Ames Business Group has a duty to remain knowledgeable of DNR's asbestos rules. Mr. Ames did not have the facility inspected prior to demolition as required by the Asbestos NESHAP.

Therefore, 1,000.00 assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This Administrative Consent Order is entered into knowingly and with the consent of Ames Business Group. For that reason, Ames Business Group waives the right to appeal this Administrative Consent Order or any part thereof.

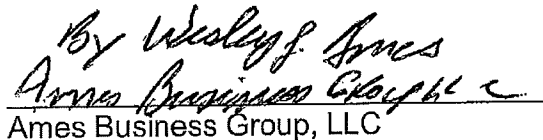
VIII. NONCOMPLIANCE

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.



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KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



Ames Business Group, LLC

Dated this 19th day of
MARCH, 2024.