

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

IN THE MATTER OF:

**IRISH CAPITAL INVESTMENTS,
L.L.C.**

ADMINISTRATIVE CONSENT
ORDER

NO. 2024-AQ-09

TO: Barry Smith, Registered Agent
Irish Capital Investments, L.L.C.
999 44th Street
Marion, Iowa 52302

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Irish Capital Investments, L.L.C. (Irish Capital Investments) for the purpose of resolving the air quality violations which occurred during the demolition of a building located in Marion, Iowa. This administrative consent order requires Irish Capital Investments to pay a \$7,000.00 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:

Tom Wuehr, Air Quality Bureau
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321
Phone: 515/343-7063

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
6200 Park Avenue; Suite 200
Des Moines, Iowa 50321
Phone: 515/210-3408

Payment of penalty to:

Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321

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

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promulgated or permits issued pursuant to that division and Iowa Code section; 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. Irish Capital Investments owns a building located at 1485 Grand Avenue in Marion, Iowa. The building is a former nursing home and was constructed in 1962, with an addition in 1985. The building is single story structure and is over 36,000 square feet in size.

2. On October 20, 2023, DNR received a complaint regarding a renovation project at the building located at 1485 Grand Avenue in Marion, Iowa.

3. On October 23, 2023, Tom Wuehr, DNR Air Quality environmental specialist senior, conducted a complaint investigation at the property. Mr. Wuehr noted that all of the tile flooring in the building had been removed, approximately 36,000 square feet. Mr. Wuehr reviewed a sampling report from a previous inspection from Active Thermal Concepts that was hired to do a survey in anticipation of the renovation and it was determined that the flooring contained 2-8% asbestos. At the time of the inspection no floor tile remained on the site.

4. In talking with an Active Thermal Concepts representative, it was determined prior to Mr. Wuehr's visit that Kolker Excavating was conducting the disconnect work and disturbed the suspect asbestos containing material prior to a demolition. Irish Capital Investments claimed the asbestos inspection had been completed, but could not provide a copy of the report. Kolker Excavating stopped worked because an asbestos inspection could not be provided. Following this discovery, Irish Capital Investments hired Active Thermal Concepts to complete a comprehensive asbestos survey. The survey indicated more than 10,000 square feet of asbestos containing joint compound and approximately 20,000 square feet of floor tile containing between 2-8% asbestos. The areas containing asbestos was spray painted orange. Irish Capital Investment directed it workers to remove the asbestos containing material that had been identified in the Active Thermal Concepts asbestos survey. The employees removed the floor tile, approximately 20,000 square foot of the floor tile contained regulated amounts of asbestos. They also removed approximately 10,000 square feet of sheet rock, some of which contained regulated amounts of asbestos.

5. The employees of Irish Capital Investments removed the asbestos containing floor tile. They only removed the orange spray painted materials. No precautions were used when removing the floor tiles. Active Thermal Concepts disposed of the remaining asbestos containing debris following the DNR's visit to the site.

6. On December 12, 2023, DNR issued a Notice of Violation letter to Irish Capital Investments for the asbestos violations discovered during the investigation. In

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response to the Notice of Violation, Irish Capital Investments provided a written protocol indicating how it would avoid asbestos violations in the future. They indicated that they would have future projects inspected, and if asbestos was discovered Active Thermal Concepts would be hired to remove the asbestos.

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. Kolker Excavating began work prior to an asbestos inspection being conducted. 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 notification was submitted prior to the project. 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 as the owner of the building, Irish Capital Investments was not in compliance with these provisions when the project occurred.

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. The asbestos containing floor tiles were not properly removed. 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

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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 when the asbestos containing floor tiles were removed. The above facts indicate noncompliance with this provision.

V. ORDER

THEREFORE, DNR orders and Irish Capital Investments agrees to do the following:

1. Comply with all asbestos regulations in the future; and
2. Pay an \$7,000.00 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.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 \$7,000.00 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.” A reasonable estimate for asbestos abatement and floor tile removal is \$4.00 per square feet, which could have cost Irish Capital Investments over \$100,000.00 for proper removal of the floor tile. The floor tiles were properly disposed of by Active Thermal Concepts so that amount is likely reduced. Even though the cost saved exceeds the administrative threshold, DNR has determined an administrative consent order is the appropriate enforcement action. Additionally, Irish Capital Investments avoided the cost of the notification fee to DNR, which is \$100.00. Therefore, based on the above-mentioned facts, \$4,000.00 is assessed for this factor.

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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. Irish Capital Investments' employees were not properly trained to remove asbestos and could have been exposed to asbestos fibers as the floor tiles were not removed properly. These violations threaten the integrity of the regulatory program because compliance with the asbestos regulations is required of all persons in this state. Therefore, \$2,000.00 is assessed for this factor.

Culpability – Irish Capital Investments has a duty to remain knowledgeable of DNR's asbestos rules. Based on the above considerations, \$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 Irish Capital Investments. For that reason, Irish Capital Investments 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.

KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



IRISH CAPITAL INVESTMENTS, L.L.C.

Dated this 28th day of
MAY, 2024.