

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

<p>IN THE MATTER OF:</p> <p>DARREL SCHIPANSKY</p>	<p style="text-align: center;">ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align: center;">NO. 2024-AQ-13 NO. 2024-SW-07</p>
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TO: Darrel Schipansky
1018 S. Avenue
Villisca, Iowa 50864

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Darrel Schipansky for the purpose of resolving the asbestos, open burning, and solid waste disposal violations which occurred during the burning of ten structures in Montgomery County. This administrative consent order requires Darrel Schipansky to pay a \$10,000.00 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, Environmental Specialist Sr.
Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50312
Phone:

Relating to legal requirements:

Kelli Book, Attorney
Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50312
Phone: 515/210-3408

Payment of penalty to:

Iowa Department of Natural Resources
6200 Park Avenue, Suite
Des Moines, Iowa 50312

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

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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. Darrel Schipansky owns the former Montgomery Valley Farms site located at 2975 265th Street, Villisca, Iowa (Section 29, East Township, Montgomery County). The facility is located within the Villisca city limits. The facility consisted of ten chicken confinement buildings, with each building being 50 feet wide and 728 feet long and one story tall. The square footage of each building was 36,400 square feet and the ten buildings have a total square footage of 364,000 square feet. The buildings consisted of metal on wood frames with cement footings on concrete floors. The buildings had electricity, heat, and water. Montgomery Valley Farms, LLC sold the facility to Forsman Farms, LLC in January 2022. Forsman Farms, LLC sold the facility to Darrel Schipansky in July 2022. In September 2023, Shawn Gohlinghorst and Tyson Means began the contract purchase of the facility.

2. In August 2022, Emily Anderson with Montgomery Farms contacted Alison Manz, DNR Field Office 4 environmental specialist senior. Ms. Anderson informed the field office that the facility had been sold to Mr. Schipansky and all manure had been removed from the facility. She indicated that the buildings would be torn down. Ms. Manz provided Ms. Anderson with the instructions for manure removal, and building demolition. She also provided the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations.

3. On June 29, 2023, DNR Field Office 4 received a complaint that the buildings at the former Montgomery Valley Farms were being burned and there was a lot of black smoke in the area. Multiple calls were received throughout the night reporting the fire and black smoke. One of the callers indicated that they evacuated their home because of its close proximity to the fire and smoke. Brian Hamman, the Montgomery County Emergency Management Coordinator, took a photograph of the buildings on fire. The photograph also indicated that a liquid fertilizer tank farm was located near the south side of the Montgomery Valley Farms property. Various governmental entities in Montgomery, Page, and Adams counties received dozens of telephone calls regarding the fire and black smoke.

4. On June 30, 2023, DNR Field Office 4 environmental specialists, Kristi Burg and Brent Martens, conducted a complaint investigation. They noted that several of the buildings were still smoldering and an excavator was on site. Mr. Gohlinghorst and Mr. Means were the operators of this project and were on site during the fire. Mr. Gohlinghorst explained to the field office staff that he and Mr. Means were in the process of purchasing the property from Mr. Schipansky and that he and Mr. Means in burned the buildings because they were an eyesore and the land would be put back into

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production. Mr. Gohlinghorst informed the field officer staff that this was his property and he would do what he wanted with it. The field office staff asked if an asbestos inspection had occurred prior to the fire. Mr. Gohlinghorst stated that there had not been an asbestos inspection prior to burning the buildings. He further stated that he had not notified the DNR of the fire, but claimed to have notified the Villisca fire chief. Mr. Gohlinghorst stated he started the fire at approximately 3:00 pm on June 29, 2024. The field office staff identified several homes within close proximity to the property, but all were more than a quarter mile of the property. Mr. Gohlinghorst stated he planned to have Frederiksen Iron Recycling, Inc. onsite to bale the remaining tin. Once the solid waste was removed, he intended to have a construction company onsite to crush the concrete. Since an asbestos inspection had not been conducted prior to the burning of the buildings, Ms. Burg informed Mr. Gohlinghorst the debris would need to be treated as asbestos containing material.

5. Following the inspection, Jessica Montana, DNR Field Office 4 supervisor, contacted the Villisca fire chief to verify Mr. Gohlinghorst's statement. Larry Taylor, the fire chief, stated that he was not aware of the intention to burn the buildings. Chief Taylor stated that if he had been notified of the fire that the Villisca Fire Department would have had to request assistance from eight or nine other fire departments due to the size of the fire. Chief Taylor stated he first learned of the fire around 10:00 pm when he saw the flames from a distance and drove to the site. Based on the size of the fire, he determined it was too big to be put out.

6. On June 30, 2023, following the inspection, DNR Field Office 4 notified the DNR Air Quality Bureau asbestos section of the fire. On July 6, 2023, Levi Fisher, Air Quality Bureau environmental specialist, conducted an inspection at the property. Mr. Fisher spoke to Mr. Gohlinghorst who confirmed that an asbestos inspection had not been conducted and DNR had not been notified of the demolition burn. Mr. Fisher collected 11 samples of the debris, but none of the samples indicated the presence of asbestos. However, a thorough asbestos sampling could not have been conducted since the buildings had been completely burned.

7. On July 3, 2023, Ms. Burg contacted Mr. Gohlinghorst and advised him that the material would need to be inspected by a certified asbestos contractor prior to it being scrapped. She also stated that any additional solid waste would need to be properly disposed of at a landfill.

8. On July 6, 2023, DNR issued a Notice of Violation letter to Mr. Schipansky for the open burning, solid waste, and asbestos violations as a result of the burning of the buildings at his facility. The letter informed Mr. Schipansky the matter may be referred for further enforcement.

9. On July 19, 2023, DNR issued a Notice of Violation letter to Mr. Schipansky as the owner of the property. The letter included the following violations: failure to conduct a thorough asbestos inspection and failure to submit a demolition

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notification. The letter informed Mr. Schipansky that the matter may be referred for further enforcement.

10. Mr. Gohlinghorst and Mr. Means attended a 40-hour asbestos contractor/supervisor class in August 2023. They also became contract owners of the property in August 2023. Mr. Gohlinghorst and Mr. Means began the cleanup of the property in September 2023 and completed the cleanup in October 2023. They submitted the landfill receipts from the Loess Hills Landfill.

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. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in subrule 23.2(2) (variances) and subrule 23.2(3) (exemptions). 567 IAC 23.2(3)"i" provides an exemption to allow for the burning of agricultural structures. The exemption states that for agricultural structures located within a city or town, the following must occur: 1) a written waiver in the form of an affidavit from the tenant of any building within one-fourth mile of the open burning; all chemicals and asphalt roofing are removed; 3) burning is conducted only when weather conditions are favorable with respect to surrounding property; and 4) permission from the local fire chief is secured in advance of the burning. The exemption also requires that the burning is done in accordance with the asbestos NESHAP regulations. During the investigation, it was determined that the Villisca fire chief had not given permission for the burning and the asbestos NESHAP regulations had not been followed. The above facts demonstrate noncompliance with this exemption provision, therefore the burning of the confinement buildings was not allowed.

3. 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.

4. 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. Mr. Gohlinghorst stated that no asbestos inspection was conducted prior to the burning of the buildings. The above facts indicate a violation of this provision.

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5. 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. No notification for the burning of the buildings was submitted prior to the burning. The above facts indicate a violation of this provision.

6. 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.

7. 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. The buildings were disposed of through burning, rather than properly disposed on at a landfill. The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, DNR orders and Darrel Schipansky agrees to do the following:

1. Pay a \$10,000.00 administrative penalty in accordance with the following payment plan. If any of the payments are not received in accordance with the payment plan, the remaining penalty shall be due immediately.

\$1,250.00 due July 1, 2024	\$1,250.00 due July 1, 2025
\$1,250.00 due October 1, 2024	\$1,250.00 due October 1, 2025
\$1,250.00 due January 1, 2025	\$1,250.00 due January 1, 2026
\$1,250.00 due April 1, 2025	\$1,250.00 due April 1, 2026

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 \$10,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

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Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.30(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 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available. It is estimated that the asbestos inspection for each building would have been \$1,000.00 for proper sampling and employee expenses. As an owner of the facility, Mr. Schipansky gained an economic benefit of at least \$10,000.00 by avoiding the inspection fees. Mr. Schipansky also gained an economic benefit by avoiding the notification fee of \$100.00 per building, for a total of \$1,000.00. Additionally, landfill fees were reduced since a majority of the buildings were burned rather than being taken to the landfill. Even though the economic benefit exceeds the administrative threshold; DNR has determined an administrative consent order is the appropriate enforcement actions. Based on these considerations \$5,000.00 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 inspect a structure for asbestos prohibits the removal of potential asbestos containing material prior to burning. In addition, the open burning of the structures within close distance to a city and residences may release toxins that pollute the air, may pollute the groundwater, and pose a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning, solid waste, and asbestos regulations is required of all persons in this state. Therefore, \$3,000.00 is assessed for this factor.

Culpability – Mr. Schipansky has a duty to remain knowledgeable of DNR’s rules for asbestos removal and open burning. Based on the above considerations, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Darrel Schipansky. For that reason, Darrel Schipansky waives the right to appeal this administrative consent order or any part thereof.

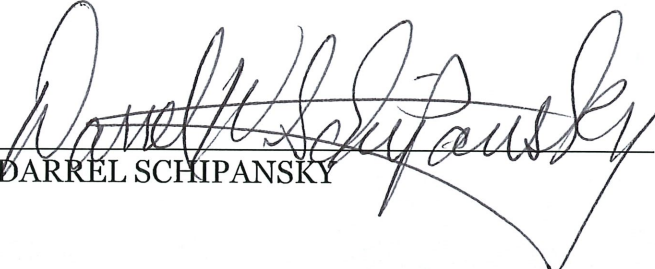
VIII. NONCOMPLIANCE

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

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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


DARREL SCHIPANSKY

Dated this 26 day of
June, 2024.