

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

IN THE MATTER OF: JEFFREY BUCH and SUSAN BUCH Jefferson County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2024-AQ-22 NO. 2024-SW-15
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TO: Jeffrey and Susan Buch
1541 171st Boulevard
Fairfield, Iowa 52556

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Jeffrey and Susan Buch (Buch) for the purpose of resolving the asbestos, open burning, and solid waste disposal violations which occurred during the burning of six agricultural buildings, solid waste, and tires in Jefferson County. This administrative consent order requires Jeffrey and Susan Buch to: 1) properly dispose of the remaining solid waste and demolition debris at the property and 2) 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:

Jon Ryk, Environmental Specialist
Department of Natural Resources, FO 6
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319/653-2135

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

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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, 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. Jeffrey and Susan Buch own an animal feeding operation located at 1546 171st Boulevard, Fairfield, Iowa. The animal feeding operation was operated under the name Buch Farms, LLC.
2. On June 4, 2024, DNR Field Office 6 received a complaint that tires and other solid waste were being burned at the Buch property.
3. On June 6, 2024, Jon Ryk, DNR Field Office 6 environmental specialist, conducted a complaint inspection at the Buch property. Mr. Ryk observed a burn pile on the south end of the property. The burn pile contained steel banding remains of approximately 100 tires. Mr. Ryk also observed burned piles containing construction and demolition debris, including vinyl siding, insulation and fiber glass panels. The burn pile was approximately 40-45 feet long, 25 feet wide, and 6-7 feet high. Mr. Ryk noted that six buildings had been demolished and burned. The remnants of approximately 20 tires were located amongst the building debris. The buildings included: a pole barn - 3,840 square feet; a utility feed shed - 400 square feet; and four confinement buildings - 1,480 square feet, 4,068 square feet, 1,120 square feet, and 1,536 square feet.
4. Mr. Ryk attempted to contact Mr. Buch; however, the two calls were immediately disconnected. A review of the DNR asbestos database indicated that demolition notifications were not submitted for the demolition and burning of the buildings. There was also no evidence that asbestos inspections had been conducted prior to the demolitions.
5. On June 12, 2024, DNR issued a Notice of Violation letter to Jeffrey and Susan Buch for the violations observed during the June inspection. The letter informed Buch that the matter was being referred for further enforcement.
6. Mr. Buch has operated an animal feeding operation at this location for many years and the DNR has conducted multiple inspections at the facility. As a result of an inspection in 2010, a Notice of Violation letter was sent to Mr. Buch regarding the animal feeding operation regulations. The letter also included the open burning and solid waste regulations, along with the asbestos requirements for handling and disposal. The regulations have not changed since the issuance of the letter.

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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). During the DNR Field Office 6 investigation, Mr. Ryk noted that over 120 tires, along with construction and demolition waste had been burned at the Buch property. The above facts indicate a violation of this provision.
3. 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 may be burned on the premises, but the use of rubber tires to ignite the fire is prohibited. The exemption also requires that the burning is done in accordance with the asbestos NESHAP regulations. For the purposes of this subrule, "agricultural structures" means barns, machine sheds, storage cribs, animal confinement buildings, and homes located on the premises and used in conjunction with crop production, livestock or poultry raising and feeding operations. "Agricultural structures," for asbestos NESHAP purposes, includes all of the above, with the exception of a single residential structure on the premises having four or fewer dwelling units, which has been used only for residential purposes. During the investigation, it was determined that six agricultural structures were burned at the facility without complying with the asbestos NESHAP regulations had not been followed. The above facts demonstrate noncompliance with this exemption provision, therefore the burning of the agricultural structures was not allowed.
4. 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.
5. 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. There is no evidence that an asbestos inspection was conducted prior to the demolition and

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burning of the six agricultural buildings. The above facts indicate a violation of this provision.

6. 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.

7. 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.

8. 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 tires, construction and demolition debris and the agricultural buildings were disposed of through burning, rather than properly disposed of at a landfill. The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, DNR orders and Jeffrey and Susan Buch agrees to do the following:

1. Properly dispose of all remaining solid waste and demolition debris at a landfill and submit the landfill receipts to DNR Field Office 6 within 30 days of the date the Director signs this administrative consent order; and
2. Pay a \$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.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 \$7,000.00 penalty. Jeffrey and Susan Buch are jointly and severally liable for the payment of the penalty. The

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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 10.30(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 \$500.00 for proper sampling and employee expenses. Buch gained an economic benefit of at least \$3,000.00 by avoiding the inspection fees. They also gained an economic benefit by avoiding the notification fee of \$100.00 per building, for a total of \$600.00. Additionally, they avoided the disposal fees for the tires. It is estimated that the disposal fee per tire is \$7.00, the estimated avoided disposal fees for 120 tires is \$840.00. The landfill fees were reduced since 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 \$4,500.00 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 tires and other solid waste releases 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, \$2,000.00 is assessed for this factor.

Culpability – Buch has a duty to remain knowledgeable of DNR's rules for asbestos removal and open burning. Based on the above considerations, \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Jeffrey and Susan Buch. For that reason, Jeffrey and Susan Buch waive the right to appeal this administrative consent order or any part thereof.

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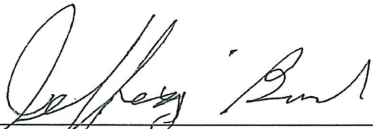
VIII. NONCOMPLIANCE

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.



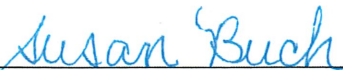
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KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources



JEFFREY BUCH

Dated this 25 day of
Oct, 2024.



SUSAN BUCH

Dated this 21st day of
October, 2024.

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<p>IN THE MATTER OF:</p> <p>JEFFREY BUCH and SUSAN BUCH</p> <p>Jefferson County, Iowa</p>	<p style="text-align: center;">PAYMENT PLAN FOR ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align: center;">No. 2024-AQ-22 No. 2024-SW-15</p>
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TO: Jeffrey and Susan Buch
1541 171st Boulevard
Fairfield, Iowa 52556

Administrative Consent Order No. 2024-AQ-22/2024-SW-15 was issued to Jeffrey Buch and Susan Buch on December 11, 2024. Jeffrey Buch and Susan Buch were ordered to pay an administrative penalty of \$7,000.00. The following payment plan has been established for the payment of the administrative penalty:

\$2,334.00 due January 15, 2025,
\$2,333.00 due January 15, 2026, and
\$2,333.0 due January 15, 2027

If any of the said payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately.

Please reference Administrative Consent Order No. 2024-AQ-22/2024-SW-15 when submitting payments. Payments should be submitted to:

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



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Lyon
Date: 2024.12.17 10:53:19
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KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

Dated this _____ day of
_____, 2024