

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

IN THE MATTER OF: KJ Excavating, LC LeClaire, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2009-AQ-19
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TO: Robert Holst, Owner
KJ Excavating, LC
24118 270th Street
LeClaire, Iowa 52753

Stephen Wing, Registered Agent
KJ Excavating, LC
1503 Brady Street
Davenport, Iowa 52803

I. SUMMARY

This administrative consent order is entered into between KJ Excavating, LC (KJ Excavating) and the Iowa Department of Natural Resources (DNR) for the purpose of resolving National Emission Standards for Hazardous Air Pollutants (NESHAP) violations in connection with a demolition project at the former EconoLodge in Bettendorf, Iowa.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Marion Burnside
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8443

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office 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 and permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess

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administrative penalties, the DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. On July 10, 2008, DNR received a complaint regarding the demolition of the former EconoLodge located at 2205 Kimberly Road in Bettendorf, Iowa. An additional complaint was forwarded by the United States Environmental Protection Agency (EPA) on July 30, 2008. The forwarded complaint was received by the EPA on July 12, 2008, and claimed that demolition was occurring at the above-mentioned property and that proper procedures were not being followed.

2. On July 10, 2008, Marion Burnside travelled to Bettendorf and investigated the complaint. Based on the information Mr. Burnside obtained in the investigation, KJ Excavating was determined to be the owner of the former EconoLodge. The former EconoLodge consisted of six buildings, and Mr. Burnside observed that KJ Excavating had demolished one building already. The debris from the building was in a dumpster and in a pile at the site. Demolition had begun on the other buildings and Rush Roll Off was salvaging the AC systems from the buildings. The salvaged material was in another dumpster on site. At the time of the inspection, no one from KJ Excavating or Rush Roll Off was on site. Mr. Burnside noted dry suspect material in the basement of the building that had been demolished. Mr. Burnside collected samples of the suspect material, including demolition debris, pipe wrap and vermiculate. Following the inspection, Mr. Burnside spoke to the owner of KJ Excavating and it was determined that KJ Excavating had not conducted a thorough asbestos inspection and had not submitted the required demolition notification to the DNR.

3. On July 11, 2008, Mr. Burnside submitted the samples to the University of Iowa Hygienic Laboratory for asbestos content analysis. On July 18, 2008, DNR received the laboratory results. Three of the four samples contained regulated amounts of asbestos. The pipe wrap sample contained 63% Chrysotile asbestos; the demolition debris sample contained 34% Chrysotile asbestos; and the vermiculite sample contained 2% Actinolite asbestos.

4. On July 30, 2008, DNR received a notification from Active Thermal Concepts to conduct an asbestos abatement project at the former EconoLodge and on August 11, 2008, DNR received a demolition notification from KJ Excavating for the demolition of the remainder of the hotel.

5. On September 3, 2008, DNR issued a Notice of Violation letter to KJ Excavating for the violations discovered during the July 10, 2008 inspection. The letter cited the following violations: failure to conduct a thorough inspection; failure to submit a demolition notification; failure to remove all asbestos containing material prior to demolition; failure to keep all asbestos containing material that has been removed adequately wet; failure to have a trained supervisor on site during demolition; failure to

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seal all asbestos containing material in leak-tight containers; and failure to dispose of the asbestos containing material at a landfill.

6. KJ Excavating has previous knowledge of the asbestos NESHAP regulations and has been cited for a notification violation in the past. On June 8, 2008, KJ Excavating was issued a Notice of Violation letter for failing to submit the proper notification prior to the demolition of a motel in Davenport, Iowa. KJ Excavating was a third party to the project in Davenport and was under the impression that the primary parties had submitted the proper notification. Additionally, on September 12, 2008 another company owned and operated by Robert Holst, Holst Trucking Company, Inc., was issued Administrative Consent Order No. 2008-AQ-28/SW-22 for the open burning and improper solid waste disposal of demolition debris

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides for the Environmental Protection Commission (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 asbestos NESHAP, found at 40 CFR part 61, subpart M.

2. 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. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the building. The above facts indicate a violation of this provision.

3. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the 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 KJ Excavating was not in compliance with these provisions when the demolition project began.

5. 40 CFR section 61.145(c)(1) states that the owner or operator of a demolition or renovation shall remove all regulated asbestos containing material from a facility being demolished or renovated before any activity begins that would break up, dislodge, or similarly disturb the material. During the inspection on July 10, 2008, Mr.

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Burnside discovered asbestos containing material had not been removed prior to the demolition of the building. The above facts 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. During the inspection on July 10, 2008, Mr. Burnside discovered dry asbestos containing material. The above facts 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 pipe removal. 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. Mr. Burnside found pieces of dry asbestos containing material that was not properly contained. The above facts indicate noncompliance with this provision.

9. 40 CFR section 61.150(b)(1) requires all asbestos containing waste material to be deposited as soon as it is practical by the waste generator at a waste disposal site operated in accordance with the provisions of 40 CFR section 61.154. Debris was deposited in the dumpsters rather than taken to the landfill as asbestos containing waste. The facts of this case indicate that this provision was violated.

V. ORDER

THEREFORE, the DNR orders and KJ Excavating agrees to do the following:

1. KJ Excavating shall pay a penalty of \$6,500.00. \$1,300.00 of the penalty shall be paid to the DNR by August 15, 2009. In lieu of payment of the remaining \$5,200.00, KJ Excavating shall:

Conduct a Supplemental Environmental Project (SEP). The SEP shall consist of a payment to the Scott County Conservation Board.

KJ Excavating shall make a payment of \$5,200.00 to the Scott County Conservation Board by August 15, 2009. Once the payment is made, KJ

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Excavating shall submit a receipt of payment to Kelli Book, attorney for the DNR.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for each of the air quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, 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 administrative penalty. The administrative penalty assessed by this administrative consent order is \$6,500.00. The administrative penalty is determined as follows:

a. Economic Benefit. Failure to follow the proper asbestos NESHAP regulations for asbestos removal and disposal has allowed KJ Excavating to save time and money. However, any economic benefit the company received was minimal because an inspection for the remainder of the project has now been completed and the proper notifications have been submitted. Therefore no economic benefit is being assessed.

b. 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 determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to follow proper procedures to remove and dispose of the regulated asbestos containing material may create an environmental hazard to the workers and general public through the likely release of asbestos fibers. For these reasons, \$1,000.00 is assessed for the notification and inspection violations noted in Section IV, Paragraphs 2 and 3; \$2,000.00 is assessed for the work practice violations noted in Section IV, Paragraphs 4, 5, 6, and 7; and \$1,000.00 is assessed for the disposal violations noted in Section IV, Paragraphs 8 and 9 for a total of \$4,000.00 being assessed for this factor.

c. Culpability. KJ Excavating has a duty to remain knowledgeable of the DNR's requirements, including requirements of the federal asbestos NESHAP regulations. KJ Excavating has been notified of the asbestos requirements in the past and had been issued a Notice of Violation letter for notification violations less than two months before the events cited in this administrative consent order. For these reasons, \$2,500.00 is assessed for this factor

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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly by and with the consent of KJ Excavating. For that reason, KJ Excavating 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 section 455B.146.

Payment of Penalty shall be submitted to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

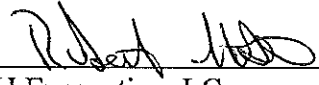
Payment to the Scott County Conservation Board shall be submitted to:
(Please include a copy of the administrative consent order with the payment)
Roger Kean, Director
Scott County Conservation Board
14910 – 110th Avenue
Davenport, Iowa 52804

Receipt of Payment to the Scott County Conservation Board shall be submitted to:
Kelli Book, Attorney
DNR
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322



RICHARD A. LEOPOLD, DIRECTOR *Deputy*
Iowa Department of Natural Resources

Dated this 23 day of
June, 2009



KJ Excavating, LC

Dated this 8 day of
June, 2009

Barb Stock (No asbestos file number); Marion Burnside; Kelli Book; DNR Field Office 6; EPA; VII.C.4