

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

---

STATE OF IOWA ex rel. IOWA	)	
DEPARTMENT OF NATURAL	)	NO. <u>EQCV088503</u>
RESOURCES,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	<b>CONSENT DECREE</b>
	)	
CEDAR RAPIDS COMMUNITY	)	
SCHOOL DISTRICT,	)	
	)	
Defendant.	)	
	)	

---

The Court is presented with Plaintiff's petition seeking injunctive relief pursuant to Iowa Code section 455B.146. The Court has reviewed the file and being advised by the parties FINDS:

1. The Court has jurisdiction over the parties and the subject matter of this action and Defendant Cedar Rapids Community School District (the School District) consents to entry of this Consent Decree.

2. While the School District hereby admits, for purposes of settlement and this action only, that sufficient evidence exists for the court to enter a finding of the violations alleged in paragraphs 57-61 of Plaintiff's Petition, Defendant denies liability for such violations. Without admission of any other alleged violations or waiver of any defense, legal or equitable which the School District may have in any future administrative or judicial proceeding, except a proceeding to enforce this Consent Decree, the School District stipulates to entry of this Consent Decree.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

3. Within 270 days of entry of this Consent Decree, the School District shall publicize and make available free of charge to every Iowa school district in an online format, an educational video or videos totaling one hour in time specifically designed and produced for Iowa school districts concerning asbestos requirements applicable to school districts that are contained in the Asbestos Hazard Emergency Response Act (AHERA), the Occupational Safety and Health Act (OSHA), and the Asbestos National Emissions Standards for Hazardous Air Pollutants (NESHAP). The School District shall complete this requirement subject to the following terms and conditions:

a. Contract with a consultant approved by Plaintiff to develop the content of the video;

b. Prior to video production, submit any topic outlines, script, or other documents regarding the content of the video to Plaintiff for review and approval;

c. Produce the video using in-house or other video production facilities capable of producing professional-quality videos;

d. Upon approval of the final video by Plaintiff, which approval shall not be unreasonably withheld, the School District shall make the video available in an online format in a manner so it will be freely accessible to all Iowa school boards, superintendents, and school facility management personnel;

e. The School District will simultaneously create and disseminate (with Plaintiff's approval, not to be unreasonably withheld) a publicity statement regarding the purpose of the video to the entities and individuals identified in subparagraph 3(d);

f. Submit in writing to Plaintiff any written contracts or other agreements entered into regarding the development, production or publication and distribution of the video;

g. The School District is not permitted at any time to charge a fee, receive a royalty, or otherwise receive any economic benefit for the video, and the video shall be freely available and useable without legal restrictions by anyone who may use, reproduce and distribute the video, in part or in whole, without obtaining permission; and

h. For a period of time no less than five (5) years after entry of this Consent Decree, the School District shall continue to provide electronic copies of the video, or provide access to the video in an online format, upon request by any individual or entity, private or public.

4. The School District is permanently enjoined from violations of 40 C.F.R. sections 61.145(a), 61.145(c)(1), 61.145(c)(3), 61.145(c)(6)(i), 61.145(c)(6)(ii), and 61.150(a) adopted by reference in 567 IAC 23.1(3).

**Stipulated Civil Penalties for Failure to Comply with Deadline**

5. Except as provided herein, the School District shall pay the following stipulated civil penalties:

a. For each day the School District fails to comply with the deadline contained in paragraph 3 herein:

<u>Period of violation</u>	<u>Penalty per day per violation</u>
1-30 days	\$250
31-60 days	\$500
Each day over 60	\$1,000

b. If a particular violation, referred to in subparagraph (a) above, occurs for more than one hundred eighty (180) days, the stipulated civil penalty of \$1,000 per day per violation shall continue unless and until the State of Iowa files in this action an Application or other pleading requesting that the Court assess against the School District up to a maximum civil penalty of \$5,000 per day per violation for such additional violations occurring after the date of the Application or other pleading. The School District reserves the right to contest the amount of any such penalties.

6. Payment of the stipulated civil penalties referred to in paragraph 5 shall be made no later than ten (10) days after receipt of a written demand from the Plaintiff for payment, or

after a court order requiring such payment, whichever is later. Payments shall be made payable to the State of Iowa, and sent to the Iowa Attorney General's Office at 1305 E. Walnut Street, Des Moines, Iowa 50319. Payment of these stipulated civil penalties shall not relieve the School District from obligations established by this Consent Decree or other provision of law. Payment of these stipulated civil penalties shall constitute full and final settlement of any penalty claims that were made or could have been made by Plaintiff in this action for the particular violations to which the stipulated civil penalties apply. In any event, Plaintiff may at any time seek entry of contempt and appropriate sanctions and relief for any willful failure to comply with the requirements of this Consent Decree.

**Force Majeure**

7. If the School District is unable to meet the requirements set forth in paragraph 3 (including all subparagraphs) of this Consent Decree, it shall provide notice to Plaintiff within thirty (30) days specifying the impediment to performance, the cause of the impediment, the possible duration of impediment, the School District's efforts to remedy the situation, and the expected effect of the delay upon the deadline contained in paragraph 3. The School District shall adopt all reasonable measures to avoid or minimize any impediment to performance of any requirement in this Order. Failure by the School District to provide notice to Plaintiff of an event which causes or may cause a delay or impediment to performance shall render the Force Majeure provisions herein voidable by Plaintiff.

8. Plaintiff shall notify the School District in writing regarding Plaintiff's position as to the School District's claim of a delay or impediment to performance as soon as practicable, but in any event within thirty (30) days after receipt. In the event Plaintiff fails to notify the School District within 30 days, the School District's claim shall be deemed agreed to by Plaintiff and the parties shall endeavor to reach agreement on an extension of the deadline. If within 30

days of receipt, Plaintiff agrees that the delay or impediment to performance has been or will be caused by circumstances beyond the reasonable control of the School District, and the School District could not have prevented the delay or impediment by the exercise of due diligence, the parties shall stipulate to an extension of the required deadline by a period equivalent to the delay actually caused by such circumstances.

9. If Plaintiff does not accept the School District's claim that a delay or impediment to performance is caused by a Force Majeure event, to avoid payment of stipulated penalties, the School District must submit the matter to this Court for resolution within thirty (30) business days after receiving notice of Plaintiff's position by filing a petition for determination with this Court. Once the School District has submitted this matter to this Court, Plaintiff shall have twenty (20) business days to file its response to said petition. If Plaintiff fails to respond within twenty days, the School District shall be entitled to petition the Court for an order relieving the School District from any liability for any penalties.

10. If the School District submits the matter to this Court for resolution and the Court determines that the delay or impediment to performance has been or will be caused by circumstances beyond the reasonable control of the School District, including any entity controlled by the School District, and the School District could not have prevented the delay or impediment by the exercise of due diligence, the School District shall be excused as to that event(s) and delay (including stipulated penalties), for a period of time equivalent to the delay caused by such circumstances. The School District shall bear the burden of proving that any delay of any requirement(s) of this Consent Decree was caused by or will be caused by circumstances beyond its reasonable control, including any entity controlled by it, and the School District could not have prevented the delay by the exercise of due diligence. The School District shall also bear the burden of proving the duration and extent of any delay(s) attributable to such circumstances.

11. Unanticipated or increased costs or expenses associated with performance of the School District's obligations under this Consent Decree shall not constitute circumstances beyond the reasonable control of the School District, or serve as a basis for an extension of time. In light of the fact that the parties cannot predict with certainty the underlying conditions that will be encountered as work proceeds, the parties recognize that the identification of unforeseen conditions may require additional time as a Force Majeure. In addition, failure of Plaintiff to issue a required approval within 14 days is an event of Force Majeure provided that the School District can meet its burden of demonstrating that it has timely completed the requirements outlined in subparagraphs 3(a)-(f), responded to any requests for additional information or actions by Plaintiff in a timely manner, and negotiated any disputed matters in good faith. If the School District meets this burden, the deadline established in paragraph 3 shall be extended by the number of days in excess of 14 days that were needed to receive Plaintiff's required approval.

**Notice and Copy Recipients**

12. For purposes of implementation of this Consent Decree, submittals, notices, documents or correspondence shall be sent to the following:

**For the Plaintiff**

David S. Steward  
Assistant Attorney General  
Environmental Law Division  
Hoover Building, 2nd Floor  
1305 E. Walnut St.  
Des Moines, IA 50319

**For the School District**

Brett S. Nitzschke  
Amy L. Reasner  
Lynch Dallas, P.C  
P.O. Box 2457,  
Cedar Rapids, IA 52406

A party may change either the notice recipient or the address for providing notices to it by serving all other parties with a notice setting forth such new notice recipient or address.

**Modification**

13. This Consent Decree and any schedule or activity required herein may be amended as necessary to accommodate changed circumstances by the written agreement of the parties (without court approval) or by further order of the Court.

**Effect of Consent Decree**

14. This Consent Decree is in full compromise and settlement of all violations alleged in the Petition to have been committed by the School District and all alleged violations by the School District arising out of the same facts and circumstances referred to in the Petition which were known or should have been known to the State of Iowa or were reasonably ascertainable from information in the State's possession as of the date of the filing of this Consent Decree.

**Jurisdiction Retained**

15. The Court retains jurisdiction over this matter to ensure compliance with the terms of this Consent Decree.

16. The costs of this action are taxed to the School District in the amount of \$185.00, and shall be made payable to the Linn County Clerk of Court.



State of Iowa Courts

**Type:** DECREE OR FINAL SUPPORT ORDER

**Case Number**      **Case Title**  
EQCV088503      STATE OF IOWA EX REL VS CEDAR RAPIDS COMMUNITY  
SCH

So Ordered

---

Denver D. Dillard, District Court Judge,  
Sixth Judicial District of Iowa