

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

<p>IN THE MATTER OF:</p> <p>HOLLIS JEFFREY Jefferson County, Iowa</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align:right">NO. 2012-AQ- 07 NO. 2012-SW- 09</p>
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TO: Hollis Jeffrey
1456 Brookville Road
Fairfield, Iowa 52556

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Hollis Jeffrey for the purpose of resolving the air quality and solid waste disposal violations which occurred during the demolition, burning and disposal of trailers and associated solid waste from the Horseshoe Court Trailer Park in Fairfield, Iowa on rural property near Richland, Iowa. 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: Relating to legal requirements:

Jim Kacer, Field Office #6 Iowa Department of Natural Resources 1023 West Madison Washington, IA 52353 Phone : 319/653-2135	Kelli Book, Attorney for the DNR Iowa Department of Natural Resources 7900 Hickman Road, Suite 1 Windsor Heights, Iowa 50324 Phone : 515/281-8563
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Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace 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

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quality), and the rules promulgated or permits issued pursuant to that part; 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. Horseshoe Court Trailer Park is located at 100 North 16th Street in Fairfield, Iowa and is owned by Mobile Management LLC. The trailer park is being sold on contract to The Earthman L.C., whose registered agent is Millard Elston III. The trailer park included 56 spaces for trailers. On June 30, 2011, Mr. Elston signed a timeline established by the City of Fairfield for the cleanup of the trailer park.

2. On September 26, 2011, DNR Field Office 6 received a complaint regarding opening burning and improper solid waste disposal that was occurring at property located at 2176 110th Street, Richland, Iowa. The property is owned by Ned and Hollis Jeffrey.

3. On October 12, 2011, Jim Kacer, DNR Field Office 6 environmental specialist, investigated the complaint at the Jeffrey's property. Mr. Kacer observed a large pile of solid waste east of an unoccupied house on the property. The pile included insulation, wood, cardboard, plastic, furniture, mattresses, clothing, and other solid waste. Mr. Kacer did not see evidence of open burning.

4. On October 12, 2011, a Notice of Violation letter was issued to Mr. Jeffrey for the improper disposal of solid waste on the property in rural Richland. The letter explained the solid waste regulations and required that the solid waste be disposed of at a permitted landfill within 30 days. The letter stated that the material must not be burned. On October 21, 2011, a Notice of Violation letter was reissued to Ned and Hollis Jeffrey for the improper solid waste disposal.

5. On October 22, 2011, prior to receiving the October 21 Notice of Violation letter, Ms. Jeffrey signed a document as the landowner allowing The Earthman, L.C. to burn the debris pile on her property.

6. On October 23, 2011, DNR Field Office 6 received a call on the spill line about a fire at the Jeffrey property. On October 24, 2011, Bert Noll, DNR Field Office 6 environmental specialist, spoke to the complainant who stated that the material that was burned included tires, televisions, paint cans, insulation, and batteries. The complainant stated that the waste came from the Horseshoe Court Trailer Park and that Mr. Elston was the person hired to clean up the park. The complainant stated that Mr. Elston may have taken some of the demolition debris from the trailers to the Jeffrey property.

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7. On October 25, 2011, Mr. Kacer spoke to the Jefferson County Sheriff's Deputy who had been called to the fire. The Sheriff's Office stated that Mr. Elston had called the fire in as a controlled burn, but later called for assistance when the fire got out of control and spread to a shed on the property. The Richland Fire Department responded. Mr. Elston provided a copy of the letter to the Sheriff's Office from Ms. Jeffrey that gave him permission to burn the debris pile.

8. On October 27, 2011, Bert Noll and Brian Lee, DNR Field Office 6 environmental specialists, visited the Jeffrey property. They noted that the debris pile had been burned. They photographed the area.

9. On October 28, 2011, Mr. Kacer and Kurt Levetzow, DNR Field Office 6 environmental specialist senior, visited the Jeffrey property and took more photographs of the debris remaining after the fire. They also visited Horseshoe Court Trailer Park and observed partially demolished mobile homes as well as piles of debris. They took photographs of the area. They contacted Mr. Elston by telephone. He stated he was out of town, but that he would stop at the field office to discuss the situation when he returned.

10. On October 31, 2011, Mr. Elston came to DNR Field Office 6 and spoke to Mr. Kacer and Mr. Levetzow. Mr. Elston did not deny bringing the demolition debris from the trailer park to the Jeffrey property. Mr. Elston stated he had permission from the landowner to burn the debris pile. Mr. Elston also stated that Ms. Jeffrey would not allow him to remove the waste from the property since the fire was being investigated.

11. On November 2, 2011, Mr. Kacer spoke to Ms. Jeffrey. She stated that she received the Notice of Violation letter after she had given Mr. Elston permission to burn the debris pile. She said that Mr. Elston had told her the burning was allowed. She stated she was not allowing Mr. Elston on the property until his insurance company had completed its investigation of the fire.

12. On November 10, 2011, Ms. Jeffrey was issued a Notice of Violation letter for the asbestos, open burning, and solid waste violations. The letter required the remaining debris to be removed from the Jeffrey property within 30 days of receipt of the letter. The letter also indicated that the matter was being referred for possible further enforcement. A Notice of Violation letter was also sent to Mr. Elston on the same day for the violations.

13. On December 5, 2011, Mr. Elston's insurance company contacted DNR Field Office 6 requesting an extension for the cleanup of the Jeffrey property. An extension was given for the cleanup to be completed by January 15, 2012.

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14. On December 14, 2011, Mr. Elston stopped at DNR Field Office 6 and provided a copy of the letter from Ms. Jeffrey that had given him permission to burn the debris on her property.

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 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Elston burned a pile of debris from the Horseshoe Court Trailer Park at property owned by Ms. Jeffrey. Ms. Jeffrey had given Mr. Elston permission to burn the debris pile on her property, thus allowing the open burning. The above facts demonstrate noncompliance with this provision.

3. 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.

4. 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. Debris from the Horseshoe Court Trailer Park was burned at the Jeffrey's property rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Hollis Jeffrey agrees to do the following:

1. Hollis Jeffrey shall remove the remaining solid waste and burn residue from her property and dispose of it as asbestos containing waste material at a permitted landfill within 30 days from the date the Director signs this administrative consent order;
2. Hollis Jeffrey shall submit the landfill receipts to DNR Field Office 6 within 14 days of the removal of the waste material; and
3. Hollis Jeffrey shall pay a penalty of \$1,000.00 within 30 days of the date the Director signs this administrative consent order.

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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. Iowa Code section 455B.146A provides for more serious criminal sanctions for the air quality violations. 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 \$1,000.00 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." It does not appear Ms. Jeffrey gained an economic benefit by allowing Mr. Elston to dispose of the debris on her property or by allowing Mr. Elston to burn the debris on her property. Therefore, no economic benefit is being assessed.

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. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. The open burning and improper solid waste disposal may adversely impact the health of the citizens in the area surrounding the burn site. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. \$750.00 is assessed for gravity of violation.

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Culpability – Ms. Jeffrey has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that her conduct is subject to DNR's rules. Open burning and solid waste rules have been in place for more than 20 years. Based on the above considerations, \$250.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Ms. Jeffrey. For that reason the Ms. Jeffrey waives the right to appeal this administrative 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 and 455B.307.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 26th day of
March, 2012.



HOLLIS JEFFREY

Dated this 17th day of
March, 2012.

Barb Stock (Con 10-6 Jefferson County); Kelli Book; Field Office 6; EPA; VI C,
VII C 1,

RECEIVED

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IDNR AIR QUALITY