

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: Simon Simonson Kossuth County, Iowa	ADMINISTRATIVE ORDER NO. 2014-SW- 06
--	---

TO: Simon Simonson
106 – 230th Street
Whittemore, Iowa 50598

I. SUMMARY

This order requires you to comply with all solid waste regulations, and to pay a penalty of \$5,000.00, subject to your appeal rights stated in this administrative order.

Any questions regarding this administrative order should be directed to:

Relating to technical requirements:

Carl Berg
Iowa Department of Natural Resources
Field Office No. 2
2300 15th Street S.W.
Mason City, Iowa 50401
Phone: 641-424-4073

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515-725-9551

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative order is issued pursuant to the provisions 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: Simon Simonson

III. STATEMENT OF FACTS

1. Simon Simonson owns an acreage located at 106 – 230th Street, in Whittemore, Kossuth County, Iowa (the site).
2. On August 29, 2012, DNR Field Office No. 2 received an anonymous complaint stating that Simon Simonson had been roofing homes and burying shingles behind a barn at the site.
3. On September 10, 2012, DNR Field Office Inspector Carl Berg visited the site and observed two burial pits with shingles located in and around the pits. The first pit containing shingles had a 15 by 15 foot area of recently disturbed ground in front of it. Mr. Berg obtained Mr. Simonson's phone number from a relative of Mr. Simonson who was at the site. At Mr. Berg's request, Mr. Simonson came to the site. At the site, Mr. Simonson showed Mr. Berg a second large pit filled with shingles. This pit was approximately 20 to 25 feet deep, 35 feet wide, and 15 feet long. Shingles were observed in and around the pit, and it was evident that shingles had been buried in the pit. Mr. Simonson stated that he had been bringing shingles to the site for 3 or 4 years. Mr. Simonson stated that he had hauled approximately 50 loads of waste shingles to the site from his roofing jobs. Mr. Simonson informed Mr. Berg that he was not aware that he could not dispose of the waste shingles on his property.
4. Mr. Simonson agreed to have all shingles exhumed from the pit and to haul 15 loads to the landfill by December 15, 2012, with all the remaining shingles disposed at the landfill by July 1, 2013. Additionally, photos of the pit were to be emailed to DNR Field Office No. 2 within 72 hours after removing all shingles from the pit.
5. A September 13, 2012, Notice of Violation letter (NOV) was sent to Simon Simonson for illegal disposal of shingles. The NOV contained the agreed upon schedule for removal of the shingles from the site.
6. On December 12, 2012, at the request for Mr. Simonson, the date for the exhumation and proper disposal of all shingles at the site was extended to July 1, 2013.
7. On December 17, 2012, DNR Field Office No. 2 received landfill disposal receipts for 18 loads of shingles.
8. On July 5, 2013, Mr. Berg visited the site. Minimal work appeared to have been conducted since December 2012.
9. An August 2, 2013, NOV letter was sent to Simon Simonson for failure to remove the shingles according to the agreed schedule.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: Simon Simonson

10. On October 5, 2013, Mr. Berg visited the site to evaluate Mr. Simonson's progress disposing of the shingle waste and other waste materials. Mr. Simonson was actively disposing of the waste during the site visit. On November 4, 2013, Mr. Simonson called Mr. Berg to inform Mr. Berg that about three loads of waste material per day were being removed to the landfill and Mr. Simonson anticipated that the waste removal would be completed by the end of November 2013. Mr. Berg requested to be informed when the removal was completed.

11. On December 19, 2013, Mr. Simonson submitted landfill receipts to DNR Field Office No. 2, along with a statement that he had properly disposed of all the shingles by taking them to a landfill. While the receipts from October 2013 and December 2013 were not provided, a significant amount of solid was hauled to the landfill based on the November 2013 receipts submitted.

12. On December 23, 2013, Mr. Berg visited the site and observed that the large stockpile of shingles had been removed from the property and the property was adequately cleaned up. The landfill receipts submitted to DNR totaled \$60,506.55. Mr. Simonson also submitted handwritten notes indicating that he spent a total of \$88,361.70 disposing of waste from the site.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

2. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit 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 illegal open dumping of solid waste in this case demonstrates non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders Simon Simonson to do the following:

1. Simon Simonson shall pay a penalty of \$5,000.00 within 30 days of the date this order is signed by the Director, and

2. Simon Simonson shall cease all illegal solid waste disposal activity at any location in the State of Iowa, and shall comply in the future with the regulations concerning disposal of solid waste.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: Simon Simonson

VI. PENALTY

Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal 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, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a \$5,000.00 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Simon Simonson initially saved time and money by burying trade waste from his business at the site rather than by transporting the waste to a landfill for proper disposal. Mr. Simonson estimated on September 10, 2012, that he had open dumped approximately 50 loads of shingles at the site. He later removed 18 loads from the site to a landfill. In September 2013, DNR estimated that the economic benefit to Mr. Simonson was at least \$9,427.68, based on the cost of transportation to and disposal of the remaining loads of shingles at the Kossuth County Transfer Station. However, in December 2013, Mr. Simonson submitted to DNR landfill receipts totaling \$60,506.55 from cleanup of the site. Therefore, no amount is assessed for economic benefit.

Gravity of the Violation – The illegal disposal of solid waste, including shingles, may pollute surface and groundwater. Therefore, \$2,500.00 is assessed for this factor.

Culpability – Simon Simonson has an obligation to be knowledgeable of the law applicable to the proper disposal of solid waste materials from his roofing business. Although the DNR rules regarding solid waste disposal have been in effect for many years, Mr. Simonson claims he was not aware of them. Noncompliance undermines and threatens the regulatory authority of the DNR. Therefore, \$2,500.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.308 and 561 IAC 7.4(1), a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: Simon Simonson

VIII. NONCOMPLIANCE

Failure to comply with this administrative order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.307. Compliance with Section "V. Order" of this administrative order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative order.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 30th day of
April, 2014.

DNR Field Office 2; Anne Preziosi; VI. C.

