# IOWA DEPARTMENT OF NATURAL RESOURCES
# ADMINISTRATIVE CONSENT ORDER

| IN THE MATTER OF:<br><br>DREDGE FEED SERVICE, INC.;<br>Ringgold County, Iowa | ADMINISTRATIVE CONSENT ORDER<br><br>NO. 2007-SW-01<br>NO. 2007-AQ-01 |
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**TO:** **Royce Dredge**
**Registered Agent**
**Dredge Feed Service, Inc.**
**R.R 1, Box 149A**
**Mount Ayr IA 50854**

## I. SUMMARY

This administrative consent order (Order) is issued to resolve violations arising from the illegal open dumping and open burning of solid waste by Dredge Feed Service, Inc. (Dredge Feed). Pursuant to this Order, Dredge Feed hereby agrees to pay a penalty of $1,500. A cash penalty of $1,000 shall be paid to the Department within 30 days of the execution of this Order. The remaining $500 penalty shall be satisfied through a Supplemental Environmental Project (SEP) consisting of the expenditure of at least $500 on advertisements related to open burning.

Any questions regarding this Order should be directed to:

Jon C. Tack, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-281-8889

## II. JURISDICTION

This Order is issued pursuant to 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; 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 or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

## III. STATEMENT OF FACTS

1. Dredge Feed is a farm supply company located in Mount Ayr, Iowa. Royce Dredge is the president and owner of Dredge Feed.

2. On May 23, 2005, the Department sent a Notice of Violation to the Ringgold County Engineer due to illegal open burning and illegal disposal of solid waste by the County Engineer. A copy of the Notice of Violation was sent to the Ringgold County Board of Supervisors. Royce Dredge was one of three members of the County Board of Supervisors at the time this Notice of Violation was received and discussed by the Board of Supervisors. The Notice of Violation detailed the applicable regulations.

3. On May 3, 2006, the Department received a complaint of illegal open burning of solid waste at the Dredge Feed facility at 1106 W. South Street, Mount Ayr, Iowa. The complainant alleged that illegal open burning had also occurred approximately 2 weeks prior to this incident.

4. On May 19, 2006, the Department investigated the complaint and confirmed that Dredge Feed had conducted illegal open burning of trade wastes at the facility. Photographs were taken of multiple burn sites on the property. The evidence observed indicated that the practice had been ongoing for a significant period of time.

5. A Notice of Violation was issued to Dredge Feed on May 30, 2006.

6. Royce Dredge asserts that he was unaware of the prohibitions against open burning.

## IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-121.

2. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit dumping or depositing or permitting dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise provided by rule. The above facts disclose violations of these provisions.

3. Iowa Code section 455B.133 provides that the Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.

4. Rule 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). The materials burned in this case do not qualify for exemption or variance. The above facts disclose violation of this provision.

## V. ORDER

THEREFORE, the Department orders and Dredge Feed hereby agrees to do the following:

1. Pay a penalty of $1,500. $1,000 of the penalty shall be paid to the Department at the time of execution of this Order. In lieu of payment of the remaining $500 amount, Dredge Feed shall conduct a Supplemental Environmental Project (SEP). The SEP shall consist of commissioning anti-open-burning advertisements. The Department shall contact the newspaper(s) and provide the print advertisement(s) to the newspaper(s). Dredge Feed will be billed for the advertisements, for an amount equal to $500. A copy of the newspaper(s) with the advertisement(s) shall be sent to Jon Tack at the Iowa Department of Natural Resources, 502 E. 9th Street, Des Moines, IA 50319-0034. The SEP shall be completed within 60 days of the date the director signs this Order.

## VI. PENALTY

1. Iowa Code section 455B.307(3) provides for civil penalties of up to $5,000 per day for solid waste violations. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to $10,000 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; Chapter 567 IAC 10. Pursuant to this chapter, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a penalty. $1,000 of this penalty shall be paid to the Department at the time of execution of this Order. $1,000 of this penalty shall be satisfied in accordance with Section "V. Order". The administrative penalty assessed by this Order is determined as follows:

a. Economic Benefit. Dredge Feed has achieved an economic benefit from its illegal conduct. Costs avoided include landfill disposal fees, labor, and hauling costs. The open burning of solid waste can reduce the volume of such waste by greater than 50 percent. In this case, based upon observations of the burn sites, the Department has determined that the open burning of trade wastes had been an ongoing business practice of Dredge Feed. However, Dredge Feed has contracted for waste disposal services throughout the period of violations and it is unclear whether any additional costs would have been incurred by placing this waste with other waste to be hauled to the landfill. Based upon these considerations, no penalty is assessed for this factor.

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 the type of violation. The illegal open dumping of solid waste threatens the groundwater of the state and provides a home and breeding ground for mosquitoes and other pests. 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. Based on the above considerations and the distinct, separate, and multiple dates of burning the waste, $1,000 is assessed for this factor.

c. Culpability. Dredge Feed is engaged in a business that routinely generates solid wastes. The disposal of this trade waste is a normal and expected cost of engaging in this business. Dredge Feed has a duty to be aware of the regulations applicable to the operation of its business. In addition, Royce Dredge was notified of the applicable regulations through his role on the Ringgold County Board of Supervisors. Despite these facts, Mr. Dredge alleges that he was unaware of the applicable prohibitions. Based on the above considerations and the continuing nature of the violations, $500 is assessed for this factor. In order to increase awareness the Department has determined that this penalty should be satisfied through the publication of advertisements notifying the public of the prohibitions against open burning.

## VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.138 and 455B.308 and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Dredge Feed. By signature to this Order, all rights to appeal this Order are waived.

## VIII. NONCOMPLIANCE

Failure to comply with this Order may result in the imposition of administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with provision "V. Order" of this Order constitutes full satisfaction of all requirements pertaining to the violations described in Divisions III and IV of this Order. The Department reserves the right to bring enforcement action or to request that the Attorney General initiate legal action to address other violations not described in this Order but which may arise from the facts summarized in Division III of this Order.

JEFFREY R. VONK, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 10 day of January, 2007

ROYCE DREDGE
DREDGE FEED SERVICE, INC.

Dated this 4th day of 1-4-, 2007

Field Office #4; Jon Tack; VI.C; VII.C(1)