

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

IN THE MATTER OF:

GEARY JAMES,
Harper, Iowa

ADMINISTRATIVE CONSENT ORDER

**NO. 2009-AQ-09
NO. 2009-SW-07**

TO: Geary James
26725 210th St.
Harper, IA 52231

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and Geary James for the purpose of resolving an issue pertaining to the open burning of combustible materials and improper solid waste disposal. 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:

Kurt Levetzow
Field Office #6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52327
Phone: 319-653-2135

Payment of penalty to:

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

Relating to legal requirements:

Jon Tack
Legal Services Bureau
Iowa Department of Natural Resources
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515-281-5145

II. JURISDICTION

This administrative consent order is issued 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 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

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and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Geary James owns a property located at 26725 210th Street, Harper, Iowa. Mr. James has engaged in illegal open burning and illegal disposal of solid waste at this site.

2. On April 24, 2008, the Department investigated a complaint alleging illegal open dumping and open burning at the Geary James property. It was observed that over 500 waste tires had been dumped at the site and that the tires had been burned. Based upon the remaining bead wire and other remnants, it was estimated that over 100 waste tires had been burned. Other solid waste had been dumped and appeared to be prepared for burning. Photographs were taken.

3. By July 1, 2008, all of the waste tires had been removed by Geary James and properly disposed of. Receipts were provided to IDNR Field Office #6.

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 20-34 relating to air quality.

2. 567 IAC 23.2 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under 567 IAC 23.2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.

3. 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 Department has documented violations of these provisions by Schnoebelen, Inc.

V. ORDER

THEREFORE, the Department orders and Geary James agrees to pay a penalty in the amount of \$2,000 at the time of execution of this Order.

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VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000 per day of violation for the solid waste disposal 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, 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 Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$2,000. The administrative penalty is determined as follows:

Economic Benefit - James Geary has achieved an economic benefit from the violations documented herein. The illegal open dumping and open burning of solid waste results in the avoidance of time, labor and disposal costs. Disposal costs for the 100 or more waste tires which were burned are estimated to be at least \$400, including loading, labor, and hauling costs. An additional \$1,500 or more has been avoided by the failure to dispose of the remaining waste tires. Because Mr. Geary has agreed to dispose of the remaining tires in a timely fashion, only \$400 is assessed for this factor.

Gravity - The improper disposal and burning of waste tires releases toxins and threatens ambient air quality. The improper storage of waste tires presents a risk of fire and provides a harborage for mosquitoes and other disease carrying pests. The burning of waste tires also threatens groundwater through the release of petroleum constituents. Therefore, \$1,000 is assessed for this factor.

Culpability - James Geary has a responsibility to be aware of applicable prohibitions on the open burning of waste tires. Because the tires were intentionally burned to avoid disposal costs and recover metal, a penalty of greater than \$1,000 is warranted. In light of the fact that the tires were apparently on site at the time the property was purchased, the penalty for this factor is being reduced to \$600.

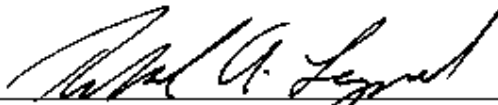
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Geary James. For that reason Geary James waives its rights to appeal this administrative consent order or any part thereof.


VIII. NONCOMPLIANCE

Failure to comply with this administrative consent 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 sections 455B.146, 455B.175 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 31 day of
March, 2009.



GEARY JAMES

Dated this 20 day of
March, 2009.

Jon Tack; F.O. #6, Dan Stipe; V.I.C; VII.C.1