

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF: Rick Spees 1961 Libertyville Rd. Fairfield, IA 52556	ADMINISTRATIVE ORDER 2009-SW- 10 2009-AQ- 15
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I. SUMMARY

This administrative order (Order) requires Mr. Rick Spees to cease and desist from illegal and unauthorized open dumping and open burning in the future, as well as to pay an administrative penalty of \$7,000 to the order of the Iowa Department of Natural Resources (Department). See Sections IV and V for more details. Any questions regarding this Order should be directed to:

Relating to technical requirements:

Ryan Stouder
Iowa DNR, Field Office #6
1023 W. Madison
Washington, IA 52353
Ph: 319-653-2135

Relating to legal requirements:

Tamara Mullen, Attorney
Iowa Department of Natural Resources
Des Moines, Iowa 50319-0034
Ph: 515/281-8934
tamara.mullen@dnr.iowa.gov

II. JURISDICTION

This Order is issued pursuant to 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, Part 1 (air quality) and the rules promulgated pursuant to that part; and Iowa Code section 455B.109 and Department rules in 567 Iowa Administrative Code (I.A.C.) Chapter 10, which authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. Rick Spees owns Rick Spees Auctions, an auction house located at 1961 Libertyville Road, Fairfield, Iowa.
2. On July 26, 2007, the Department received a complaint alleging that unsold auction material is routinely burned at 1961 Libertyville Road.

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3. The Department investigated the complaint on August 2, 2007. Two large burn piles were noted on the property by Field Office (FO) #6 environmental specialist Mr. Bob Pyle. Clearly visible in the burn piles were large pieces of furniture, boxes, fabric pillows, various plastic items (such as Tupperware containers and buckets), a truck canopy, and metal drums.
4. Mr. Spees was sent a Notice of Violation (NOV) on August 2, 2007 for illegal open dumping and open burning. The matter was subsequently referred to the Department's Legal Services Bureau for enforcement.
5. On March 27, 2008, an administrative consent order was sent to Mr. Spees but no agreement was reached.
6. The Department issued a unilateral order via certified mail to Mr. Spees on August 28, 2008, but Mr. Spees refused to sign for the document. Numerous attempts to contact Mr. Spees by phone were unsuccessful.
7. On September 5, 2008, Department FO#6 environmental specialist Mr. Ryan Stouder conducted an on-site visit. No one was present at Mr. Spees's property, but photos were taken showing open dumping and open burning was still on-going. Large pieces of furniture, such as desks, bookshelves, chairs, and stools; bed mattresses and box springs; drywall; fabric and upholstery; books and magazines; paint cans, plastic containers, bottles, and buckets; cribs; exercise equipment; and metal drums were all seen in dump and burn piles. Leftover debris was dumped into a ravine behind Mr. Spees' tool shed.
8. Mr. Spees called Mr. Stouder on September 9, 2008. Mr. Stouder again informed Mr. Spees of the illegality of his conduct, and urged him to contact the Department's Legal Services Bureau concerning the unilateral order. Mr. Spees failed to do so.
9. Mr. Stouder visited the auction site for a second time on November 13, 2008. No one was home. Photographs showed that open dumping and open burning continued, including the disposal of refrigerators and microwaves.
10. A second NOV for open dumping and open burning was issued to Mr. Spees on November 24, 2008. Shortly thereafter this matter was referred back to the Legal Services Bureau for follow-up enforcement.

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 I.A.C. 100 through 123.

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2. Iowa Code section 455B.307(1) and 567 I.A.C. 100.4 prohibit dumping or depositing or permitting the dumping or depositing of any solid waste at any place other than a facility permitted by the Department, unless otherwise specified by rule.
3. Solid waste includes “garbage, refuse, rubbish and other similar discarded solid or semisolid materials, including but not limited to such materials resulting from industrial, commercial, agricultural, and domestic activities” IOWA CODE § 455B.301(23).
4. The above-stated facts demonstrated Mr. Spees’ noncompliance with these provisions. Rick Spees Auctions is not a permitted facility for solid waste disposal yet large piles of solid waste have been dumped on the property.
5. 567 I.A.C. 118.2(1) prohibits any person from disposing or recycling an appliance until it has been properly demanufactured. A person cannot demanufacture an appliance without first obtaining an appliance demanufacturing permit (ADP) from the Department. *Id.* at 118.2(2).
6. “Appliances” is defined to include “household and commercial devices such as refrigerators, [and] . . . microwave ovens” 567 I.A.C. 118.3.
7. Mr. Spees does not possess an ADP, making the presence of appliances on his property a violation of these provisions.
8. 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 I.A.C. 20 through 35 relating to air quality.
9. 567 I.A.C. 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 567 I.A.C. 23.2(2) (variances) and 23.2(3) (exemptions).
10. At no time did Rick Spees seek, nor was he ever granted, a variance pursuant to 567 I.A.C. 23.2(2) to burn the solid waste present on his property. Nor do the materials in this case qualify as being exempt under 567 I.A.C. 23.2(3). As such, Mr. Spees’ open burning violated these provisions.

V. ORDER

THEREFORE, the Department orders Mr. Spees to comply with the following:

1. Mr. Spees shall properly dispose of all demolition debris, trade waste, and other solid wastes on his property. Mr. Spees shall provide the Department with disposal receipts from an approved disposal facility and have all cleanup completed within 45 days of this Order.

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2. Mr. Spees shall run an anonymous ad for one week in the Fairfield Ledger newspaper outlining the consequences for violating open dumping and open burning laws beginning within 30 days of this Order.
3. Mr. Spees shall pay an administrative penalty of \$7,000 to the order of the Iowa Department of Natural Resources 30 days after the Director signs this Order.

VI. PENALTY

Iowa Code section 455B.307 authorizes the assessment of civil penalties in Iowa District Court of up to \$5,000 per day of violation for solid waste violations involved in this matter. Additionally, Iowa Code section 455B.146 authorizes the assessment of civil penalties 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 Iowa Code section 455B.146A.

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. See 567 I.A.C. 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. The administrative penalty assessed by this Order is determined as follows:

ECONOMIC BENEFIT: Mr. Spees' economic benefit for not complying with Department rules is based upon the costs saved by avoiding labor, hauling, and tipping fee costs associated with proper disposal. Additionally, the burning of solid waste generally reduces the volume of that waste by more than 50%, decreasing disposal costs proportionally. Therefore, \$2,000 is assessed for this factor.

GRAVITY: The unregulated open burning of solid waste poses dangers to human health and the environment by releasing toxins and particulates into the air. Additionally, tax dollars were expended to investigate, document, and respond to these violations. A penalty of \$2,000 is assessed for this factor.

CULPABILITY: Mr. Spees has a legal duty to act in compliance with the open burning and open dumping laws of the State. The record shows Mr. Spees has been duly informed of the law numerous times. His continued noncompliance is knowing and willful. Accordingly, \$3,000.00 is assessed for this factor.

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VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code Chapter 17A and 561 I.A.C. 7. You may contact Tamara Mullen, attorney for the Department, at (515) 281-8934 for more information regarding appeal procedures and resolution of this Order.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this 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.



RICHARD A LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 27 day of May, 2009

Rick Spees: FO #6; Dan Stipe; Dennis Ostwinkle; Ryan Stouder; Tamara Mullen;
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