

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

<p>IN THE MATTER OF:</p> <p><b>BILL WHITTERS CONSTRUCTION CO.</b> Johnson County, Iowa</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2009-AQ- <del>22</del> NO. 2009-SW- 11</p>
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TO: Bill Whitters Construction Co.  
William Whitters, Registered Agent  
1303 Hickory Hollow Road  
Solon, IA 52333

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Bill Whitters Construction Co. for the purpose of resolving violations pertaining to open burning and open dumping of waste material. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Bert Noll  
Iowa Department of Natural Resources  
Field Office No. 6  
1023 West Madison  
Washington, IA 52353  
Phone: 319/653-2135

**Relating to legal requirements:**

Anne Preziosi, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-6243

**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 consent 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;

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IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: BILL WHITTERS CONSTRUCTION CO.

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) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Bill Whitters Construction Co. is owned by William (Bill) Whitters and has property located at 1303 Hickory Hollow Road, NE in the city of Solon in Johnson County, Iowa (the site).
2. On February 19, 2009, DNR Field Office 6 received a complaint regarding improper solid waste disposal and open burning at the site. The complainant reported that demolition waste was being open dumped and open burned in a pit located on the site.
3. On February 24, 2009, Environmental Specialists Kurt Levetzow and Bert Noll visited the site and documented open dumping of demolition materials and home remodeling waste along with other miscellaneous trash.
4. The following day, on February 25, 2009, a Notice of Violation letter was sent to Bill Whitters Construction Co. for open dumping and improper solid waste disposal. The Notice of Violation letter required clean-up of the site by March 31, 2009. Pictures were taken to document the violations.
5. Mr. Whitters called Mr. Levetzow on March 4, 2009. Mr. Levetzow explained the solid waste rules and informed Mr. Whitters to dispose the solid waste at a sanitary landfill instead of improperly burning it.
6. On March 10, 2009, DNR Field Office 6 received a complaint alleging that open burning and open dumping at the site was continuing. The same day, Mr. Noll visited the site and observed that the pile of illegally open dumped trade waste materials had been set on fire and was still burning and smoldering. Pictures were taken to document the violations.
7. Bill Whitters Construction Co. has improperly disposed approximately 10 tons of waste. The tipping fees in Johnson County are calculated based on \$38.50 per ton of waste. Transportation, landfill, and other costs are also estimated when calculating the amount saved by the company by failing to comply with state laws.
8. On July 20, 2004 Bill Whitters Construction Co. was issued a Notice of Violation for improper solid waste disposal of trade waste.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: BILL WHITTERS CONSTRUCTION CO.

**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 Iowa Administrative Code (IAC) chapters 20-35 relating to air quality.
2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning and open dumping of trade waste, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited. The above facts demonstrate violations of 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 567 IAC chapters 100-123.
4. 567 IAC 100.4 prohibits a private or public agency 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 above facts demonstrate non-compliance with this provision.

**V. ORDER**

THEREFORE, DNR orders and Bill Whitters Construction Co. agrees to do the following:

1. Pay a penalty of \$2,000.00 (two thousand dollars) within 30 days of the date this order is signed by the Director;
2. By June 30, 2009, dispose of the remaining solid waste at the site at a permitted sanitary landfill and send receipts to DNR Field Office 6 to demonstrate compliance; and
3. Immediately halt improper illegal open dumping and open burning of trade wastes and other materials at any location in the State of Iowa, and comply in the future with all state and local requirements regarding the proper disposal of solid waste and the prohibition against illegal open burning.

**VI. PENALTY**

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$2,000.00 is assessed. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: BILL WHITTERS CONSTRUCTION CO.

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. 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 \$5,000.00 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 consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Bill Whitters Construction Co. has achieved an economic benefit from open burning and improper waste disposal. It has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the demolition waste from the site. Tipping fees are \$38.50 per ton in Johnson County. Transportation, landfill, and other costs are also estimated when calculating the amount saved by the company by failing to comply with state laws. Based on a 10 ton calculation, a fine of \$500.00 is imposed.

Gravity of the Violation – Bill Whitters Construction Co. has been cited in the past for improper solid waste disposal. The burning of solid waste releases harmful pollutants in to the air and affects the health of other residents. \$500.00 is assessed for the gravity of these violations.

Culpability – Bill Whitters Construction Co. has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Further, in this case Bill Whitters Construction Co. was specifically informed of the DNR's rules regarding open burning in the past. Therefore, \$1,000.00 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Bill Whitters Construction Co. For that reason, Bill Whitters Construction Co. waives its rights to appeal this order or any part thereof.

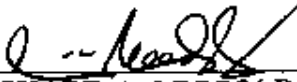
## VIII. NONCOMPLIANCE

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 and 455B.307. Compliance with Section "V. Order" of this

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
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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.

Patricia L  
Boddy

  
RICHARD A. LEOPOLD, DIRECTOR, Deputy  
Iowa Department of Natural Resources

Dated this 23 day of  
June, 2009.

  
WILLIAM WHITTERS  
Bill Whitters Construction Co.

Dated this 11 day of  
June, 2009.

Johnson County Air Quality file; Anne Preziosi; Field Office No. 6; VII.C.1