

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

IN THE MATTER OF: Chris Webb & Eugene Vogel Keokuk County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2009-AQ- 35 NO. 2009-SW- 24
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TO: Chris Webb
26248 185th Avenue,
Sigourney, IA 52591

Eugene Vogel
18961 315th Street
Hedrick, IA 52563

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department), Chris Webb and Eugene Vogel for the purpose of resolving air quality and solid waste disposal violations. 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:
Jim Sievers Field Office 6
Iowa Department of Natural Resources
2300 15th S.W.
Washington, Iowa 52353
Phone: 319/653-2135

Relating to legal requirements:
Carrie Schoenebaum, Attorney for the DNR
Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/281-0824

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

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

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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 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Chris Webb and Eugene Vogel were hired by Arthur Millikin to clear trees and build a pond at Section 26 T 74N R13W, Hedrick, Iowa. This property is owned by Mr. Millikin.
2. On July 29, 2007, Department Field Office 6 received a complaint alleging someone was burning tires on a brush pile located north of the City of Hedrick, Iowa. The complainant stated that the tires were burning last night and were burning at the time of the phone call.
3. On the same day, Jim Sievers, Department Environmental Specialist Senior, went to the above mentioned property to investigate the complaint. Once on site, he observed a burning brush pile that contained approximately 3 tires that had been partially burned and 3 or 4 additional tires that had yet to catch fire. Steel belts were also observed on the ground near another brush pile. Mr. Sievers spoke with Mr. Webb who was operating a bulldozer on site. Mr. Webb stated that he used the tires to get the brush pile to burn completely. He further stated that some of the tires had been brought to the site by Mr. Vogel to be burned.
4. Following the onsite investigation, on July 31, 2009, Mr. Sievers spoke to Mr. Vogel who confirmed that he had brought some of the tires to the site to be burnt along with the brush pile.
5. On August 3, 2009, a Notice of Violation was mailed to Mr. Webb and Mr. Vogel for the above discussed violations.

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 20-35 relating to air quality.
2. 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). Mr. Webb and Mr. Vogel allowed the burning of tires at the above mentioned property. Therefore, the above stated facts demonstrate noncompliance with 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 such rules at 567 IAC chapters 100-123.

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4. 567 IAC 100.4 prohibits 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 above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Mr. Webb and Mr. Vogel agree to do the following:

1. In the future properly dispose of all solid waste; and
2. Mr. Webb and Mr. Vogel shall be held to be jointly and severally liable for the payment of a penalty in the amount of \$2,000.00 that shall be paid to the Department within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

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 that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste 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, the Department 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 \$2,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Mr. Webb and Mr. Vogel save time, labor, and landfill costs by not properly disposing of the solid waste. It is estimated that Mr. Webb and Mr. Vogel saved approximately 20 dollars per tire and approximately 4 tires were burned. Therefore, \$100.00 is assessed for this factor.

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may

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violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning, and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$950.00 is assessed for this factor.

Culpability – Mr. Webb and Mr. Vogel have a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that their conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Based on the above considerations, \$950.00 is assessed for this factor.

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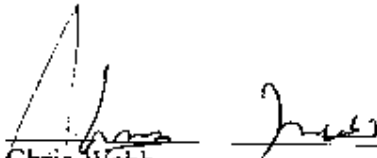
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VII. WAIVER OF APPEAL RIGHTS

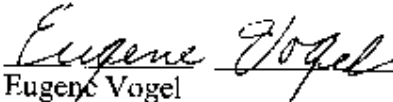
This administrative consent order is entered into knowingly and with the consent of Mr. Webb and Mr. Vogel. For that reason, they waive their right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE


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


Chris Webb

Dated this 7 day of
Dec. ~~27~~, 2009.


Eugene Vogel

Dated this 7 day of Dec
2009, 2009.


RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 14 day of
Dec., 2009.

Carrie Schoenebaum; DNR Field Office 6; EPA; VI.C and VII.C.1.