

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

IN THE MATTER OF:

Feeders Grain and Supply, Inc.
Adams County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2009-AQ-24
NO. 2009-SW-16

To: Feeders Grain and Supply, Inc.
James and Carolyn Curtis, Registered Agents
2052 Hunter Trail
Coming, Iowa 50841

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Feeders Grain and Supply, Inc. (Feeders Grain) for the purpose of resolving violations pertaining to open burning and improper disposal of trade waste. 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:
Dan J. Stipe
Iowa Department of Natural Resources
Field Office No. 4
1401 Sunnyside Lane
Atlantic, Iowa
Phone: 712/243-1934

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

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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; 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. Feeders Grain has a facility that is located at 2052 Hunter Trail, Corning, Adams County, Iowa.

2. On February 17, 2009, Keith Wilken of DNR Field Office No. 4 was conducting a follow-up investigation at Feeders Grain regarding an ethanol feed syrup spill complaint. During his visit to the site, Mr. Wilken observed evidence of illegal open dumping and illegal open burning of trade waste. Mr. Wilken observed a large burn barrel located on property owned by Feeders Grain. The burn barrel contained several oil filters, scrap metal, an aerosol can, shop rags, firewood, and other miscellaneous solid waste around the burn barrel.

3. Feeders Grain owner Jim Curtis was on vacation at the time of the site visit, so Mr. Wilken discussed the prohibitions against illegal open burning and illegal open dumping with another person in the Feeders Grain office. Mr. Wilken explained that all illegal open dumping and open burning must cease immediately. Mr. Wilken further explained to the Feeders Grain representative that the solid waste materials at the site had to be disposed of at a landfill and that landfill receipts should be submitted to Field Office No. 4. Mr. Wilken informed Feeders Grain that a monetary penalty would be assessed as a result of the violations.

4. While at the site on February 17, 2009, Mr. Wilken documented the violations by taking photographs.

5. A February 24, 2009, Notice of Violation (NOV) letter was sent to Feeders Grain. The NOV letter required Feeders Grain (1) to cease illegal open burning and open dumping; (2) to properly dispose of the open dumped materials at the site by March 20, 2009; and (3) to submit copies of landfill receipts to DNR Field Office No. 4 by March 27, 2009. Feeders Grain also was directed to submit a compliance plan to DNR Field Office No. 4 by March 27, 2009, explaining future plans to properly dispose of solid waste from the business.

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6. Feeders Grain received the NOV letter on February 26, 2009.

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). 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 Feeders Grain to do the following:

1. Pay a penalty of \$1,000.00 (one thousand dollars) within 30 days of the date this order is signed by the Director;
2. Immediately halt improper illegal solid waste disposal and open burning of waste materials at any location in the State of Iowa and specifically at the Corning site, 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; and
3. Clean up and dispose of all solid waste remaining on site within 30 days of issuance of this order. Feeders Grain shall submit copies of landfill receipts to DNR Field Office No. 4 within 45 days of issuance of this order.

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

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penalty of \$1,000.00 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 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 at 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 – Feeders Grain 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 solid wastes from the site. Proper disposal of the solid wastes dumped and burned at the site would have required payment of landfill tipping fees and transportation costs of at least \$300.00. Based on these considerations, a conservative estimate of \$300.00 is assessed for this factor.

Gravity of the Violation – Failure to properly dispose of solid waste threatens the integrity of the regulatory program. Moreover, improper solid waste disposal can degrade water quality and contribute contaminants to both land and water. Additionally, the unregulated open burning of solid waste poses dangers to human health and the environment by releasing toxins and particulates into the air. Finally, DNR personnel devoted significant amounts of time to respond to these violations. Based on the above considerations, \$400.00 is assessed for this factor.

Culpability – Feeders Grain and its agents have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. Therefore, \$300.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

Iowa Code sections 455B.138 and 455B.308 authorize a written notice of appeal to the Commission. This administrative consent order is entered into knowingly by and with the consent of Feeders Grain. By signing this order, the appellant waives all rights to appeal this order or any part of it.

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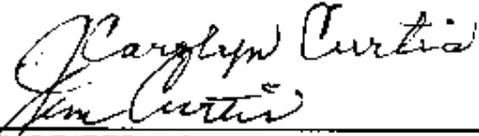
VIII. NONCOMPLIANCE

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 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
August, 2009.



AUTHORIZED AGENT
Feeders Grain and Supply, Inc.

Dated this 11 day of
Aug, 2009.

Adams County Air Quality file; Anne Preziosi; Field Office No. 4; VII.C.1

