

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

IN THE MATTER OF: NEW CO-OPERATIVE, INC. Humboldt County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2009-AQ-26 NO. 2009-SW-17
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TO: Dennis Knight, Safety Director
NEW Co-Operative, Inc.
2626 1st Avenue South
Fort Dodge, Iowa 50501

Robert Dobson, Registered Agent
NEW Co-Operative, Inc.
2626 1st Avenue South
Fort Dodge, Iowa 50501

I SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and NEW Co-Operative, Inc. for the purpose of resolving the air quality and solid waste disposal violations which occurred during the demolition and disposal of a commercial building in Bode, Iowa. 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:

Jeremy Klatt, Field Office 2
Iowa Department of Natural Resources
2300 15th S.W.
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

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 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

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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, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. NEW Co-Operative, Inc. owns and operated a grain elevator in Bode, Iowa. The facility is located the SE ¼ of the NE ¼, Section 17, Delana Township, Humboldt County.
2. On June 18, 2009, Jeremy Klatt, DNR Field Office 2 environmental specialist, observed black smoke coming from a grain bin site in the NE ¼ of Section 16, Delana Township, Humboldt County. Mr. Klatt spoke to Adam Kutschara with Reding Sand and Gravel. Mr. Kutschara was overseeing the burning, he informed Mr. Klatt that Reding Sand and Gravel had been hired to demolish the building for NEW Co-Operative, Inc..
3. Mr. Klatt met with Gary Fitzgerald with NEW Co-Operative, Inc. at the site of the demolished building. The building had been demolished and transported to a grain bin site approximately three-quarters of a mile from the elevator. The demolished building had been burned in a hole. Mr. Fitzgerald stated the building was approximately 40 foot by 20 foot with a bathroom and dinette area. He stated the building had asphalt shingles. Mr. Klatt explained the open burning rules and informed Mr. Fitzgerald that the burned waste and ash needed to be hauled to the landfill.
4. On June 19, 2009, DNR Field Office 2 issued a Notice of Violation letter to NEW Co-Operative, Inc. for improper open burning, improper solid waste disposal and failure to inspect and notify prior to a demolition. The letter informed the company that the matter was being referred for further enforcement.
5. Landfill receipts submitted by the company following the issuance of the Notice of Violation letter indicated that 51 tons of solid waste was transported to the landfill from the burn site.

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(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). A building owned by NEW Co-Operative, Inc. was demolished, transported to a different location, placed in a hole, and burned. The debris was burning when Mr. Klatt conducted his inspection on June 18, 2009. The above facts demonstrate noncompliance with this provision.

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3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

4. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the building. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the building. The above facts indicate a violation of this provision.

6. 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.

7. 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 demolition debris from the building was placed in a hole and burned rather than disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and NEW Co-Operative, Inc. agrees to do the following:

1. NEW Co-Operative, Inc. shall pay a penalty of \$8,500.00 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.

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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 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 an \$8,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR 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." Failure to follow the proper asbestos NESHAP regulations and solid waste disposal regulations by the improper open burning and disposal of the buildings has allowed NEW Co-Operative, Inc. to save time and money. NEW Co-Operative, Inc. was able to avoid the cost of an asbestos inspection and saved time by not notifying the DNR of the demolition. The estimated cost of an inspection and possible cost of asbestos abatement that NEW Co-Operative, Inc. avoided is \$1,000.00. Significant savings was achieved by burning the building rather than taking it to the landfill. It is estimated that the burning reduced the landfill fees by a factor of four. Therefore an additional 150 tons of solid waste disposal fees were avoided at an estimated \$30.00 per ton for an estimated savings of \$4,500.00. Based on the above considerations, \$5,500.00 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 violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition and burning of the structures. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, 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, \$2,000.00 is assessed for this factor.

Culpability – NEW Co-Operative, Inc. 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. The open burning and solid waste disposal regulations have been in place for more than 20 years. Based on the above considerations, \$1,000.00 is assessed for this factor.

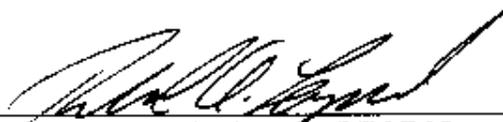
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of NEW Co-Operative, Inc. For that reason, NEW Co-Operative, Inc. waives the rights to appeal this order or any part thereof.

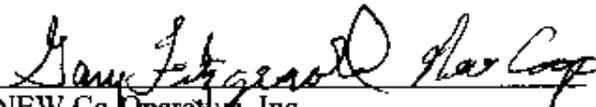
VIII. NONCOMPLIANCE

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.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 30 day of
Sept., 2009.



NEW Co-Operative, Inc.

Dated this 25 day of
Sept., 2009.

Barb Stock (Con 10-6 Humboldt County); Kelli Book; Marion Burnside; DNR Field Office 2; EPA; VI.C, VII.C.1, and VII.C.4