

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

IN THE MATTER OF: U.S. AG CENTER, INC., dba LEGRAND FARM CENTER Marshall County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2009-AQ- 33 NO. 2009-SW- 22
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TO: U.S. AG Center, Inc., dba LeGrand Farm Center
Don Wogen, Manager
1004 Hwy E-49
Marshalltown, IA 50158

U.S. AG Center, Inc., dba LeGrand Farm Center
Brad Olemann, Registered Agent
30473 260th St.
Eldora, IA 50627

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and U.S. AG Center, Inc., dba LeGrand Farm Center (LeGrand) for the purpose of resolving violations pertaining to illegal 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:
David L. Perry
Iowa Department of Natural Resources
Field Office No. 5
401 SW 7th, Suite 1
Des Moines, IA 50309
Phone: 515/725-0268

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. LeGrand is located at 1004 Hwy E-49 in the city of Marshalltown in Marshall County, Iowa (the site). The facility distributes fertilizers and receives grain. The manager of the facility is Don Wogen.
2. On September 23, 2008, while driving in the area to another site, David Perry of DNR Field Office 5 observed a plume of black smoke emanating from the site. Mr. Perry stopped at LeGrand and observed an area of open burning of solid waste including wood, plastic, and metal located in an excavation pit at the site. Mr. Perry also observed a refrigerator lying on its side next to the excavation pit. Mr. Perry spoke with a man who was outside at the site. Mr. Perry informed the man, who was apparently an employee at the site, that the open burning was illegal and that the solid waste should be removed and properly disposed of at a permitted landfill. Mr. Perry asked that the open burning cease immediately. Photographs were taken by Mr. Perry at the site to document the open dumping and open burning violations.
3. Mr. Perry entered the facility's scale house and asked to speak with the manager. He was informed that the manager was on the telephone. Mr. Perry asked for the name of the manager and the address of the facility, and he left his cell phone number in case the manager had questions.
4. On the same day, shortly after leaving the facility, Mr. Perry was contacted by Don Wogen, Manager of LeGrand. Mr. Wogen understood what needed to be done regarding discontinuance of the open burning and removal of the solid waste to a permitted landfill. Mr. Wogen inquired whether the site would be revisited by a DNR staff member prior to back-filling. Mr. Perry informed him that a letter warranting a response would be sent to the facility instead.
5. A September 24, 2008, Notice of Violation letter was sent to LeGrand, citing the open burning violation and requesting that solid waste be removed from the site and disposed of at an approved and permitted sanitary disposal project or landfill. The letter also requested that by October 4, 2008, a written response from

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LeGrand should be sent to DNR Field Office 5, containing a list of items burned or partially burned; the name, address and phone numbers of any responsible persons, including any contractor or excavator; and any receipts pertaining to the disposal of the partially burned solid waste that was required to be taken to the landfill.

6. Mr. Wogen responded on behalf of LeGrand with an undated letter listing items disposed of in what was described as "the hole that was being dug to bury a large piece of cement." The items included appliances, furniture, plastic, and vehicle parts. The letter from LeGrand stated that the solid waste had been removed from the site. The letter was accompanied by evidence of the proper disposal of the solid waste.

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. 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.

3. 567 IAC 23.2 specifically states that no person shall allow, cause or permit open burning of combustible materials, except as provided in 23.2(2) and 23.2(3). The facts described above demonstrate non-compliance with this provision.

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 facts described above demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and LeGrand agrees to the following:

1. LeGrand shall pay a penalty of \$1,000.00 within 30 days of the date this order is signed by the Director; and

2. LeGrand shall immediately halt all improper illegal open dumping and open burning of solid waste 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.

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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 \$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 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 – By burning solid waste, LeGrand reduced the volume of the waste and therefore avoided certain landfill tipping fees.

Gravity of the Violation – The burning of solid wastes releases hazardous air pollutants, particulate matter, and other pollutants. These air pollutants pose a health risk to persons, particularly persons with pre-existing respiratory problems. Further, the pollutants resulting from open burning may pollute groundwater, and pose a risk to both human health and the environment. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. 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. Based on the above considerations, \$600.00 is assessed for this factor.

Culpability – LeGrand has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Based on the waste that was dug out of the excavation pit, it is reasonable to assume that LeGrand was acting with high disregard to the long term effects on the environment from open burning and improper disposal. Therefore, \$400.00 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 LeGrand. For that reason, LeGrand waives its rights to appeal this order or any part thereof.

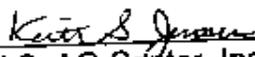
VIII. NONCOMPLIANCE

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. Failure to comply with this administrative consent order 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.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 8 day of
Dec., 2009.

 Treasurer
U.S. AG Center, Inc., dba LeGrand Farm Center

Dated this 1st day of
December, 2009.

Marshall County Air Quality file; Anne Preziosi, Field Office No. 5; VII.C.1