

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

IN THE MATTER OF:

TINA OLSEN AND MARTY
JUELSGAARD;

Audubon County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AQ- 21

NO. 2010-SW- 18

TO: Tina Olsen
2169 Hwy 71
Audubon, IA 50025

Marty Juelsgaard
2169 Hwy 71
Audubon, IA 50025

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department), Tina Olsen, and Marty Juelsgaard for the purpose of resolving an issue pertaining to illegal solid waste disposal, including the illegal open burning of solid waste. 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:

Dan Stipe, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, IA 50022
Phone: (712) 243-1934

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E 9th St.
Des Moines, IA 50319
Phone: 515/281-

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 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;

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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 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. Marty Juelsgaard and Tina Olsen reside at 2169 Hwy 71, Audubon, Iowa 50025. Ms. Olsen owns the subject property. Mr. Juelsgaard is a private contractor. Mr. Juelsgaard has dumped solid waste on the property of Ms. Olsen and burned the solid waste at the site. These illegal activities have been conducted with the knowledge and consent of Ms. Olsen.
2. On November 19, 2008, the Department received a complaint alleging that Mr. Juelsgaard was illegally open dumping and open burning solid waste at his residence.
3. On November 20, 2008, the Department investigated the complaint and confirmed the illegal open dumping and open burning. Photographs were taken. Voice messages and certified letters were provided instructing Mr. Juelsgaard and Ms. Olsen that they were required to remove and properly dispose of the solid waste. Mr. Juelsgaard and Ms. Olsen were specifically instructed that they could not burn or bury the solid waste. A deadline of November 26, 2008 was indicated by all of the contacts.
4. On November 21, 2008, the Department resent the letters to Mr. Juelsgaard and Ms. Olsen as a Notice of Violation.
5. On November 24, 2008, Mr. Juelsgaard accepted and signed for the certified letters. On that date, Mr. Juelsgaard contacted Dan Stipe, Supervisor of Department Field Office #4. Mr. Juelsgaard indicated that he would clean up the solid waste but would need additional time. A deadline of December 15, 2008 was agreed upon.
6. On December 16, 2008, the Department conducted a follow-up inspection. Most of the solid waste remained on site. Photographs were taken. On that date, the Department sent letters to Mr. Juelsgaard and Ms. Olsen extending the cleanup deadline to December 31, 2008 and requiring the submission of receipts by January 9, 2009.
7. On December 17, 2008, Mr. Juelsgaard informed Mr. Stipe that he believed he could comply with the December 31st deadline.
8. On December 18, 2009, Ms. Olsen accepted and signed for the letters sent by the Department on December 16th.
9. On January 12, 2009, Mr. Juelsgaard submitted landfill receipts and a letter indicating that he would continue removing solid waste from the subject property.

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10. On March 10, 2009, the Department conducted a follow-up inspection. Mr. Juelsgaard and Ms. Olsen had not completed the removal of the solid waste from the subject property. A letter was sent to Mr. Juelsgaard and Ms. Olsen on March 11, 2009 indicating that the matter would be referred for enforcement and that all solid waste should be removed by March 31, 2009 with receipts submitted by April 7, 2009.

11. On May 19, 2009, the Department conducted a follow-up inspection. The solid waste had been removed. No disposal receipts related to this removal have been provided. Disturbed ground was observed in the area where the solid waste had been located, indicating the possibility of illegal burial of the solid waste. It is the Department's understanding and belief that the solid waste was not delivered to the local solid waste landfill and is therefore likely to have been disposed of illegally. The evidence of disturbed soil reinforces this belief and it is therefore the conclusion of the Department that the solid waste was in fact illegally buried at the 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 states that no person shall allow, cause, or permit open burning of combustible materials except as provided in subrules 567 IAC 23.2(2) (variances) and 567 IAC 23.2(3) (exemptions). The burning documented in this matter does not fall under 567 IAC 23.2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision.

3. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit 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 Department has documented violations of these provisions by Marty Juelsgaard and Tina Olsen.

V. ORDER

THEREFORE, the Department orders and Marty Juelsgaard and Tina Olsen jointly agree to the following:

1. Marty Juelsgaard and Tina Olsen shall pay a joint penalty in the amount of \$750 pursuant to the following payment schedule:
\$250 by May 15, 2010;
\$250 by June 15, 2010; and
\$250 by July 15, 2010.

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2. Marty Juelsgaard and Tina Olsen shall maintain disposal receipts and other records to verify compliance with the requirements for legal disposal of solid waste. Such records shall be maintained until December 31, 2012.

VI. PENALTY

1. Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000 per day of violation for each of 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 per day of violation for the solid waste disposal violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with an administrative penalty of \$4,500. The administrative penalty is determined as follows:

Economic Benefit – Marty Juelsgaard and Tina Olsen have achieved an economic benefit from the violations documented herein. The illegal open dumping and open burning of solid waste results in the avoidance of time, labor and disposal costs. Disposal costs for the solid waste at the site are estimated to be at least \$750. The penalty contained herein is intended to recover the economic benefits realized by Mr. Juelsgaard and Ms. Olsen.

Gravity – The improper disposal and burning of solid waste toxins threatens ambient air quality. The improper burial of solid waste may cause groundwater contamination. Based upon the cooperation of the responsible parties during the investigation of this matter, the apparent financial condition of the parties, and the desire to resolve this matter consensually, no penalty is assessed for this factor.

Culpability – Marty Juelsgaard is engaged in the construction business. His business regularly generates trade waste and he has a duty to be aware of the applicable regulations. Based upon the cooperation of the responsible parties during the investigation of this matter, the apparent financial condition of the parties, and the desire to resolve this matter consensually, no penalty is assessed for this factor.

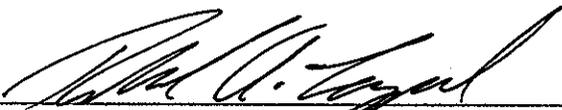
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Marty Juelsgaard and Tina Olsen. For that reason Marty Juelsgaard and Tina Olsen waive their rights to appeal this administrative consent 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 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.



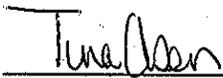
RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 9 day of
April, 2010



MARTY JUELSGAARD

Dated this 18 day of
September, 2009



TINA OLSEN

Dated this 18 day of
September, 2009

Field Office 4; Susan Johnson; VI.C; VII.C.1