

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER

IN THE MATTER OF:  <b>SMITH FERTILIZER AND GRAIN COMPANY</b> Monroe County, Iowa	ADMINISTRATIVE ORDER  NO. 2010-AQ-05 NO. 2010-SW-06
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TO: Smith Fertilizer and Grain Company  
Max Smith, Registered Agent  
1650 Quebec Street  
Knoxville, IA 50138

**I. SUMMARY**

This administrative order requires you to immediately discontinue the practice of improper solid waste disposal and open burning at the site described below in this order, and pay a penalty of \$4,000.00 within 45 days subject to the appeal rights stated in this order.

Any questions regarding this administrative order should be directed to:

**Relating to technical requirements:**

Bill Gross  
Iowa Department of Natural Resources  
Field Office No. 5  
401 SW 7<sup>th</sup>, 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

**II. JURISDICTION**

This administrative 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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: SMITH FERTILIZER AND GRAIN COMPANY

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. Smith Fertilizer and Grain Company (Smith Fertilizer and Grain) has a grain storage facility on the northwest side of Albia in Monroe County, Iowa.
2. On March 2, 2009, DNR Field Office 5 received a complaint that Smith Fertilizer and Grain remodeled its facility and dumped all the debris, including metal waste material, in the back of the property. The complainant stated that Smith Fertilizer and Grain was open burning the waste material and producing black smoke from the facility.
3. Bill Gross of DNR Field Office 5 inspected the facility on March 4, 2009, and found that a new building was being constructed at the front of the site. In the back area, he found a smoldering tree pile and some smoke coming from beneath the surface of the ground. In the smoldering area that had been leveled, Mr. Gross observed charred pieces of boards, plywood, and feed sacks. While at the site on March 4, 2009, Mr. Gross met with equipment operator Charles Smith, who stated that he mainly burned trees from the removed fence line, but also burned scrap lumber from the construction project and feed sacks. He also reported that waste from a previous renovation project was taken to a sanitary landfill.
4. A March 10, 2009 Notice of Violation letter (NOV) was sent to Smith Fertilizer and Grain, citing the facility for the open burning of trade waste. Following the issuance of the NOV, on March 14, 2009, Max Smith of Smith Fertilizer and Grain emailed Mr. Gross, admitting trade waste should not have been open burned, but stated that Smith Fertilizer and Grain employees had been informed not to open burn trade waste.
5. Smith Fertilizer and Grain has a prior history of open burning violations. Administrative Consent Order No. 2006-AQ-15; 2006-SW-06 was issued to Smith Fertilizer and Grain on May 9, 2006, for the illegal open dumping and illegal open burning of trade waste at or near its home site in Marion County. The order included a penalty of \$3,000.00. On September 14, 2005, a DNR Field Office 5 inspector visited the home site and observed a burn area in the southwest corner of the site. The burn area contained the remains of burned tires and furniture and other miscellaneous waste. The inspector also observed a burn bin containing sand bags and plastic bottles. A September 16, 2005, NOV was sent to Smith Fertilizer and Grain for this incident. On July 14, 2005, Smith Fertilizer and Grain was issued an NOV citing Smith Fertilizer and Grain for open burning shingles and other materials.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: SMITH FERTILIZER AND GRAIN COMPANY

**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 Smith Fertilizer and Grain to do the following:

1. Pay a penalty of \$4,000.00 within 45 days of the date this order is signed by the Director; and
2. Immediately cease illegal open dumping and open burning of waste materials at any location in the State of Iowa and specifically at the site mentioned in this order, 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.

**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 \$4,000.00 is assessed by this administrative order. The penalty must be paid within 45 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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: SMITH FERTILIZER AND GRAIN COMPANY

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 Order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Smith Fertilizer and 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 demolition waste from this site. The estimate for a ton of waste disposal is \$50. Therefore based on an estimate of two tons at \$50 per ton plus transportation and labor costs, a penalty of \$200.00 is assessed for this factor.

Gravity of the Violation – Smith Fertilizer and Grain has been cited in the past for open burning violations and an administrative consent order was issued against Smith Fertilizer and Grain in May 2006. Improper open burning of construction debris and feed sacks can degrade air quality in the immediate area. Since a residential subdivision is near this burn site, general public health and quality of life are negatively affected. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Based on the mentioned factors, \$1,300.00 is assessed for gravity of violation.

Culpability – Smith Fertilizer and Grain 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. Further, Smith Fertilizer and Grain was specifically informed of the prohibitions against illegal open dumping and illegal open burning on more than one occasion in the past. Therefore, \$2,500.00 is assessed for this factor.

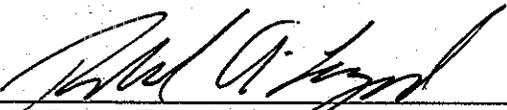
IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: SMITH FERTILIZER AND GRAIN COMPANY

**VII. APPEAL RIGHTS**

Pursuant to Iowa Code sections 455B.138 and 455B.308 and 561 IAC 7.4(1), a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

**VIII. NONCOMPLIANCE**

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

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 8 day of  
Feb., 2010.

Marion County Air Quality file; Anne Preziosi; DNR Field Office5; VII.C.2

