

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: JEFF LARABEE, dba J & J CONSTRUCTION Taylor County, Iowa	ADMINISTRATIVE ORDER NO. 2010-AQ-09 NO. 2010-SW-09
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TO: Jeff Larabee, dba J & J Construction
409 West 2nd Street
New Market, Iowa 51646

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 \$2,000.00 within 60 days subject to the appeal rights stated in this order.

Any questions regarding this administrative order should be directed to:

Relating to technical requirements:
Keith Wilken
Iowa Department of Natural Resources
Field Office No. 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
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

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

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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. On April 2, 2009, DNR Field Office No. 4 investigated an illegal open dumping and illegal open burning incident at 409 West 2nd Street in New Market, Taylor County, Iowa. Jeff Larabee, dba J & J Construction, was open burning lumber, garden hoses, mattresses, metal fragments, appliances, shingles, household waste, clothing and other miscellaneous waste items. The location of the illegal open dumping and open burning is property owned by Jeff Larabee. Pictures were taken by DNR Field Office No. 4 to document the violations.

2. An April 9, 2009, Notice of Violation letter was sent to Jeff Larabee at J & J Construction, citing the violations of illegal open dumping and illegal open burning. The letter directed Mr. Larabee to remove the remaining solid waste from the site by May 1, 2009 and to provide landfill receipts to DNR by May 15, 2009. A landfill receipt dated April 11, 2009, was received by DNR.

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.

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V. ORDER

THEREFORE, DNR orders Jeff Larabee, dba J & J Construction, to do the following:

1. Jeff Larabee, dba J & J Construction, shall cease all illegal solid waste disposal and open burning activities;
2. By no later than April 1, 2010, Jeff Larabee, dba J & J Construction, shall clean up any remaining solid waste located at the site described in this order; and
3. Jeff Larabee, dba J & J Construction, shall pay a penalty of \$2,000.00 within 60 days of the date this order is signed by the Director.

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 \$2,000.00 is assessed by this administrative order. The penalty must be paid within 60 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 order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Jeff Larabee, dba J & J Construction, has achieved an economic benefit from open burning and improper waste disposal. Through the avoidance of solid waste disposal and landfill costs, Jeff Larabee, dba J & J Construction, has received an economic benefit of at least \$500.00. Therefore, \$500.00 is assessed for this factor.

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Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authority by the Iowa Code for that type of violation. Substantial penalties are authorized by statute. Despite the high penalties authorized, DNR has determined at this time that the most equitable and efficient means of resolving this matter is through the issuance of an administrative consent order. Failure to properly dispose of solid waste threatens the integrity of the regulatory program. Improper solid waste disposal and open burning can degrade water quality and contribute contaminants to land, water, and the air, as well as threaten public health. Therefore, \$1,000.00 is assessed for this factor.

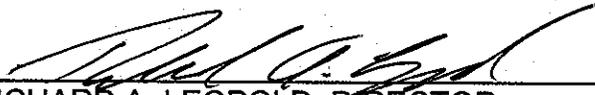
Culpability – Jeff Larabee, dba J & J Construction, has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's requirements. Therefore, \$500.00 is assessed for this factor.

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.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 23 day of
Feb., 2010.

Taylor County Air Quality file; Anne Preziosi; DNR Field Office 4; VII.C.2