

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

IN THE MATTER OF: Donald W. Christensen Emmet County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2010-AQ- 01 NO. 2010-SW-01
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TO: Donald W. Christensen
1815 5th Avenue North
Estherville, IA 51334

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Donald W. Christensen (Mr. Christensen) for the purpose of resolving violations pertaining to 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:
Bryon Whiting
Iowa Department of Natural Resources
Field Office No. 3
1900 North Grand Ave, Suite E17
Spencer, IA 51301
Phone: 712/262-4177

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 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

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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. Mr. Christensen currently owns a farmstead parcel of 6.43 acres located at 3976 14th Avenue North in Estherville, Emmet County, Iowa (the site). Mr. Christensen operates a farm shop at this location, where he repairs and services trucks.
2. On April 24, 2009, DNR Field Office 3 received a complaint from Terry Reekers (Mr. Reekers) of Emmet County Emergency Management regarding Mr. Christensen allowing, causing, or permitting open burning of waste tires at the site. Mr. Christensen alleges that this fire was reported to the Estherville Fire Department by Mr. Christensen's daughter-in-law. Mr. Dick Beaver of the Estherville Fire Department indicated that Mr. Christensen maintained a contemptuous attitude during the event and drove away while the fire was being put out by the Fire Department and other volunteers. Mr. Reekers took pictures of the burning waste pile of approximately 25 burned tires, with additional pictures of previous burning of a PVC pipe and a microwave oven.
3. Generally, proper disposal of truck tires cost approximately \$10 per tire at a waste tire processor, and disposing tires may include additional costs for transportation.
4. On May 1, 2009, Field Office 3 issued a Notice of Violation letter (NOV) to Mr. Christensen for the illegal open burning. The NOV advised Mr. Christensen of referral of his illegal activities for further enforcement action. A copy of the open burning prohibition was also enclosed with the NOV.

Past Violations

5. On June 29, 2004, Field Office 3 received a complaint from Mr. Reekers and the Estherville Fire Chief indicating that Mr. Christensen was illegally open burning a refrigerator, oil filters, a plastic tank, and waste tires.
6. On July 14, 2004, a Notice of Violation was sent to Mr. Christensen with a copy of the rule prohibiting open burning, and he was advised about possible further enforcement actions.
7. On July 29, 2004, Director Vonk signed an administrative order (Administrative Order Number 2004-AQ-40) which required Mr. Christensen to cease open burning and to pay a \$1,000.00 penalty within 30 days.

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8. On September 28, 2004, Mr. Christensen submitted a check to DNR for the \$1,000.00 assessed by Administrative Order Number 2004-AQ-40.

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. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). The burning of trade waste is specifically prohibited. 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 and Mr. Christensen agrees to do the following:

1. Pay a penalty of \$5,500.00 (five thousand and five hundred dollars) within 30 days of the date this order is signed by the Director;
2. By October 15, 2009, clean up the burn site and properly dispose of all materials, and submit copies of receipts for disposed material to DNR Field Office No. 3 within 15 days after cleanup.
3. Submit to DNR a copy of any contract with a waste tire processor for the proper disposal of waste tires generated at the site; and
3. Immediately halt improper illegal open dumping and open burning of solid waste 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 \$5,500.00 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 – Mr. Christensen has achieved an economic benefit from open burning and improper waste disposal. He has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the solid waste from the site. Transportation, disposal, and other costs are also estimated when calculating the amount saved by the company by failing to comply with state laws. Tire disposal fees are generally at least \$10 per truck tire and an estimated 25 tires were burned at the site. Based on a conservative estimate of \$10 per truck tire for 25 tires, a penalty of \$250.00 is assessed.

Gravity of the Violation – Mr. Christensen has been cited in the past for open burning and improper solid waste disposal. The burning of solid wastes releases hazardous air pollutants, particulate matter, and other pollutants. These air pollutants pose a health risk to persons breathing, 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. \$3,000.00 is assessed for the gravity of these violations.

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Culpability – Mr. Christensen 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 rules. Further, in this case Mr. Christensen was specifically informed of the DNR's rules regarding open burning in the past. The tire pile was nearly burnt out by the time the Fire Department arrived, at which point Mr. Christensen left the scene while the fire was being put out. The sum of this evidence indicates Mr. Christensen's willful negligence to comply with the open burning prohibition. Therefore, \$2,000.00 is assessed for this factor.

Mitigating or Aggravating Factors – There are no mitigating factors evident in this situation. However, aggravating factors here include Mr. Christensen's contemptuous attitude, failure to take any reasonable actions to assist with putting out the fire, and failure to offer or provide access to on-site equipment to help the volunteer fire fighters extinguish the fire. Based on these considerations, \$250.00 is assessed for aggravating factors.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Mr. Christensen. For that reason, Mr. Christensen waives his rights to appeal this order or any part thereof.

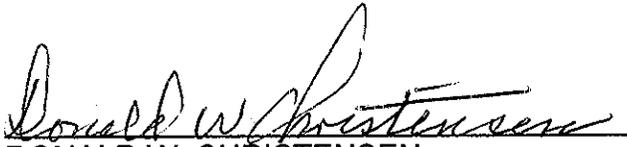
VIII. NONCOMPLIANCE

Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in 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 section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 12 day of
January, ~~2009~~
2010.



DONALD W. CHRISTENSEN

Dated this 17 day of
December, 2009