

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

<b>IN THE MATTER OF:</b>  <b>ELLIS HOUK;</b>  <b>Adams County, Iowa</b>	<b>ADMINISTRATIVE ORDER</b>  <b>NO. 2009-AQ- 34</b> <b>NO. 2009-SW- 23</b>
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**TO: Ellis Houk**  
**2058 Hunter Trail Road**  
**Corning, IA 50841**

**I. SUMMARY**

This administrative order is issued by the Iowa Department of Natural Resources (Department) to Ellis Houk, for the purpose of resolving an issue pertaining to illegal solid waste disposal, including the illegal open burning of solid waste.

Questions regarding this administrative 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 9<sup>th</sup> St.  
Des Moines, IA 50319  
Phone: 515-281-8889

**Payment of penalty or appeal 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 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; 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

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Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Ellis Houk and his wife, Gayle Houk, operate multiple businesses at a property at 2058 Hunter Trail Road, Corning, IA 50841. The property is listed by the Adams County Assessor as being owned by Feeders Grain, L.L.C. Feeders Grain, L.L.C. was administratively dissolved on August 11, 2008. Ellis Houk previously held an appliance demanufacturing permit for his property at 2243 190<sup>th</sup> Street, Bedford, Iowa. The appliance demanufacturing permit expired on May 12, 2008 and was not renewed. Ellis Houk previously had a storm water discharge permit for the 190<sup>th</sup> Street property. The permit expired on April 22, 2008 and was not renewed.

2. On February 20, 2009, the Department received a complaint alleging that Ellis Houk was processing junk vehicles and allowing the fluids (oil, antifreeze, and gasoline) from the vehicles to run onto the ground and allowing the refrigerant to vent into the air. The Department attempted to investigate the complaint on March 6<sup>th</sup> but was denied access to the property by Mr. Houk.

3. On March 12, 2009, the Department received a complaint alleging that Ellis Houk was cutting up junk vehicles and allowing the fluids to spill onto the ground.

4. On March 13, 2009, the Department sent a letter to Mr. Houk outlining the allegations made against him and notifying him of the applicable regulations in regard to storm water, solid waste, open burning, and appliance salvaging.

5. Mr. Houk notified the Department that all correspondence should be directed to Attorney Richard Wilson. A letter was sent to Mr. Wilson on April 10, 2009.

6. On April 16, 2009, Attorney Richard Wilson sent a letter to the Department indicating that he would speak with his client and respond further after he found out more information.

7. On May 4, 2009, Ellis Houk, through attorney Richard Wilson, notified the Department that Mr. Houk would not cooperate with an investigation by the Department.

8. On May 7, 2009, the Department obtained a search warrant and inspected the property at 2058 Hunter Trail Road, Corning, Iowa. The Department documented multiple violations related to the illegal open burning of solid waste and illegal disposal of solid waste. Photographs were taken. It appeared that fluids discharges from vehicles were uncontrolled and could be reaching a storm sewer but an actual discharge could not be verified at that time.

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9. On May 13, 2009, the Department sent a Notice of Violation to Ellis Houk along with a copy of the investigation report.

**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 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 Ellis Houk.

**V. ORDER**

THEREFORE, the Department orders:

1. Ellis Houk shall remove all solid waste from the property located at 2058 Hunter Trail Road, and any other property under his possession or control, by January 31, 2009.
2. Within 15 days of disposal, Ellis Houk shall provide receipts to the Department verifying lawful disposal of all solid waste removed from the properties.
3. Ellis Houk shall pay a penalty in the amount of \$8,000 within 60 days of the execution of this administrative order.

**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.

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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 \$8,000. The administrative penalty is determined as follows:

Economic Benefit – Ellis Houk has 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. The burning of solid waste generally reduces the volume of that waste by greater than 50% and thereby reduces disposal costs proportionately. Based upon these considerations and the determination that this matter was an ongoing activity, a penalty of \$1,000 is assessed for this factor.

Gravity – The improper disposal and burning of solid waste releases toxins and thereby threatens ambient air quality and human health. The improper disposal of solid waste may cause groundwater contamination and provides habitat for mosquitoes and other pests. The failure to properly dispose of solid waste threatens the integrity of the regulatory program. Therefore a penalty of \$3,000 is assessed for this factor.

Culpability – Ellis Houk has been previously made aware of the Department's regulations through his appliance demanufacturing permit and storm water permit. Mr. Houk refused to cooperate with the Department's investigation throughout the process. The Department's investigation found multiple burn locations and evidence of repeated violations over an extended period of time. There were clearly multiple days of violations. Therefore a penalty of \$4,000 is assessed for this factor.

**VII. APPEAL**

Pursuant to Iowa Code sections 455B.138 and 455B.308 and 561 IAC chapter 7, as adopted by reference at 567 IAC 7.1, a written Notice of Appeal to the Commission may be filed within 30 days of issuance of this administrative order. The Notice of Appeal should be filed with the Director of the Department, 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.

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VIII. NONCOMPLIANCE

Failure to comply with this administrative 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. Total Compliance with all provisions of Section "V. Order" of this administrative order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 18 day of  
Dec, 2009.

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