

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

<b>IN THE MATTER OF:</b>  <b>Melvin Yerkes Butler County, Iowa</b>	<b>ADMINISTRATIVE CONSENT ORDER</b>  NO. 2009-AQ- <b>52</b> NO. 2009-SW- <b>21</b>
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TO: Melvin Yerkes  
P.O. Box 618  
Greene, IA 50636

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and Melvin Yerkes for the purpose of resolving air quality and solid waste disposal violations. 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:**  
Glenn Carper Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> S.W.  
Mason City, Iowa 50401  
Phone: 641/424-4073

**Relating to legal requirements:**  
Carrie Schoenebaum, Attorney for the DNR  
Iowa Department of Natural Resources  
502 East Ninth Street  
Des Moines, Iowa 50319-0034  
Phone: 515/281-0824

**Payment of penalty to:**  
Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

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 Administrative Code

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(IAC) chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative consent order.

**III. STATEMENT OF FACTS**

1. Melvin Yerkes owns property located in Butler County, Iowa located at Section 1 T 93N R17W, Greene Iowa.
2. In April 2009, Greene Police Department received a complaint alleging that a large pile of debris had accumulated on a piece of unimproved land in the City of Greene. The caller stated that the land was on the north end of Melvin Yerkes' pasture located east of the 600<sup>th</sup> block of North Second Street.
3. On April 23, 2009, Officer Tim Joebgen, of the City of Greene Police Department, went to the above mentioned area to look at the pile of debris. Once on site, Mr. Joebgen observed that there was a lot of ash and partially burnt items from previous fires. The pile consisted of old siding, tree branches and other landscape waste. Mr. Joebgen also noticed a few cardboard boxes, plastic sacks and dimensional lumber in the pile. Mr. Joebgen was aware that Mr. Yerkes had recently removed old siding from his home; therefore, he suspected that Mr. Yerkes was responsible for the accumulation of debris.
4. On April 28, 2009, Officer Joebgen met with Mr. Yerkes and told him that he could burn tree limbs, branches and leaves that were on the pile but, according to the city code, he could not burn siding, boxes, plastic, dimensional lumber or any other trash.
5. On July 4<sup>th</sup>, 2009, while Officer Joebgen was standing in his front yard, Mr. Yerkes pulled up and stated that he had lit the pile of debris on fire, that there was green grass all around, therefore the fire would not travel. He also stated that he didn't see a problem with it. Officer Joebgen was off duty at the time Mr. Yerkes made the statement and was unable to investigate. However, a short time later he received several calls from residents of the City of Greene complaining of noxious smoke, coming from Mr. Yerkes' property.
6. On July 4, 2009, Butler County Deputy Sheriff Larry J. Crawford received numerous telephone complaints alleging a large fire near the 600 block of North Second Street in Greene, Iowa. While driving to the City of Greene to investigate the complaint, Deputy Crawford observed smoke from the fire several miles away. Once on site he observed a large fire in an undeveloped area on the other side of the railroad tracks. Deputy Crawford noted that the fire had been large, and had burned down to a large bed of hot coals with only some sections still burning. Due to the heat from the fire it was difficult to get close, but he did observe what appeared to be belting wire from automobile tires, and an item that looked like a chassis from electronic equipment, it had the remains of a circuit board and electronic components attached.
7. On July 6, 2009, Department Field Office 2 received a complaint from police officer Joebgen stating that on July 4, 2009, Melvin Yerkes had burned a large pile containing siding

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and appliances at the above referenced property. Mr. Jobgen stated that Mr. Yerkes burned the pile despite being told by him that it was illegal to do so.

8. Glenn Carper, Department Environmental Specialist Senior, investigated the complaint. Officer Jobgen took Mr. Carper to the burn site. Mr. Carper observed that the pile had burned almost completely and the ash had been pushed into a hole excavated next to the burn pile. Mr. Carper also observed the remnants of a television set, a metal cart, building material, and bead rings from several tires.

Following the onsite investigation Mr. Carper went to the Yerkes family business (Mel's TV Appliance Sales & Services). Mr. Yerkes stated that Officer Jobgen told him that it was okay to burn the pile. He said there were no appliances in the pile, but there was an old burned out TV chassis in the pile and he didn't know where it came from. He said that he didn't know that there were any tires in the pile when he burned and that someone else must have put the tires in the pile. Mr. Carper informed Mr. Yerkes that solid waste could not be buried and that all the solid waste must go to a landfill.

9. On July 28, 2009, a Notice of Violation (NOV) was mailed to Mr. Yerkes for the above discussed violations. This NOV required that Mr. Yerkes clean up any remaining solid waste from the burn site and properly dispose of it at a landfill.

10. On August 12, 2009, the Department received a copy of a landfill receipt from Melvin Yerkes indicating that the remaining solid waste from the burn pile had been properly disposed.

11. On August 13, 2009, Mr. Carper conducted a follow up investigation and concluded that the burn pile had been sufficiently cleaned up.

#### 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). Mr. Yerkes allowed the burning of siding, electronics and tires. The above stated facts demonstrate noncompliance with 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 such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits 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

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disposal project approved by the Director. The above facts demonstrate noncompliance with this provision.

**V. ORDER**

THEREFORE, it is hereby ordered and Mr. Yerkes agrees to do the following:

1. In the future properly dispose of all solid waste;
2. Mr. Yerkes shall pay a penalty of \$2,000.00 within 30 days of the date the Director signs this administrative consent order.

**VI. PENALTY**

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 that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste 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, the Department 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 \$2,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." It is estimated that Mr. Yerkes saved approximately \$100.00 by not properly disposing of the solid waste.

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, 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

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potential contamination of soil and groundwater. Therefore, \$900.00 is assessed for this factor.

Culpability - Mr. Yerkes has a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that his conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Moreover, Mr. Yerkes was told by Officer Joebgen that it was illegal to burn the pile that had accumulated on his property. Based on the above considerations, \$1,000.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

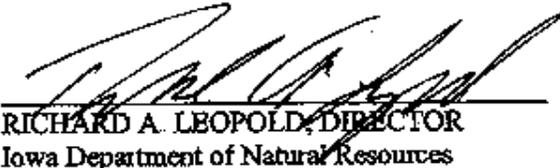
This administrative consent order is entered into knowingly and with the consent of Mr. Yerkes. For that reason, Mr. Yerkes waives his rights to appeal this order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the 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 sections 455B.146 and 455B.307.

  
Melvin Yerkes

Dated this 7 day of  
Dec, 2009.

  
RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 10 day of  
Dec, 2009.

Carrie Schoenebaum; DNR Field Office 2; EPA; V.I.C and V.I.C.1.