

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**Denny Geer
Taylor County, Iowa**

ADMINISTRATIVE ORDER

NO. 2009-SW-14

TO: Denny Geer
1262 205th Street
New Market, IA 51646

I. SUMMARY

This administrative order (order) is issued to Denny Geer for the purpose of resolving solid waste violations which have occurred at a property owned by Mr. Geer at 310 West 4th Street, New Market, Iowa.

Questions regarding this order should be directed to:

Relating to technical requirements:

Thad Nanfite, Environmental Specialist
DNR Field Office #4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Jon Tack, Attorney for the DNR
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515/281-8889

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to 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 (IAC) chapter 10, which authorize the director to assess administrative penalties.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Geer Sanitation

III. STATEMENT OF FACTS

1. Denny Geer operates Geer Sanitation, a residential trash service in and around the town of New Market, Iowa. Mr. Geer owns a site at which he stores equipment and illegally engages in open dumping and open burning. The subject property is located in the SW ¼ of the NE ¼ of Section 28, T69N, R35W, Dallas Township, Taylor County (the site).

2. On April 23, 2003, the Department issued Administrative Order Nos. 2003-AQ-16 and 2003-SW-08 to Denny Geer. The orders required Mr. Geer to cease illegal disposal activities, clean up the property, and pay a fine of \$3,000. Mr. Geer appealed these orders. Mr. Geer submitted a plan for removing all of the solid waste from the property and eventually submitted proof of proper disposal of all such waste. After completion of the clean-up, the administrative penalty was settled for \$500.

2. On February 25, 2008, the Department received two complaints which alleged improper disposal of solid waste by Denny Geer at a site near New Market, Iowa. The complaints were investigated by the Department on February 27, 2008. Improper solid waste disposal was observed at the site. Photos were taken as documentation.

4. A Notice of Violation letter (NOV) was sent to Mr. Geer by Mr. Thad Nanfito of Department Field Office 4 on March 5, 2008. The letter informed Mr. Geer that complaints had been received about solid waste being dumped on the site, and that an investigation had verified those complaints. The letter also stated that dumping at the site must stop, and included copies of the laws prohibiting open dumping. The letter stated that Mr. Geer was required to take all solid waste improperly disposed of on any property that he owns to a sanitary landfill. Copies of the landfill receipts, including the tonnage received, were to be submitted to Field Office 4 by May 1, 2008. Lastly, the letter informed Mr. Geer that the matter was being referred to the Department's Legal Services Bureau.

5. On May 15, 2008, Field Office 4 received a complaint which alleged that Mr. Geer was continuing to illegally dispose of solid waste at the site. Specifically, the complaint alleged that since the last complaint, all of the plastic bags that were holding the trash were disposed of, and the trash that they had been holding had been dumped all over the site.

6. Mr. Nanfito from Field Office 4 conducted an investigation of the complaint on May 22, 2008. Improper solid waste disposal was observed at the site. Photos were taken of the solid waste on the site for documentation.

7. On June 5, 2008, an NOV was sent to Mr. Geer. The letter stated that Mr. Geer was required to remove all solid waste from the site and dispose of it at a sanitary landfill. The letter also required that Mr. Geer submit tonnage receipts to the field office by July 1, 2008.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Geer Sanitation

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

2. 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 above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, the Department orders Denny Geer to do the following:

1. Cease the illegal disposal of solid waste at the site, and elsewhere in the state of Iowa, now and in the future;
2. Within 30 days of receipt of this order, remove all illegally disposed of solid waste and dispose of the waste at a permitted sanitary disposal project, recycling facility, or other appropriate facility;
3. Within 10 days of disposal, submit receipts and other documentation of proper disposal to Department Field Office 4; and
4. Pay a penalty of \$9,500 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 \$9,500 is assessed. 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.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.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Geer Sanitation

issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Denny Geer has achieved an economic benefit from the improper disposal of solid waste. Mr. Geer is paid to accept and haul waste for disposal. Through the illegal dumping of the waste, Mr. Geer has avoided labor and landfill costs. The costs associated with proper disposal, including transportation, amounts to at least \$500. Therefore, \$500 is assessed for this factor.

Gravity – Open dumping of solid waste threatens the waters of the state. The disposal of solid waste at landfills is designed primarily to protect groundwater from contamination. The uncontrolled disposal of such waste constitutes a threat to human health and the environment, provides an attraction to disease-carrying vermin, and threatens to contaminate groundwater. In this case, appliances were dumped. Appliances can contain toxic pollutants such as mercury, PCB's and refrigerants. These actions violate a previous administrative order. There are multiple days of violation. Therefore, \$4,000 is assessed for this factor.

Culpability – Denny Geer has been repeatedly notified of the prohibitions against the open dumping of solid waste. This notification includes a prior administrative order and penalty. Mr. Geer is in the business of hauling and disposing of solid waste and therefore has a heightened responsibility to be aware of the applicable regulations. The violations documented in this case were clearly intentional, knowing violations of applicable law. There are multiple days of violation. Therefore, \$5,000 is assessed for this factor.

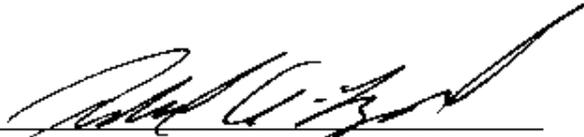
VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.308 and 561 IAC 7.5(1), 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 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
Geer Sanitation

VIII. NONCOMPLIANCE

Failure to comply with this 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 section 455B.307. Compliance with Section "V. Order" of this order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this order.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 31 day of
August, 2009.

Field Office #4; Jon Tack; VLC.