

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

IN THE MATTER OF:  TITAN MACHINERY, INC.;  Adair County, Iowa	ADMINISTRATIVE CONSENT ORDER  NO. 2009-AQ- <b>31</b> NO. 2009-SW- <b>20</b>
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TO: David Davis,  
Store Manager  
2114 State Highway 92  
PO Box 80  
Greenfield IA 50849

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department), and Titan Machinery, Inc. for the purpose of resolving an issue pertaining to illegal solid waste disposal, including the illegal open burning of solid waste. 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:**

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 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 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

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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.

**III. STATEMENT OF FACTS**

1. Titan Machinery, Inc. operates a farm equipment dealership at 2114 State Highway 92, Greenfield, Iowa. 50849.
2. On August 22, 2009, a Department employee observed a fire on the east side of the Titan Machinery, Inc. property.
3. On August 27, 2009, the Department inspected the Titan Machinery, Inc. property. A Titan Machinery, Inc. employee authorized an inspection of the site. A large burn pile was observed. The pile consisted of several cubic yards of ash, indicating that open burning had been ongoing for a significant period of time. The Department observed the remains of burned tires, pallets and lumber, miscellaneous trade wastes, and garbage. Photographs were taken.
4. On August 31, 2009 a Notice of Violation was sent to Titan Machinery, Inc.
5. On September 2, 2009, Titan Machinery, Inc. disposed of all ash and remaining solid waste at the Adair County Sanitary Landfill. A total of \$1,469.60 was paid in disposal fees.
6. On September 25, 2009, Titan Machinery, Inc. submitted receipts showing the proper disposal of the ash and remaining solid waste. On this date Titan Machinery, Inc. also submitted a solid waste management plan for the future handling and disposal of solid waste. A photograph was also submitted showing that the waste had been removed.

**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 the 567 IAC 23.2(2) exemptions and the burning of trade wastes is specifically prohibited. The above facts demonstrate a violation of this provision by Titan Machinery, Inc.
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

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place other than a sanitary disposal project approved by the Director. The Department has documented violations of these provisions by Titan Machinery, Inc..

**V. ORDER**

THEREFORE, the Department orders and Titan Machinery, Inc. agrees to pay a penalty of \$2,500 within thirty days of the execution of this administrative consent 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.

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 \$2,500. The administrative penalty is determined as follows:

Economic Benefit - Titan Machinery, Inc. 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. Titan Machinery, Inc. disposed of 18.37 tons of waste at a cost of \$1,469.60. Open burning can reduce the volume of waste by up to 90%. Titan Machinery, Inc. reported that it had taken ash to the landfill previously so the amount disposed of does not represent the full amount of solid waste that has been illegally burned at this site... In light of the response of Titan Machinery, Inc. and in order to resolve this matter consensually a penalty of \$2,000 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. . The failure to properly dispose of solid waste threatens the integrity of the regulatory program. Therefore a penalty of up to \$2,000 might be justified for this factor. In light of the response of Titan Machinery, Inc. and in order to resolve this matter consensually a penalty of \$500 is assessed for this factor.

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Culpability – Titan Machinery, Inc. generates trade waste as a normal part of its business operations. Titan Machinery, Inc. has a duty to properly dispose of its trade wastes and to be aware of the applicable regulations. The illegal conduct occurred over a significant period of time. Therefore the assessment of a penalty can be justified for this factor. However, Titan Machinery, Inc. has cooperated fully with the Department’s investigation and has responded promptly to the Notice of Violation. Proper disposal occurred within days of Titan Machinery, Inc. receiving the Notice of Violation. Titan Machinery, Inc. has developed a solid waste management plan and provided the Department with documentation of their remedial efforts. In light of this positive response, no penalty is being assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

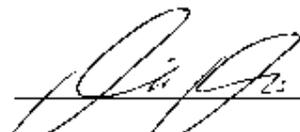
This administrative consent order is entered into knowingly and with the consent of Titan Machinery, Inc.. For that reason Titan Machinery, Inc. waives its right to appeal this Order or any part thereof.

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative consent 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 consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section “IV. Conclusions of Law” of this administrative consent order.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 10 day of  
Dec., 2009.

  
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TITAN MACHINERY, INC.

Dated this 19<sup>th</sup> day of  
Nov, 2009