

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**Walter H. Marshall, Jr.
Harrison County, Iowa**

ADMINISTRATIVE ORDER

NO. 2010-AQ- **26**
NO. 2010-SW- **24**

TO: Walter H. Marshall, Jr.
1747 325th Street
Missouri Valley, IA 51555-7034

I. SUMMARY

This administrative order is entered into between the Iowa Department of Natural Resources (Department) and Walter H. Marshall, Jr. for the purpose of resolving air quality and solid waste disposal violations.

Questions regarding this administrative order should be directed to:

Relating to technical requirements:

Dan Stipe, Environmental
Program Supervisor F.O. 4
2300 15th S.W.
Mason City, Iowa 50401
Phone: 641/424-4073

Relating to appeal rights:

Carrie Schoenebaum
Attorney for 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 order.

III. STATEMENT OF FACTS

1. Mr. Marshall owns property located in Harrison County, Iowa located at Section 24 T 78N R45W, Missouri Valley, Iowa.

2. On August 12, 2009, the Harrison County Sheriff's Office received a complaint alleging black smoke was coming from the area of the above mentioned property. Harrison County Deputy Sheriff Dallas Clemens investigated the complaint. Once on site, he was met in the driveway by Mr. Marshall. Deputy Clemens informed him that his office received a complaint alleging that tires were being burnt on his property. Mr. Marshall stated that he was burning old furniture in the back and nothing else. He then escorted the Deputy to the location of the fire, and stated that he had just put the fire out but had carried the embers to the back of the property. Deputy Clemens looked towards the back of the property and observed smoke coming from that area. Mr. Marshall stated that he was surprised smoke was coming from that area, the embers he had carried to that location must have caught on something, and now he too was curious to see what was burning. Mr. Marshall escorted Deputy Clemens to the back of the property. Deputy Clemens observed several tires and other solid waste burning. Mr. Marshall stated the he had stored the tires to the side of the burn pile and he did not know how they got into the pile. Deputy Clemens informed Mr. Marshall that there were several tires in the burn pile, they were spread throughout the area, and it looked like he was burning them. Photographs were taken which clearly show that tires were located on the burn pile and that tires and other solid waste was burnt.

3. On August 13, 2009, the Harrison County Sheriff's Office forwarded the complaint and investigation report to the Department.

4. On August 14, 2009, Dan Stipe, Department Environmental Program Supervisor, and Mr. Marshall had a telephone conversation in which Mr. Marshall stated that he had burned solid waste that someone had dumped on his property and that he was not aware that there were tires in the pile. The same day, Mr. Stipe mailed a Notice of Violation (NOV) to Mr. Marshall for the above discussed violations.

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. Marshall allowed the burning of various solid wastes, including tires. The above stated facts demonstrate noncompliance with this provision.

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

V. ORDER

THEREFORE, it is hereby ordered that Mr. Marshall does the following:

1. In the future properly dispose of all solid waste;
2. Mr. Marshall shall pay a penalty of \$720.00 in accordance with the following schedule:
 1. \$20.00 due May 10, 2010;
 2. \$20.00 due June 10, 2010;
 3. \$20.00 due July 10, 2010;
 4. \$20.00 due August 10, 2010;
 5. \$20.00 due September 10, 2010;
 6. \$20.00 due October 10, 2010;
 7. \$20.00 due November 10, 2010;
 8. \$20.00 due December 10, 2010;
 9. \$20.00 due January 10, 2011;
 10. \$20.00 due February 10, 2011;
 11. \$20.00 due March 10, 2011;
 12. \$20.00 due April 10, 2011;
 13. \$20.00 due May 10, 2011;
 14. \$20.00 due June 10, 2011;
 15. \$20.00 due July 10, 2011;
 16. \$20.00 due August 10, 2011;
 17. \$20.00 due September 10, 2011;
 18. \$20.00 due October 10, 2011;
 19. \$20.00 due November 10, 2011;
 20. \$20.00 due December 10, 2011;
 21. \$20.00 due January 10, 2012;
 22. \$20.00 due February 10, 2012;
 23. \$20.00 due March 10, 2012;
 24. \$20.00 due April 10, 2012;
 25. \$20.00 due May 10, 2012;
 26. \$20.00 due June 10, 2012;
 27. \$20.00 due July 10, 2012;

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28. \$20.00 due August 10, 2012;
29. \$20.00 due September 10, 2012;
30. \$20.00 due October 10, 2012;
31. \$20.00 due November 10, 2012;
32. \$20.00 due December 10, 2012;
33. \$20.00 due January 10, 2013;
34. \$20.00 due February 10, 2013;
35. \$20.00 due March 10, 2013; and
36. \$20.00 due April 10, 2013;

If any of the above payments are not received in accordance with the scheduled dates, the remainder of the penalty shall be due immediately. Failure to pay the penalty in full may result in referral to the Iowa Attorney General's Office or to the Iowa Department of Revenue and Finance.

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 order with a \$720.00 penalty. The administrative penalty assessed by this administrative 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." The Harrison County landfill charges \$40.00 a ton to dispose of solid waste. Therefore, considering disposal costs and hauling costs it is estimated that Mr. Marshall saved approximately \$50.00 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

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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 potential contamination of soil and groundwater. Therefore, \$335.00 is assessed for this factor.

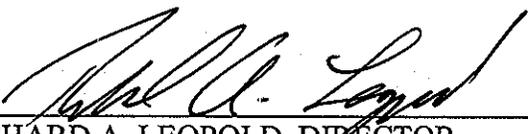
Culpability – Mr. Marshall has a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that his conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Based on the above considerations, \$335.00 is assessed for this factor.

VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director, at the address provided above, within 30 days of your receipt of this order. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC 7. You may contact Carrie Schoenebaum, attorney for the Department, at (515) 281-0824 for more information regarding appeal procedures and resolution of this order.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative order. Failure to comply with this administrative 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.



RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 2 day of
May, 2010.

Carrie Schoenebaum; DNR Field Office 4; EPA; VI.C and VII.C.1.