

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

CLINTON REED;

Union County, Iowa

ADMINISTRATIVE ORDER

NO. 2010-AQ-06

NO. 2010-SW-07

TO: Clinton Reed  
1128 M Avenue  
Nevada, IA 50201

**I. SUMMARY**

This administrative consent order (Order) is issued to Clinton Reed for the purpose of resolving an issue pertaining to illegal solid waste disposal, including the illegal open burning of solid waste. Pursuant to this Order, the Department orders Clinton Reed to pay a penalty in the amount of \$2,100

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 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

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Clinton Reed**

and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

**III. STATEMENT OF FACTS**

1. Clinton Reed is in the process of cleaning up a property in Section 28, Township 71 North, Range 29 West in Union County (the Reed property). Mr. Reed reports that the property was formerly used as a junk yard and that he is cleaning the site up for sale.

2. On October 3, 2009, Department Conservation Officer Marc Roberg discovered Clinton Reed burning waste tires on the Reed property. Officer Roberg returned on October 4<sup>th</sup> to determine how many tires had been burned. Officer Roberg estimated, based on remaining rims and steel belts, that over 50 tires had been burned at the site. Mr. Roberg spoke with neighbors who indicated that this was the 5<sup>th</sup> time that tires had been burned on the site in 2009.

3. On October 5, 2009, Officer Roberg reported the incident to Department Field Office #4. On that date, Field Office Supervisor Dan Stipe investigated the reported illegal open burning. Mr. Stipe verified the allegations and met with Mr. Reed. Mr. Reed admitted to burning the tires but alleged that he was told by the Union County Sheriff that it was legal to use tires to burn landscape waste. Mr. Reed further indicated that he was in the process of cleaning up the site for his parents. Photographs were taken.

4. On October 7<sup>th</sup>, Supervisor Stipe contacted the Union County Sheriff by email. On that date the Sheriff indicated that no one from that office had informed Mr. Reed that he could burn tires. On that date, the Department sent a Notice of Violation to Mr. Reed in regard to the violation of Iowa prohibitions on the open burning and open dumping of solid waste.

**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 Clinton Reed.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Clinton Reed**

**V. ORDER**

THEREFORE, the Department orders Clinton Reed to pay a penalty in the amount of \$2,100 within 30 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.

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 \$2,100. The administrative penalty is determined as follows:

Economic Benefit – Clinton Reed 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 Prairie Solid Waste Agency, which accepts waste from the geographic area that includes the Reed property, charges \$2 per waste tire for disposal. It is estimated that more than 50 waste tires were burned. Therefore an economic benefit penalty of \$100 is assessed for this factor.

Gravity – The illegal open burning of waste tires releases toxin that endanger human health and the environment. The open burning of waste tires can produce toxic runoff that pollutes ground and surface waters. Therefore a penalty of \$1,500 is assessed for this factor.

Culpability – Clinton Reed has a duty to be aware of the applicable regulations before engaging in the clean up of a former salvage yard. Mr. Reed indicated that he had been authorized by the Union County Sheriff to burn the tires and the Sheriff denies this authorization was given. In light of the lack of a prior history of violations, only \$500 is assessed for this factor.

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
Clinton Reed**

**VII. APPEAL**

Pursuant to Iowa Code section 455B.138 and 455B.308 and 561 IAC 7.5(1), as adopted by reference at 567 IAC 7.1, a written Notice of Appeal to the Environmental Protection 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.

**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 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.



RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 12 day of  
Feb., 2010.

Field Office 4; VI C; VII C 1