

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

IN THE MATTER OF:

**OEL CONSTRUCTION SERVICES,
INC. & DWIGHT MCDONALD
Hardin County, Iowa**

ADMINISTRATIVE CONSENT ORDER
NO. 2010-AQ-15
NO. 2010-SW-14

TO: Chad McDonald
23466 VV Ave.
Eldora, Iowa 50627

Jennifer Ingledue, Registered Agent
21072 Y Ave.
Steamboat Rock, Iowa 50672

Dwight McDonald
23466 VV Ave.
Eldora, Iowa 50627

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and OEL Construction Services, Inc. (OEL Construction) and Dwight McDonald for the purpose of resolving violations pertaining to illegal open burning and improper disposal of solid waste that occurred on Dwight McDonald's property at 23466 VV Ave., Eldora, Hardin County, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Michelle Johnson
Iowa Department of Natural Resources
Field Office No. 2
2300 15th Street SW
Mason City, IA 50401
Phone: 641/424-4073

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This administrative order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; 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; 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. On November 5, 2009, Michelle Johnson and Clay Swanson of DNR Field Office 2 observed a large pile of construction and demolition waste dumped on a pile of tree branches. The pile was on Dwight McDonald's property at 23466 VV Ave., Eldora, Hardin County, Iowa. They also observed two employees of OEL Construction dumping more construction and demolition waste on this property, which they claimed came from sites in town. The additional waste consisted of windows, lumber, metal siding, ceiling tile, insulation, tires, and furniture. A smaller burn pile was observed near the large pile of construction and demolition waste, which contained remnants of tin cans, glass jars, and other burned waste. Northeast of the large construction and demolition waste pile was a large burn area with older ash residual. Ms. Johnson and Mr. Swanson took photos to document their observations.

2. On the same day, Ms. Johnson and Mr. Swanson spoke with Chad McDonald, co-owner of OEL Construction, on site. He informed them that the waste had been there for about two weeks and had come from storm jobs in Eldora. He claimed that the company's waste usually goes in dumpsters. Ms. Johnson and Mr. Swanson explained the regulations for proper disposal of solid waste and that OEL Construction was in violation. Mr. McDonald was told that the matter would be referred to the DNR legal department.

3. On November 9, 2009, a Notice of Violation letter was issued to OEL Construction stating that illegal disposal of solid waste and illegal open burning is prohibited and that OEL Construction was in violation. The letter included the regulations regarding open dumping of solid waste and opening burning. The letter ordered all open burning and improper disposal of non-exempt solid waste materials to cease immediately. It also ordered proper disposal of all remaining non-exempt solid waste and retention of copies of landfill receipts for documentation.

4. On November 13, 2009, Ms. Johnson spoke with Dwight McDonald, property owner, and Chad McDonald and Jennifer Ingledue, co-owners of OEL Construction, on a conference call. The company maintained that the construction

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and demolition waste had been stockpiled on the property since the hail storm in Hardin County on August 9, 2009. The reason given was that their dump truck was damaged in the storm and still under repair. The company claimed that only landscape waste had been burned, that the small burn pile and some other waste was not theirs, and that the construction and demolition waste had not been removed in a timely fashion because there were no dumpsters available. They also maintained that they were not aware of the improper waste disposal and open burning regulations, and Mr. McDonald claimed he thought it was acceptable to burn this waste since it was on his personal property.

5. On January 5, 2010, Ms. Johnson followed up with OEL Construction about the proper disposal of the solid waste. The site was in the same condition as originally discovered on November 5, 2009. No solid waste had been removed and properly disposed of pursuant to the November 9, 2009 Notice of Violation letter. Ms. Johnson took photos to document her observations.

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). It is a violation to burn scrap lumber, trade wastes, demolition debris, and any other material not specifically exempted in the rules. The above facts demonstrate violations of 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 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency 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.

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V. ORDER

THEREFORE, DNR orders and OEL Construction & Dwight McDonald agree to the following:

1. OEL Construction & Dwight McDonald shall jointly & severally pay a penalty of \$2,000.00 within 30 days of the date this administrative consent order is signed by the Director;
2. OEL Construction & Dwight McDonald shall immediately cease improper solid waste disposal and open burning of non-exempt materials at any location in the State of Iowa and specifically at the site mentioned in this administrative consent order;
3. OEL Construction & Dwight McDonald shall clean up the open dump site mentioned in this administrative consent order and properly dispose or recycle the material within 30 days of receipt of this administrative consent order; and
4. OEL Construction & Dwight McDonald shall submit sanitary disposal project receipts for the cleaned up waste to the DNR Field Office 2 within 45 days of receipt of 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 Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 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 \$10,000.00 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, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative order with a \$2,000.00 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – OEL Construction & Dwight McDonald achieved an economic benefit from the open burning and improper solid waste disposal. They have saved time, labor, and money by not timely or properly removing, transporting and disposing of the solid wastes from the site. Past open burning has also saved time and landfill disposal fees. Proper disposal of the construction and demolition wastes dumped and burned at the site would have required tipping fees at the landfill of \$45.00/ton. The landfill is located about 11.5 miles from the site. To

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dispose of the solid waste using pickup trucks, including fuel costs, the cost assessed for economic benefit to the company is an estimated \$500.00.

Gravity of the Violation – The burning of solid wastes releases hazardous air pollutants, particulate matter, and other pollutants. These air pollutants pose a health risk to persons breathing, particularly persons with pre-existing respiratory problems. Further, the pollutants resulting from open burning may pollute groundwater, and pose a risk to both human health and the environment. The violation threatens the integrity of the regulatory program, because compliance with the open burning regulations is required of all persons in this state. 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. Based on the above considerations, \$1,000.00 is assessed for this factor.

Culpability – OEL Construction & Dwight McDonald have a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. The company never contacted DNR for assistance after the storm, but instead dumped all construction and demolition waste into a mixed pile with landscape waste on Mr. McDonald's property. Further, OEL Construction was specifically informed of the state open burning and solid waste disposal regulations in the November 9, 2009, Notice of Violation letter, but they still failed to remove the waste in a timely and proper manner. Therefore, \$500.00 is assessed for this factor.

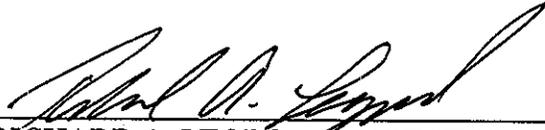
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of OEL Construction & Dwight McDonald. For that reason, OEL Construction & Dwight McDonald waive their right 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 specific violations described in this administrative consent order. Failure to comply with this administrative consent order 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.

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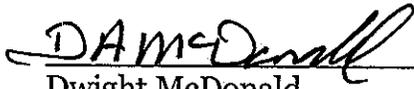
RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 23 day of
March, 2010.



OEL Construction Services, Inc.

Dated this 12th day of
March, 2010.



Dwight McDonald

Dated this 12th day of
March, 2010.

Con 10-6 Hardin County; Kelli Book; DNR Field Office 2; VI.C., VII. C. 1.

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