

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

IN THE MATTER OF: MELVIN WELLIK and WELLIK-DEWITT IMPLEMENT, INC. Hancock County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2010-AQ- 11 NO. 2010-SW- 10
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TO: Melvin Wellik
279 4th Street SE
Britt, Iowa 50423-1826

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Melvin Wellik and Wellik-DeWitt Implement, Inc. for the purpose of resolving the air quality and solid waste disposal violations which occurred as a result of the disposal of solid waste at property owned by Mr. Wellik. 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:

Michelle Johnson, Field Office 2
Iowa Department of Natural Resources
2300 15th S.W.
Mason City, Iowa 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:

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

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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, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Wellik-DeWitt Implement, Inc. is in the business of farm equipment sales and service. The facility is located at 2345 Nation Avenue, Britt, Iowa (facility is in the unincorporated area of Duncan). Melvin Wellik owns property at 1960 Nash Avenue, Britt, Iowa (SW ¼ NW ¼, Section 17, Liberty Township, Hancock County, Iowa). This property is located approximately four miles south of Duncan.

2. On December 4, 2009, DNR Field Office 2 received a complaint regarding open burning that occurred at Mr. Wellik's property. The complainant alleged that Mr. Wellik was burning shingles, beverage containers, and other refuse at the property creating a black plume of smoke.

3. On December 4, 2009, Michelle Johnson, DNR Field Office 2 environmental specialist, investigated the complaint. Ms. Johnson observed a large pile of refuse, including beverage containers, smoldering at the site. The pile was in a pasture south of the house and highly visible from the road. Ms. Johnson also observed a large pile of miscellaneous waste east of the house. Ms. Johnson contacted Mr. Wellik and asked him to meet her at the site. When Mr. Wellik arrived, he admitted to burning the garbage, but stated there were no shingles in the pile. He stated that he started the fire that morning, and that the garbage was from Wellik-DeWitt Implement, Inc. and his own residence in Britt, Iowa. Ms. Johnson and Mr. Wellik discussed the open burning and solid waste disposal regulations. Ms. Johnson informed Mr. Wellik that further enforcement would be recommended because of past violations of open burning and improper solid waste disposal.

4. On December 10, 2009, DNR Field Office 2 issued a Notice of Violation letter to Mr. Wellik and Wellik-DeWitt Implement, Inc. for the open burning and improper solid waste disposal violations discovered by Ms. Johnson on December 4, 2009. The letter required Mr. Wellik to properly dispose of the solid waste from the property at a landfill. The letter also informed Mr. Wellik that the matter was being referred for further enforcement. On January 28, 2010, Ms. Johnson spoke to Mr. Wellik. Mr. Wellik informed Ms. Johnson that the heavy snowfall has prevented him from cleaning up the property. He intends to have the property cleaned up as soon as the snow melts.

5. Mr. Wellik has received a Notice of Violation letter in the past for previous open burning and improper solid waste disposal at the 1960 Nash Avenue property. On July 23, 2008, DNR Field Office 2 issued a Notice of Violation letter to Mr. Wellik for the open burning and improper solid waste disposal of tires,

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appliances, electronics, shingles, and other residential waste not originating on site. The Notice of Violation letter explained the regulations to Mr. Wellik and to clean up the burn pit.

6. Wellik-DeWitt Implement, Inc. has received two Notice of Violation letters in the past for previous open burning and improper solid waste disposal at the 2345 Nation Avenue facility. On October 9, 2007, DNR Field Office 2 issued a Notice of Violation to Wellik-DeWitt Implement, Inc. for improper burning and solid waste disposal of garbage at the facility. The letter explained the regulations and required the area to be cleaned up. On December 1, 1988, DNR Field Office 2 issued a Notice of Violation letter to Wellik-DeWitt Implement, Inc. for the open burning of tires at the facility. The letter included a copy of the open burning rules.

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). On December 4, 2009, during an inspection by DNR Field Office 2 it was determined that garbage from Wellik-DeWitt Implement, Inc. and Mr. Wellik's residence had been burned at Mr. Wellik's 1960 Nash Avenue property. The above facts demonstrate noncompliance with 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 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. On December 4, 2009, during an inspection by DNR Field Office 2 it was determined that garbage from Wellik-DeWitt Implement, Inc. and Mr. Wellik's residence had been burned at Mr. Wellik's 1960 Nash Avenue property rather than disposed of at a permitted landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Melvin Wellik and Wellik-DeWitt Implement, Inc. agree to do the following:

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1. Melvin Wellik and Wellik-DeWitt Implement, Inc. shall immediately cease all nonexempt open burning at any location in Iowa;
2. Melvin Wellik and Wellik-DeWitt Implement, Inc. shall immediately cease all improper solid waste disposal at any location in Iowa;
3. Melvin Wellik and Wellik-DeWitt Implement, Inc. shall clean up the solid waste, including ash residual, located at the 1960 Nash Avenue property and properly dispose of or recycle the material within 90 days of the date the Director signs this administrative consent order. Melvin Wellik and Wellik-DeWitt Implement, Inc. must submit the landfill receipts for the cleanup to DNR Field Office 2 within 10 ten days of completion of the cleanup;
4. Wellik-DeWitt Implement, Inc. shall obtain a garbage dumpster for the facility within 30 days of the date the Director signs this administrative consent order; and
5. Melvin Wellik and Wellik-DeWitt Implement, Inc. shall pay an administrative penalty in the amount of \$3,000.00 within 30 days from the date the Director signs 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) 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 DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$3,000.00 penalty. Melvin Wellik and Wellik-DeWitt Implement, Inc. are jointly and severally liable for the administrative penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR 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

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should be made where clear data are not available." Failure to properly dispose of the garbage and other solid waste has allowed Melvin Wellik and Wellik-DeWitt Implement, Inc. to save time and money. They were able to avoid the cost of taking the material to a landfill for proper disposal. The estimated cost of proper disposal at the landfill as well as transportation costs is \$500.00. Based on the above considerations, \$500.00 is assessed for this factor.

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 pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. 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. Therefore, \$1,000.00 is assessed for this factor.

Culpability – Melvin Wellik and Wellik-DeWitt Implement, Inc. have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Mr. Wellik has received a prior Notice of Violation letter for improper solid waste disposal and open burning at the 1960 Nash Avenue property. Wellik-DeWitt Implement, Inc., with Mr. Wellik as the owner, has received two prior Notice of Violation letters for improper solid waste disposal and open burning at the 2345 Nation Avenue property. Based on the above considerations, \$1,500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Melvin Wellik and Wellik-DeWitt Implement, Inc. For that reason, Melvin Wellik and Wellik-DeWitt Implement, Inc. waive the right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

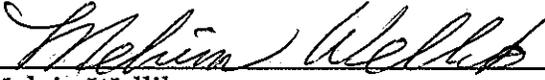
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties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

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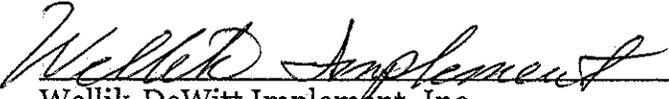
RICHARD A. LEOPOLD, DIRECTOR
Iowa Department of Natural Resources

Dated this 8th day of
March, 2010.



Melvin Wellik

Dated this 26th day of
Feb, 2010.



Wellik-DeWitt Implement, Inc.

Dated this 26th day of
Feb, 2010.

Barb Stock (Con 10-6 Hancock County); Kelli Book; DNR Field Office 2; EPA; VI.C
and VII.C.1