

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

<p>IN THE MATTER OF:</p> <p>DARRIN JANNING dba JANNING CREATIVE COUNTERTOPS</p> <p>Carroll County, Iowa</p>	<p style="text-align:center">ADMINISTRATIVE CONSENT ORDER</p> <p style="text-align:right">NO. 2010-AQ- 18 NO. 2010-SW- 15</p>
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TO: Darrin Janning
Janning Creative Countertops
17127 Highway 71
Carroll, Iowa 51401

Colin McCollough
P.O. Box 428
Sac City, Iowa 50583

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Darrin Janning dba Janning Creative Countertops for the purpose of resolving the air quality and solid waste disposal violations which occurred at 17509 Hwy 71 North near Carroll, Iowa. 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 Olson, Field Office 4
Iowa Department of Natural Resources
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712/243-1934

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

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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 (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. Darrin Janning owns and operates Janning Creative Countertops in Carroll, Iowa. Janning Creative Countertops has a building on the same property as Janning Tile which is located at 17509 Hwy 71 North one mile north of Carroll, Iowa.

2. On January 14, 2010, Dan Olson, DNR Field Office 4 environmental specialist senior, was travelling north on Highway 71 from Carroll, Iowa. He observed dark black smoke drifting across the highway. The smoke appeared to originate from behind the Janning Tile building.

3. Mr. Olson stopped at the Janning Tile facility and noted a fire burning in a square metal container at the facility. Mr. Olson met with Darrin Janning. Mr. Janning indicated that he was burning template paper. Template paper is a thin plastic that is used to create templates for counter tops. Mr. Janning stated that the material had been recycled three times and could no longer be used. Mr. Olson explained the material was considered to be a trade waste and that the burning of trade waste was prohibited. Mr. Olson also explained that the matter would likely be referred for further enforcement. Mr. Janning asked what he was supposed to do with the material since it could not be recycled. Mr. Olson informed Mr. Janning that the material should be disposed of at an approved sanitary landfill. The fire was extinguished at Mr. Olson's request.

4. On February 12, 2010, DNR Field Office 4 issued Notice of Violation letters to Darrin Janning, Janning Tile representative; Bernard Janning; and Arlene Janning for improper open burning and improper solid waste disposal as a result of Mr. Olson's inspection on January 14, 2010. The letter informed the parties that the matter was being referred for further enforcement.

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 January 14, 2010, DNR Field Office 4

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personnel observed the open burning of trade waste by Darrin Janning dba Janning Creative Countertops. 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. The trade waste from Janning Creative Countertops was disposed of through burning rather than being disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Darrin Janning dba Janning Creative Countertops agrees to do the following:

1. Cease all improper open burning and improper solid waste disposal at any site in Iowa;
2. Develop a solid waste management plan and submit a copy of the plan to DNR Field Office 4 within 30 days from the date the Director signs this administrative consent order; and
3. Pay an administrative penalty in the amount of \$1,750.00 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 \$1,750.00 penalty. The administrative penalty assessed by this administrative consent order is

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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 should be made where clear data are not available." Failure to properly dispose of the trade waste has allowed Mr. Janning to save time and money. The estimated cost savings, including landfill fees and transportation costs is estimated to be \$200.00. Based on the above considerations, \$200.00 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. 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. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$1,000.00 is assessed for this factor.

Culpability - Mr. Janning has 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 25 years. Based on the above considerations, \$550.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Darrin Janning. For that reason, Darrin Janning waives the right to appeal this administrative consent 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 30 day of
March, 2010.



DARRIN JANNING dba JANNING CREATIVE
COUNTERTOPS

Dated this 20 day of
March, 2010.

Barb Stock (Con 10-6 Carroll County); Kelli Book; DNR Field Office 4; EPA; VI.C
and VII.C.1