

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

IN THE MATTER OF:

KENNETH KNIGHT Sr.;

Mills County, Iowa

ADMINISTRATIVE ORDER

NO. 2010-AQ-**38**

NO. 2010-SW- **33**

TO: Kenneth Knight Sr.
53439 Deacon Road
Glenwood, IA 51534

I. SUMMARY

This administrative order is issued to Kenneth Knight for the purpose of resolving violations related to illegal solid waste disposal, including the illegal open burning of solid waste.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Thad Nanfito, 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 9th 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

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

III. STATEMENT OF FACTS

1. Kenneth Knight Sr. owns a property located in Section 22, Township 73 North, Range 43 West, Mills County, Iowa.

2. On January 20, 2009, the DNR received a complaint from Mills County Sanitarian Mike Sukup indicating that illegal solid waste disposal had been observed on a property owned by Kenneth Knight Sr. The DNR, along with Mr. Sukup, visited the site on January 22, 2009 and observed a large amount of solid waste disposed of on the property, evidence of a spill of oil or some other petroleum product, and evidence of prior open burning of solid waste. Discarded appliances were observed at the site. Photographs were taken.

3. On January 28, 2009, the DNR issued a Notice of Violation to Kenneth Knight due to the documented illegal open dumping and open burning. Mr. Knight was directed to clean up the property and provide disposal receipts by March 15, 2009.

3. On March 25, 2010, the DNR investigated a complaint alleging the illegal open burning of solid waste at Mr. Knight's property. On that date it was observed that the solid waste previously documented at the site had not been cleaned up and that additional illegal disposal, including illegal open burning, had occurred since the January 2009 inspection. Photographs were taken.

4. On April 21, 2010, the DNR issued a Notice of Violation to Kenneth Knight Sr. due to the documented violations at his property.

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 DNR has documented violations of these provisions by Kenneth Knight.

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V. ORDER

THEREFORE, Kenneth Knight Sr. is hereby ordered to do the following:

1. By October 15, 2010, Kenneth Knight Sr. shall pay a penalty in the amount of \$3,500.
2. By October 15, 2010, Kenneth Knight Sr. shall remove and properly dispose of all solid waste on his property located in Section 22, Township 73 North, Range 43 West, Mills County, Iowa.

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 DNR 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 \$3,500. The administrative penalty is determined as follows:

Economic Benefit – Kenneth Knight 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. Based upon these considerations, a penalty of \$1,000 is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute. The illegal open burning of solid waste releases toxins that endanger human health and the environment. Discarded appliances contain hazardous wastes including PCBs, mercury, and refrigerants. The improper handling, storage, and disposal of discarded appliances threaten the release of hazardous wastes into the atmosphere. The continued failure to properly dispose of solid waste threatens the integrity of the regulatory program. Therefore a penalty of \$1,500 is assessed for this factor.

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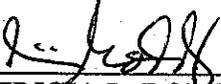
Culpability – Kenneth Knight has been given prior notice and the opportunity to clean up his property and stop illegal disposal. Despite such notice, Mr. Knight continued to dump and burn at the site. This action indicates willful noncompliance with Iowa law. Therefore, in light of these facts \$1,000 is assessed for this factor.

VII. APPEAL

Pursuant to Iowa Code section 455B.175 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 administrative consent 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.



PATRICIA L. BODDY, INTERIM DIRECTOR
Iowa Department of Natural Resources

Dated this 9 day of Sep
September, 2010.

Field Office #4; V.I.C; VII.C.1