

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

IN THE MATTER OF:

SCOTT HERUM;

Emmet County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2011-AQ- 09

NO. 2011-SW- 13

TO: Eldon McAfee
Beving Swanson & Forrest PC
321 E. Walnut ST
Suite 200
Des Moines IA 50309

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and Scott Herum for the purpose of resolving an issue pertaining to illegal solid waste disposal, including the illegal open burning of solid waste. 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:

Jennifer Christian, Field Office 3
Iowa Department of Natural Resources
1900 N. Grand
Spencer IA 51301-2200
Phone: 712-262-4177

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

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

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.

III. STATEMENT OF FACTS

1. Scott Herum does business as Herum Excavating, a company specializing in demolition work. The business is located at 1700 410th Street, Estherville, Iowa.
2. On September 8, 2009, Terry Reeker, Emmet County Emergency Management Coordinator, received multiple complaints alleging that Scott Herum demolished a home in Estherville, hauled it to his business property, and buried the material. Mr. Reeker reported these complaints to the Department.
3. On September 9, 2009, Mr. Reeker received a complaint indicating that Scott Herum had begun demolition work on a second property in Estherville. Mr. Reeker went to the demolition site and observed that the demolition of the second home had been completed. Mr. Reeker then proceeded to the business location of Herum Excavating. At that location, Mr. Reeker observed a pit measuring approximately 35 feet deep and 50 feet long into which the two demolished homes had been dumped. The construction and demolition debris was on fire at that time. The Gruver fire department was called and extinguished the fire. At approximately 10:20 p.m., it was reported that the fire was burning again. The Gruver fire department returned to the site and smothered the fire with the dirt that was stockpiled from the excavation of the pit.
4. On September 10, 2009, Department Environmental Specialist Jennifer Christian investigated the complaints. Ms. Christian observed the still-smoldering construction and demolition waste in the pit. At that time, Scott Herum admitted to the illegal open dumping and open burning of the solid waste.
5. On October 15, 2009, a Notice of Violation was issued to Scott Herum.
6. On September 10, 2010 and September 27, 2010, Scott Herum provided the Department with further information for the purpose of characterizing the waste disposed of at the burn site and the sources or sources of that 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.

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

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 Scott Herum.

V. ORDER

THEREFORE, the Department orders Scott Herum, and Scott Herum agrees, to pay a penalty in the amount of \$3,000 within 30 days of the execution of this administrative consent 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 \$2,495. The administrative penalty is determined as follows:

Economic Benefit – Scott Herum 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 Northern Plains Regional Landfill, which accepts waste from the geographic area that includes the Herum property, charges \$35.50 per ton of solid waste for disposal. Scott Herum acknowledges that approximately 42.11 tons of prohibited solid waste was burned and buried at the site. Additional waste was disposed of at the site but it included materials which are allowed by law to be disposed of in this manner including concrete from other locations and trees originating at the burn site. Based upon these calculations, an economic benefit penalty of \$1,500 is assessed for this factor.

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

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. In this case, the smoke from the fire was reported to have caused traffic problems on U.S. Highway 9, indicating a significant risk of harm to human health. Therefore a penalty of \$750 is assessed for this factor.

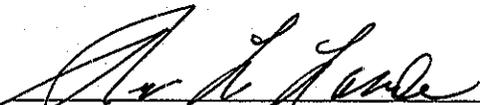
Culpability – Scott Herum is in the business of demolition. This business routinely generates construction and demolition waste. Scott Herum has a duty to be aware of the applicable regulations. Therefore, in light of these facts \$750 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Scott Herum. For that reason Scott Herum waives his rights to appeal this administrative consent order or any part thereof.

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.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 21st day of
April, 2011.



SCOTT HERUM

Dated this 5th day of
April, 2011.

Field Office 3; VI.C; VII.C.1