

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

IN THE MATTER OF:

GUS CONSTR. CO., INC.

ADMINISTRATIVE CONSENT ORDER

NO. 2010-AQ- 58

NO. 2010-SW- 41

TO: Gus Construction Co., Inc.
Jeffrey L. Ocheltree, Registered Agent
P.O. Box 77
Casey, Iowa 50048-0077

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Gus Constr. Co., Inc. (Gus Construction) for the purpose of resolving violations pertaining to open dumping and open burning of trade waste. 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:

Dan Stipe
Iowa Department of Natural Resources
Field Office No. 4
1401 Sunnyside Lane
Atlantic, IA 50022
Phone: 712/243-1934

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-6243

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 order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to

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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 March 30, 2010, DNR Field Office 4 received a complaint from the Guthrie County Sanitarian regarding open burning incidents occurring at Gus Construction, located at 1491 – 340th Street, north of Adair. The sanitarian has evidence that burning of trade waste has occurred at Gus Construction in the past. Guthrie County Environmental Health personnel have observed open burning at Gus Construction in the past. The sanitarian reported that the burn area was blocked by concrete and currently contained "a lot of junk plus scrap lumber, etc." A photograph of the open dump and open burn area was provided by the sanitarian.

2. On April 14, 2010, Dan Stipe of DNR Field Office 4 inspected the Gus Construction site. While at the site, Mr. Stipe met with Plant Manager Mike Roberts. Mr. Roberts admitted to Mr. Stipe that plant personnel open burn trade waste at the site. Mr. Stipe informed Mr. Roberts that open dumping and open burning is prohibited and that Gus Construction must discontinue these practices.

3. An April 15, 2010, Notice of Violation (NOV) letter was sent by DNR Field Office 4 to Jeffrey Ocheltree, owner of Gus Construction, at the Gus Construction address. The NOV letter summarized the April 14, 2010, inspection findings, and cited the violations of illegal open dumping and illegal open burning. The NOV letter also required Gus Construction to develop a solid waste management plan. The NOV letter was sent by certified mail. On April 19, 2010, DNR Field Office 4 received the certified letter back with "No Mail Receipt" written on the envelope. The NOV letter was re-sent to Mr. Ocheltree at his address at P.O. Box 77 in Casey, Iowa.

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).

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(variances) and 23 2(3) (exemptions). The burning of trade waste is specifically prohibited. The open burning of trade waste at Gus Construction demonstrates 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 illegal open dumping of trade waste at Gus Construction demonstrates non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and Gus Construction agrees to the following:

1. Gus Construction shall pay a penalty of \$1,000.00 within 45 days of the date this order is signed by the Director;
2. Gus Construction shall develop a solid waste management plan and shall submit the plan to DNR Field Office 4 within 45 days of the date this order is signed by the Director; and
3. Gus Construction shall immediately discontinue improper open dumping and improper open burning of solid waste, including trade waste, and other materials at any location in the State of Iowa; and Gus Construction shall comply in the future with all state and local requirements regarding the proper disposal of solid waste and the prohibition against illegal open burning.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$1,000.00 is assessed by this administrative consent order. The penalty must be paid within 45 days of the date this order is signed by the Director. The administrative penalty is determined as follows:

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

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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 through 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 consent order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Gus Construction has achieved an economic benefit from open burning and improper waste disposal. It has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the demolition waste from this site. This savings has occurred over a period of time, and DNR estimates that at least \$500.00 has been saved in this manner. Therefore, a penalty of \$500.00 is assessed for this factor.

Gravity of the Violation – 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 that type of violation. Substantial penalties are authorized by statute. Despite the high penalties authorized, DNR has determined that the most equitable and efficient means of resolving the matter is through an administrative consent order. Failure to properly dispose of solid waste materials threatens the integrity of the regulatory program. The open burning of solid waste can release toxins that pollute the air and may pose a risk to human health and the environment. Therefore, \$250.00 is assessed for gravity of violation.

Culpability – Gus Construction has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Further, the open burning of trade wastes has been prohibited for decades. Therefore, \$250.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

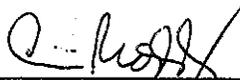
This administrative consent order is entered into knowingly and with the consent of Gus Construction. For that reason, Gus Construction waives its rights to appeal this order or any part thereof.

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

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penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with 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 27 day of
December, 2010.



AUTHORIZED AGENT
Gus Constr. Co., Inc.

Dated this 14th day of
December, 2010.

Guthrie County Air Quality file; Anne Preziosi; DNR Field Office 4; VII.C.2