

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**STEVE FRIESTH  
Webster County, Iowa**

ADMINISTRATIVE ORDER

NO. 2011-AQ- **25**  
NO. 2011-SW- **27**

TO: Steve Friesth  
1822 220<sup>th</sup> Street  
Fort Dodge, Iowa 50501

**I. SUMMARY**

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

**Relating to technical requirements:**

David Miller, Field Office 2  
Department of Natural Resources  
2300 15<sup>th</sup> S.W.  
Mason City, Iowa 50401  
Phone: 641/424-4073

**Relating to appeal rights:**

Kelli Book, Attorney  
Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Appeal, if any, addressed to:**

Director, Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**Penalty of payment to:**

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 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

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authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this Order.

**III. STATEMENT OF FACTS**

1. The estate of Katharine Doan owns a parcel of property located at 1599 Madison Avenue, Fort Dodge, Iowa. The property contains an abandoned house and two out buildings. There is also a quarry on the property located several hundred yards to the north of the buildings. William Doan is the property's contact. Steve Friesth leases the property and operates the quarry.

2. On September 21, 2010, Eric Wiklund, DNR Field Office 2 environmental specialist senior, and Rodney Tucker, DNR Emergency Response, responded to an open burning complaint at property located at 1599 Madison Avenue, Fort Dodge, Iowa. The complaint came from the Webster County Public Health Department. Mr. Wiklund and Mr. Tucker arrived at the property and spoke with Mr. Friesth. They observed a large amount of solid waste being burned at the time of the investigation. The solid waste included household garbage, metal pop cans, metal paint cans, a pressure washer, lumber, and fiberglass insulation. Tree branches were also being burned with the solid waste. Mr. Wiklund and Mr. Tucker observed explosions within the pile of debris with the material landing in the adjacent field. They also observed additional solid waste that had been partially buried near the old quarry site. Mr. Friesth informed the DNR personnel that the solid waste had been removed from a building on the site. Mr. Friesth stated that he had demolished the building. Mr. Friesth stated that there was no asbestos inspection prior to the demolition and there had not been a notification submitted for the demolition. Additionally, the DNR personnel observed several appliances in an abandoned cattle shed. Mr. Friesth stated the appliances had been illegally left at the site and that he intended to take them to a person for demanufacturing. Several of the appliances were tipped or laying on their side.

3. On September 24, 2010, DNR issued a Notice of Violation letter to Mr. Friesth and Mr. Doan for the violations discovered during the DNR inspection on September 21, 2010. The letter required that the open burning and improper solid waste disposal be stopped immediately; that all solid waste and ashes be taken to a landfill no later than November 1, 2010; that no further burning occur until a follow up inspection had occurred; that no further demolition be done until the proper inspections and notifications had been completed; and that all appliances be properly stored until they could be taken to a licensed appliance demanufacturer.

4. On November 3, 2010, Mr. Wiklund returned to the property and noted that the solid waste had been removed from the property. Mr. Friesth submitted the landfill receipts to DNR Field Office 2.

5. Mr. Friesth has received copies of the DNR's regulations in the past and has been issued previous Notice of Violation letters and an administrative order.

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In 1999, DNR Field Office 2 issued Mr. Friesth a Notice of Violation letter for failing to be certified to land apply septic waste. A copy of the solid waste regulations was also sent to Mr. Friesth on the same day. In 2000, DNR Field Office 2 sent Mr. Friesth a letter because Mr. Friesth had not cleaned up the site. Also in 2000, DNR issued Administrative Order No. 2000-SW-06/2000-AQ-21 to Mr. Friesth for open burning and solid waste violations. In 2001, DNR Field Office 2 issued a Notice of Violation letter to Mr. Friesth for solid waste violations. In 2004, DNR Field Office 2 sent Mr. Friesth a letter citing the solid waste and proper appliance disposal regulations.

**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). During the September 21, 2010 investigation, DNR personnel observed the open burning of a large amount of solid waste at the property leased by Steve Friesth. The DNR personnel also observed evidence of previous open burning. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

4. 40 CFR section 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to the commencement of demolition or renovation. The DNR has no evidence that an asbestos inspection was ever completed prior to the demolition of the building. The above facts indicate a violation of this provision.

5. 40 CFR section 61.145(b) states that the owner or operator of a demolition or renovation shall submit a complete and timely notification prior to the commencement of the demolition or renovation operations. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the building. The above facts indicate a violation of this provision.

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6. 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.

7. 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. During the September 21, 2010 investigation, DNR personnel observed the open burning of a large amount of solid waste at the property leased by Steve Friesth. The DNR personnel also observed evidence of previous open burning. The demolition debris and the other solid waste were burned rather than being disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

8. 567 IAC 118.4(1) states that any person collecting and storing discarded appliances must store the appliances so as to prevent electrical capacitors, refrigerant lines and compressors, and mercury-containing components from being damaged and allowing a release into the environment. During the September 21, 2010 investigation, DNR personnel observed numerous appliances being improperly stored. The above facts demonstrate noncompliance with this provision.

**V. ORDER**

THEREFORE, the DNR orders Mr. Friesth to do the following:

1. Pay an administrative penalty in the amount of \$10,000.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII.

**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 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 Order with a \$10,000.00 penalty. The administrative penalty assessed by this 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

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"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 follow the proper asbestos NESHAP regulations and solid waste disposal regulations by the improper open burning and disposal of the building and the solid waste has allowed Mr. Friesth to save time and money. Mr. Friesth was able to avoid the cost of an asbestos inspection and saved time by not notifying the DNR of the demolition. The estimated cost of an inspection and possible cost of asbestos abatement that Mr. Friesth avoided is \$500.00. Significant savings was achieved by burning the building and the solid waste rather than taking it to the landfill. Even though Mr. Friesth did take the burned solid waste debris to the landfill, he avoided much greater landfill fees by burning the debris and the solid waste. Based on the above considerations, \$3,000.00 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. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. 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. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition and burning of the structures. These violations threaten the integrity of the regulatory program because compliance with the open burning, asbestos, and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste and improper storage of the appliances creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$2,500.00 is assessed for the open burning and asbestos violations cited in this administrative consent order and \$2,000.00 is assessed for the solid waste violations cited in this administrative consent order for a total of \$4,500.00 assessed for this factor.

Culpability – Mr. Friesth has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his 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. Friesth has been notified of the regulations on several occasions in the past. Additionally he was issued a previous administrative order for similar air quality and solid waste violations. Based on the above considerations, \$2,500.00 is assessed for this factor.

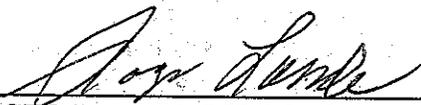
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**VII. APPEAL RIGHTS**

Pursuant to Iowa Code sections 455B.138 and 455B.308, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR 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. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this 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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ROGER LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 9<sup>th</sup> day of  
September, 2011.

Barb Stock (Con 10-6 Webster County); Kelli Book; DNR Field Office 2; EPA; VI.C,  
VII.C.1, and VII.C.4