

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

<b>IN THE MATTER OF:</b>  <b>CITY OF MARENGO, IOWA</b>	<b>ADMINISTRATIVE CONSENT ORDER</b>  NO. 2011-AQ- <u>23</u> NO. 2011-SW- <u>26</u>
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**TO:** City of Marengo  
Joe Seye, Mayor  
153 East Main Street  
Marengo, Iowa 52301

City of Marengo  
Lonnie Altenhofen  
Public Work Director  
153 East Main Street  
Marengo, Iowa 52301

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the City of Marengo for the purpose of resolving violations pertaining to illegal open dumping and open burning of solid wastes. 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:**  
Jon Ryk  
Iowa Department of Natural Resources  
Field Office No. 6  
1023 W. Madison  
Washington, Iowa 52353-1623  
Phone: 319/653-2135

**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. The City of Marengo has a wastewater treatment lagoon system located on city property at 1199 East South Street in Marengo. A city tree burn site is located on this property.

2. During the morning of August 6, 2010, Jon Ryk of DNR Field Office No. 6 was travelling west on Highway 6 from South Amana, when he noticed black smoke coming from a facility to the west. Mr. Ryk followed the black smoke to the Marengo wastewater treatment lagoon system located on the south side of East South Street in Marengo. The gate to the facility was open, so Mr. Ryk followed the path to an apparent tree burn pile in the southwest corner of the lagoons, which appeared to be a tree burn site. The burn area was located immediately southwest of the southwest corner of the southernmost lagoon. Solid waste items observed to be burning in the tree burn pile included shingles, plastic 55-gallon barrels, plastic 50-gallon buckets, pallets, bikes, bike tires, and garbage bags filled with refuse. Nobody was present at the tree burn site or the lagoon. After taking pictures to document the burning, Mr. Ryk went to the Marengo City Hall, located at 153 E. Main Street in Marengo, to notify the wastewater treatment lagoon operator. The clerk stated that the wastewater treatment lagoon operator was not in the office. The clerk further state that the operator's name was Lonnie Altenhofen, Public Works Director. Mr. Ryk was given a business card for Mr. Altenhofen.

3. On August 6, 2010, in the afternoon, Mr. Ryk called Mr. Altenhofen to inform him of Mr. Ryk's observations. Mr. Altenhofen stated that he was not aware of the burning. Mr. Ryk requested that Mr. Altenhofen cease burning and remove the solid waste items from the site, leaving only the tree waste. Mr. Ryk further requested that Mr. Altenhofen properly dispose of the solid waste at a permitted landfill and provide landfill receipts to DNR.

4. An August 12, 2010, Notice of Violation letter was issued to the City of Marengo for illegal open dumping and illegal open burning. The Notice of Violation letter required that the illegal solid waste be removed from the site and properly disposed of at a permitted sanitary landfill by September 24, 2010. Also on August 12, 2010, the City of Marengo called DNR Field Office No. 6 and reported that somebody had set fire to the city's brush pile.

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5. On August 20, 2010, Mr. Altenhofen called Mr. Ryk and informed him that the burn area had been cleaned up and that he retained the receipts from the cleanup. Mr. Ryk instructed Mr. Altenhofen to forward copies of the receipts to DNR Field Office No. 6.

6. In an April 19, 2011, letter to DNR, Mr. Brent Nelson, City Administrator for the City of Marengo, detailed the procedures the City of Marengo has taken to prevent further illegal open burning at the site. These procedures include keeping the gates locked to the lagoon site when staff was not present, placing advertisements in the local newspaper along with posting signs at the site and City Hall indicating the rules and the hours of operation of the site, and discussing DNR regulations on open burning at City Council meetings in addition to printing DNR open burning regulations in the newspaper. Lastly, the City Council contracted with T & W Grinding Services to provide composting services for the city at an annual cost of \$12,000. The city has attempted to eliminate any burning at the yard waste site except for disasters.

**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). The burning of trade waste is specifically prohibited. The open burning of solid waste by the City of Marengo 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 solid waste by the City of Marengo demonstrates non-compliance with this provision.

5. 567 IAC 23.2(3)"b" provides that the open burning of trees and tree trimmings not originated on the premises may occur provided that: (1) the burning site is operated by a local governmental entity, (2) the burning site is fenced and access is controlled, (3) burning is conducted on a regularly scheduled basis and is

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supervised at all times, (4) burning is conducted only when weather conditions are favorable with respect to surrounding property, and (5) the burning site is limited to areas at least one-quarter mile from any inhabited building unless a written waiver in the form of an affidavit is submitted by the owner of the building to the DNR and to the local governmental entity prior to the first instance of open burning at the site which occurs after November 13, 1996. The City of Marengo violated this provision at its tree burn site (1) by allowing, causing or permitting illegal open dumping and illegal open burning of solid waste items other than trees and tree trimmings at its tree burn site; (2) by failing to control access to the tree burn site at all times when burning was occurring; and (3) by failing to have burning at the site supervised at all times.

**V. ORDER**

THEREFORE, DNR orders and the City of Marengo agrees to the following:

1. The City of Marengo shall pay a penalty of \$1,000.00 within 45 days of the date this order is signed by the Director;
2. The City of Marengo shall immediately discontinue allowing, causing or permitting improper open dumping and improper open burning of solid waste at the location described in this order and at any other location in the State of Iowa; and the City of Marengo 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; and
3. The City of Marengo shall develop and submit to DNR Field Office No. 6 by no later than May 1, 2011, a written plan for the proper operation of its tree burn site in accordance with the provisions of 567 IAC 23.2(3)"b." The plan shall be designed to restrict access to the tree burn site to ensure that future incidents of illegal open dumping and illegal open burning do not occur. The plan shall include, but not be limited to, the following elements: (1) notifications to residents regarding the types of items accepted at the tree burn site; (2) instructions to residents for dropping off trees and tree trimmings, including hours of operation for the tree burn site and instructions regarding who to call to schedule drop-off; (3) a requirement that the gate to the lagoons must be closed and locked when no city personnel are present at the site; (4) a schedule for regular inspections of the burn pile by city personnel; (5) a requirement that regular inspections by city personnel are documented and kept as part of the public record available for inspection by DNR; and (6) any other provisions necessary to ensure compliance with each of the provisions of 567 IAC 23.2(3)"b."

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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 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 –The City of Marengo achieved an economic benefit by failing to comply with the laws regarding open dumping and open burning. The city failed to control access to its tree burn site; failed to have the tree burn site supervised when burning was occurring; and either allowed, caused or permitted illegal dumping and burning at the site. However, the city has since contracted to provide composting services at an annual fee of \$12,000 to prevent similar open burning violations in the future. Therefore, no penalty amount 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 August 6, 2010, violations 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, \$500.00 is assessed for gravity of violation.

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Culpability –The City of Marengo owns and controls the property on which the burning took place. The city has a responsibility to control access to and supervise its tree burn site. The city has a responsibility to comply with the provisions of 567 IAC 23.2(3)"b," regarding the operation of city tree burn sites. On August 6, 2010, DNR personnel observed that the gate to the city property was open and there was nobody present. Further, the City of Marengo has a duty to remain knowledgeable of State of Iowa's requirements regarding open dumping and open burning. Therefore, \$500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of the City of Marengo. For that reason, the City of Marengo 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 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.

  
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Roger L. Lande, Director  
Iowa Department of Natural Resources

Dated this 15<sup>th</sup> day of  
September, 2011.

  
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AUTHORIZED AGENT  
The City of Marengo

Dated this 31 day of  
August, 2011.

Iowa County Air Quality file; Anne Preziosi; DNR Field Office 6; VII.C.2