

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: Jim Knoblauch	ADMINISTRATIVE ORDER NO. 2016-SW- <u>08</u> NO. 2016-AQ- <u>10</u>
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To: Jim Knoblauch
199 Marina Drive
Montezuma, Iowa 50171

CC: PO Box 747
Montezuma, Iowa 50171

Re: Illegal disposal of solid waste, Illegal open burning of solid waste, and
illegal handling of appliances

I. SUMMARY

This administrative order (Order) requires Jim Knoblauch (Mr. Knoblauch) to pay an administrative penalty of \$10,000.00 for knowingly violating Iowa law governing solid waste disposal and open burning of solid wastes; to take immediate action to properly dispose of solid waste, appliances, contaminated soil, and any burned materials located on his property located at 4872 103rd Street in Montezuma, Iowa; and to submit proof of proper disposal to the Iowa Department of Natural Resources (DNR) Field Office (FO) 5.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Malia Schepers, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 5
7900 Hickman Road
Windsor Heights, IA 50324
Phone: (515) 725-0268

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Bureau
Wallace State Office Building
502 E. 9th St.
Des Moines, IA 50319
Phone: 515-725-8239

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This Order is issued pursuant to Iowa Code § 455B.307(2) which authorizes the Director of the DNR 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 and regulations adopted pursuant to that part; Iowa Code §§ 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 division; and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The following relevant facts are presented in chronological order:

1. On January 5, 2016, DNR staff conducted a National Pollutant Discharge Elimination System (NPDES) storm water inspection to determine the closure status of the former Shepard's Auto Salvage property located at 4872 103rd Street in Montezuma, Iowa (the Property). Poweshiek County Assessor records indicate that James Knoblauch, LPM Real Estate LLC, is the current owner of the Property.

2. During the January 5, 2016 inspection, DNR staff noted that on the Property there were approximately 10-12 junk autos, a large area of contaminated soil under the crusher on-site, and 20-30 appliances in a pile including refrigerators, microwaves, washers, dryers and stoves. None of the appliances were upright and most were damaged.

3. On January 8, 2016, DNR staff sent a Notice of Violation (NOV) to Mr. Knoblauch requiring that by May 1, 2016, the contaminated soil on the Property be excavated and properly disposed of, and that all appliances on-site be properly disposed of. In addition, the NOV explained that if it was Mr. Knoblauch's intention to use the Property as an auto salvage yard, he must apply for an NPDES permit.

4. On July 20, 2016, DNR staff again visited the Property. No removal had occurred, and in addition to the appliances, contaminated soil, and junk autos on-site, a large pile of solid waste was observed.

5. After the July 20 inspection, DNR staff visited Mr. Knoblauch at his marina and discussed the Property with him. Mr. Knoblauch agreed he was the owner of the Property, and stated he would do everything he needed to do to bring it into compliance. DNR staff explained in detail Iowa's open burning regulations and it was made clear to Mr. Knoblauch that the solid waste pile on site could not be

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burned and that it would have to be disposed of at a permitted landfill. It was further explained that if disposal receipts were not received by DNR, it would be assumed that the solid waste was not disposed of correctly resulting in a referral to DNR Legal Services Bureau for enforcement. Mr. Knoblauch took ample notes during this conversation and stated that he wanted to get started on cleanup as soon as possible.

6. During this meeting, Mr. Knoblauch stated that no one is salvaging cars at the Property and that he was not intending to operate a salvage business. Mr. Knoblauch also stated that he intended to sell the property to another individual for a home site.

7. Mr. Knoblauch also stated that he had not received the first NOV sent in January 2016. He verified the address was correct and a copy of the original NOV was given to him during this visit. Toward the end of the conversation, Mr. Knoblauch stated he may have received the NOV sent in January 2016.

8. Finally, Mr. Knoblauch stated during this meeting that he could have the appliances removed and the solid waste cleaned up in two weeks. He further stated he would need more time for removal and proper disposal of the contaminated soil.

9. On July 25, 2016, DNR sent a second NOV to Jim Knoblauch requiring that the cleanup be completed by August 25, 2016.

10. On August 29, 2016, DNR staff again visited the Property and found the large pile of solid waste had been added to and was actively burning. The pile of appliances had been removed from the original location; however, no receipts evidencing proper disposal had been submitted to DNR as required by the NOVs. Items identified in the burn pile included appliances, tires, mattresses, household wastes, plastics, metals, and construction and demolition waste including a large metal roof. Contaminated soil remains in place on site.

IV. CONCLUSIONS OF LAW

1. Iowa Code § 455B.301(23) defines solid waste as garbage, refuse, rubbish, and other similar discarded solid or semi-solid materials including but not limited to materials resulting from industrial and commercial activities such as construction and demolition debris. Iowa Code § 455B.307(1) prohibits a person from dumping or depositing, or permitting the dumping or depositing, of any solid waste at any place other than a sanitary disposal project approved by the Director of the DNR.

2. Iowa Code § 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and

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disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

3. The Commission has adopted 567 IAC 100.4 for the regulation of open dumping in Iowa. The provision prohibits a private entity from dumping or depositing, or permitting the dumping or depositing, of any solid waste at any place other than a sanitary disposal project approved by the Director and pursuant to the terms of a permit granted by the agency authorizing the disposal of solid waste. The DNR alleges that the above-stated facts represent a violation of this regulatory requirement.

4. The Commission has adopted 567 IAC 118.4 to establish acceptable practices for the storage and handling of appliances prior to demanufacturing. The above stated facts establish continued violations of this regulation.

5. The Commission has adopted 567 IAC 23.2 for the regulation of open burning of solid waste in Iowa. The regulation specifically prohibits individuals from allowing, causing or permitting open burning of combustible materials in Iowa, except in certain situations that are not applicable to Jim Knoblauch. The DNR alleges that the above-stated facts represent a violation of this regulatory requirement.

6. Finally, the Commission has adopted 567 IAC 133, which addresses rules for addressing site remediation requirements for contaminated sites that threaten groundwater. The facts outlined above establish an ongoing violation of the requirements of this regulation.

V. ORDER

THEREFORE, the Director of the DNR orders Jim Knoblauch to do the following:

1. Pay a penalty of \$10,000.00 within sixty days of the date this Order is signed by the Director.

2. Permanently cease any and all illegal disposal of solid waste, and cease any open burning of solid waste in the future.

3. Any remaining waste on the site including but not limited to solid wastes and remnants and ash from the burn pile shall be removed and properly disposed of at a permitted landfill within sixty days of this Order being signed by the Director. Disposal receipts evidencing proper disposal shall be provided to DNR FO 5.

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4. All contaminated soil at the site shall be removed and properly disposed of at a permitted facility within ninety days of this Order being signed by the Director. Disposal receipts evidencing proper disposal shall be provided to DNR FO 5.
5. Upon demand, allow DNR staff to inspect the Property to confirm that the site has been adequately remediated as directed by this Order.

VI. CIVIL PENALTY

1. Iowa Code § 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 authorizing the Director to assess administrative penalties at 567 IAC 10.
2. Additionally, Iowa Code § 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations. Iowa Code § 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 § 455B.146A. The DNR reserves its right to pursue additional penalties pursuant to this section if Jim Knoblauch fails to comply with the terms of this Order.
3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the fine should be. The general categories of consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. These categories are addressed below and the administrative penalty is determined as follows:
 - a) Economic Benefit: Mr. Knoblauch has enjoyed an economic benefit by avoiding or delaying tipping fees, cleanup costs, transportation costs for solid waste and appliances, and delaying costs associated with contaminated soil removal and disposal. DNR assesses \$3,000.00 for this factor.
 - b) Gravity of the Violations: Open burning of solid waste, appliances, and tires degrades air quality and exposes anyone nearby to dangerous and potentially toxic contaminants as well as resulting in the potential for serious environmental impacts to soil, surface water, groundwater and ambient air resources. Failure to properly excavate and dispose of contaminated soil threatens surface water and groundwater. Therefore, \$3,000.00 is assessed for this factor.
 - c) Culpability: DNR staff met with Mr. Knoblauch and explained his obligations under Iowa law. Despite the fact that he knew that open burning of wastes on the Property was a violation of Iowa law, he illegally burned the

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waste and he has failed to properly clean up appliances and contaminated soil. \$3,000.00 is assessed for this factor.

4. An additional \$1,000.00 is added to the penalty due to the aggravating factor that Mr. Knoblauch was specifically instructed not to burn the waste pile but allowed it to be burned in direct contravention of DNR instruction.

5. Failure to assess the maximum penalty allowed for the violations listed above would threaten the integrity of the regulatory program by not providing a financial incentive for owners/operators to comply.

VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director within 30 days of this Order being signed by the Director. A contested case hearing will then be scheduled pursuant to Iowa Code § 17A and 561 IAC 7. Failure to file a Notice of Appeal within this time frame will result in the waiver of the right to appeal.

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, will result in the imposition of further administrative penalties and referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code §§ 455B.146 and 455B.307. Compliance with Section V (Order) of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 20th day of
September, 2016.

CC: DNR Field Office 5; David Scott; VII.C.1, IV.B,VI.C.