

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

<p>IN THE MATTER OF:</p> <p>B WINDY ENTERPRISES, L.L.C., CHARLOTTE BEHMER, and MARK BEHMER, DBA BEHMER SOLAR DESIGN HOMES</p> <p>STORY COUNTY, IOWA</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2016-AQ- <i>22</i> NO. 2016-SW- <i>15</i></p>
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TO: B Windy Enterprises, L.L.C.
Michael Lewis
Registered Agent
Lewis Law Firm
212 Water Street
P.O. Box 289
Cambridge, Iowa 50046

Charlotte Behmer
502 3rd Street
Sheldahl, Iowa 50243

Mark Behmer
dba Behmer Solar Design Homes
502 3rd Street
Sheldahl, IA 50243

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR), B Windy Enterprises, L.L.C., Charlotte Behmer, and Mark Behmer, dba Behmer Solar Design Homes, for the purpose of resolving violations pertaining to illegal open burning and illegal open dumping 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:

Bill Gross
Iowa Department of Natural Resources
Field Office No. 5
7900 Hickman Rd. Suite 200
Windsor Heights, IA 50324-4432
Phone: (515) 725-0268

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515-725-9551

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: B Windy Enterprises, L.L.C., Charlotte Behmer,
and Mark Behmer, dba Behmer Solar Design Homes

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, which authorizes the Director to issue an order necessary to secure compliance with or prevent a violation of the provisions of chapter 455B, Division IV, part I (solid waste) 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 7, 2014, Bill Gross of DNR Field Office 5 observed a large pile of construction and demolition (C&D) waste and other miscellaneous wastes, including rubber tires, north of a metal pole building located on property on the south edge of Cambridge, Story County, Iowa. No one was present at the site when Mr. Gross visited on March 7. Mr. Gross was re-visiting the site as a follow-up to a 2011 site visit regarding a complaint that a spray paint booth was to be installed on the site. According to the Story County Assessor, the property is being purchased on contract from the City of Cambridge by Charlotte Behmer of Sheldahl, Iowa, dba as B Windy Enterprises, L.L.C. The Iowa Secretary of State lists B Windy Enterprises, L.L.C. as a domestic limited liability company.

2. An April 30, 2014, Notice of Violation Letter (NOV) was sent to Charlotte Behmer at 502 3rd Street, Sheldahl, Iowa. This address is the address of Mark Behmer's business, Behmer Solar Design Homes. Mark Behmer is the son of Charlotte Behmer. The letter stated that the debris pile should be removed by June 15, 2014. The letter stated that trade wastes and C&D wastes may not be open burned. Copies of the Iowa law prohibiting illegal disposal of solid waste and illegal open burning were included with the letter.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: B Windy Enterprises, L.L.C., Charlotte Behmer,
and Mark Behmer, dba Behmer Solar Design Homes

3. On June 3, 2014, Mr. Gross visited the site and found a pile of ashes and charred metal items, including metal cans, containers, and steel tire belts. A June 26, 2014, NOV was sent to Charlotte Behmer at the Behmer Solar Design Homes address. The NOV cited the illegal open burning violation.

4. On July 30, 2014, Mr. Gross called Mark Behmer. Mr. Behmer stated that he had received the letters sent to his mother at Mr. Behmer's business address. Mr. Behmer stated that he had contacted local authorities, including the fire department and the sheriff, and that he had burned only trees and brush. However, Mr. Gross could not confirm this contact when he requested information from the Story County dispatch. Mr. Gross informed Mr. Behmer that the charred debris observed by Mr. Gross indicated that trade waste also had been burned.

5. On August 5, 2014, Mr. Gross met with Mark Behmer and his father to discuss the open burn. Mr. Gross showed Mark Behmer photographs taken at the site. Mark Behmer stated that he had removed much of the construction waste from the site, but he admitted that likely some of the trade waste and C&D waste was remaining at the site when the open burning occurred. Mr. Behmer and his father stated that they would clean up the burn pile right away.

6. On September 23, 2015, Mr. Gross visited the site and observed that cleanup had occurred. Recently, in 2016, Mr. Gross has observed the site and the site appears to remain cleaned up.

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 illegal open burning of solid waste, including a trade waste, 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: B Windy Enterprises, L.L.C., Charlotte Behmer,
and Mark Behmer, dba Behmer Solar Design Homes

4. 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 illegal open dumping of solid waste in this case demonstrates non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and B Windy Enterprises, L.L.C., Charlotte Behmer, and Mark Behmer, dba Behmer Solar Design Homes, agree to the following:

1. B Windy Enterprises, L.L.C., Charlotte Behmer, and Mark Behmer, dba Behmer Solar Design Homes, shall pay a penalty of \$1,150.00 within 45 days of the date this administrative consent order is signed by the Director, and

2. B Windy Enterprises, L.L.C., Charlotte Behmer, and Mark Behmer, dba Behmer Solar Design Homes, shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at any location in the State of Iowa, and shall comply in the future with the regulations concerning disposal of solid waste and open burning.

3. Within 30 days of the date of this administrative consent order, B Windy Enterprises, L.L.C., Charlotte Behmer, and Mark Behmer, dba Behmer Solar Design Homes, shall remove any remaining ashes and other waste from the site and properly dispose of them at a permitted disposal site.

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 \$1,150.00 is assessed by this administrative consent order. The penalty must be paid within 30 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: B Windy Enterprises, L.L.C., Charlotte Behmer,
and Mark Behmer, dba Behmer Solar Design Homes

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 – B Windy Enterprises, L.L.C., Charlotte Behmer, and Mark Behmer, dba Behmer Solar Design Homes, saved time and money on transportation and landfill disposal fees. A rough estimate of the amount of solid waste that was burned is two tons. The Boone County Sanitary Landfill charges an \$80.00 tipping fee and \$200.00 for trucking costs. Therefore, the estimated economic benefit is \$360.00.

Gravity of the Violation – The open burning of solid waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Further, illegal open burning threatens the integrity of DNR's environmental programs and efforts to protect the State of Iowa's valuable natural resources. Also, illegal open dumping has the potential to create groundwater contamination. Therefore, the amount of \$395.00 is assessed for the gravity of the violation.

Culpability – B Windy Enterprises, L.L.C., Charlotte Behmer, and Mark Behmer, dba Behmer Solar Design Homes, have intentionally open burned prohibited solid waste materials. Mr. Mark Behmer admitted to Mr. Gross that materials open burned at the site included prohibited materials. B Windy Enterprises, L.L.C., Charlotte Behmer, and Mark Behmer, dba Behmer Solar Design Homes, have a responsibility to properly dispose of waste materials, to be knowledgeable of the DNR's requirements, and to be alert to the probability that their conduct is subject to DNR's rules. For the above reasons, the amount of \$395.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of B Windy Enterprises, L.L.C., Charlotte Behmer, and Mark Behmer, dba Behmer Solar Design Homes. For that reason, B Windy Enterprises, L.L.C., Charlotte Behmer, and Mark Behmer, dba Behmer Solar Design Homes, waive their right to appeal this order or any part thereof.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: B Windy Enterprises, L.L.C., Charlotte Behmer
and Mark Behmer, dba Behmer Solar Design Homes

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.

Chuck Gipp
Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 28th day of
November, 2014. 2016

B Windy Enterprises, LLC by
B Windy Enterprises, L.L.C. Mark Behmer, Administrator

Dated this 14 day of
November, 2014. 2016

Estate of Charlotte Behmer by Mark Behmer
Charlotte Behmer Executor

Dated this 14 day of
November, 2014. 2016

Estate of Mark Behmer by Mark Behmer
Mark Behmer, dba Behmer Solar Design Homes Executor

Dated this 14th day of
November, 2014. 2016

DNR Field Office 5; Anne Preziosi; VII.C.2