

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

JIM KNOBLAUCH

Poweshiek County, Iowa

ADMINISTRATIVE ORDER

NO. 201 *Z*-SW- *20*

NO. 201 *Z*-AQ- *30*

To: Jim Knoblauch
Jumpin' Jimmy's Bar and Grill
199 Marina Drive
Montezuma, IA 50171

I. SUMMARY

This Administrative Order ("Order") requires Jim Knoblauch to pay a penalty in the amount of \$10,000.00 and in the future comply with all laws regarding the open burning of materials and the depositing of solid waste.

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
Hickman Road
Windsor Heights, IA 50324
Phone: (515) 725-0268

Relating to legal requirements:

Noah Poppelreiter
Attorney, DNR Legal Services
Iowa Dept. of Natural Resources 7900
502 9th St. Wallace State Office Building
Des Moines, IA 50319
(515) - 275 - 8248

Send payment of penalty to:

Director of the Iowa DNR
Iowa Dept. of Natural Resources
502 9th St. Wallace State Office Building
Des Moines, IA 50319

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.138, which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, Part 1 and the rules adopted or permits issued pursuant thereto; 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 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (“IAC”) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACT

2016 Investigation

1. Mr. Knoblauch owns property located at 4872 103rd Street, Montezuma, Iowa (“103rd Street Site”).
2. In January of 2016, the DNR began an investigation of the 103rd Street Site.
3. Throughout the ongoing investigation, DNR staff observed multiple solid waste violations, including the unlawful depositing of fencing materials. Additionally, the DNR observed evidence of open burning violations.
4. In July, 2016, DNR Environmental Specialist Malia Schepers informed Mr. Knoblauch of Iowa’s regulations regarding open burning and proper waste disposal.
5. Despite this information, on August 29, 2016, Ms. Schepers’ investigation of the 103rd Street Site revealed a large pile of actively burning solid waste.
6. By agreement of Mr. Knoblauch and the DNR, Mr. Knoblauch was to clean up contaminated soil at the 103rd Street Site, cease open burning violations, and properly dispose of the solid waste located there. After Mr. Knoblauch allegedly completed these remedial actions, the parties entered into Administrative Consent Order No. 2017-SW-16/No. 2017-AQ-24, signed by Mr. Knoblauch on September 12, 2017.

2017 Investigation (Present Case)

7. Mr. Knoblauch owns property located at 1068 500th Ave., Montezuma, Iowa (“Property”).
8. On September 18, 2017, DNR Staff received a complaint that Mr. Knoblauch was hauling fencing material to the property in anticipation to burn the material.
9. On September 19, 2017, Ms. Schepers investigated the Property and observed the same fencing material previously located at the 103rd Street Site. Additionally, Ms. Schepers observed carpet, construction and demolition waste, a tire, plastics of various types, cardboard boxes, and other household trash. Many of the cardboard boxes contained shipping labels for Jumpin’ Jimmy’s Bar and Grill (“Jumpin’ Jimmy’s”). At the east end of the pile of solid waste, Ms. Schepers observed a large pile of burned and charred material.

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10. Mr. Knoblauch is the owner and operator of Jumpin' Jimmy's.

11. On September 20, 2017, Ms. Schepers attempted to make contact with Mr. Knoblauch at Jumpin' Jimmy's, but was unsuccessful. Following that attempt, she visited the Property. Located at the Property was an additional pile of cardboard boxes containing shipping labels to Jumpin' Jimmy's.

12. Later that day, Ms. Schepers made contact with Mr. Knoblauch by telephone. During the conversation, Mr. Knoblauch admitted that at least four people bring household trash to the Property, where Mr. Knoblauch burns it. This illegal operation has been ongoing for an unknown and indefinite period of time, and was not a discrete incident. Mr. Knoblauch asserted that he had no intention of burning the fencing material. Ms. Schepers informed Mr. Knoblauch, again, of Iowa's solid waste and open burning regulations.

13. On September 22, 2017, Ms. Schepers received a complaint that open burning was occurring on the Property.

14. On September 25, 2017, Ms. Schepers investigated the Property and observed a fire ring with fresh ash and metal debris. She noted the carpeting and cardboard boxes were no longer on site.

15. On September 26, 2017, Ms. Schepers sent Mr. Knoblauch a Notice of Violation ("NOV") informing him of the observed violations and the DNR's intention to pursue enforcement.

16. On September 27, 2017, Ms. Schepers received a complaint that open burning was occurring on the Property.

17. In late October, 2017, Mr. Knoblauch provided the DNR a written response to the NOV.

18. Per the response, Mr. Knoblauch removed the wire from the fencing material. He provided receipts showing the wire was sent to Sam Berman & Sons, LLC, for disposal. All receipts were dated between September 21, 2017, and October 13, 2017.

19. Mr. Knoblauch also stated in the response that he used the Property to burn boxes from Jumpin' Jimmy's, scrap materials from his dock and lift business, and household trash from several friends. He stated that no burning has occurred "at [the Property] since I was told to discontinue this practice earlier this summer."

20. Lastly, Mr. Knoblauch provided letters dated October 10, 2017, to several individuals telling them to "discontinue dumping boxes and any other trash..."

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IV. CONCLUSIONS OF LAW

1. 567 IAC 23.2(1) prohibits any person from burning combustible materials, subject to certain exceptions. The facts of this case do not meet any of the listed exceptions. See 567 IAC 23.2(3). The facts of this case, and specifically the oral and written admissions by Mr. Knoblauch, show Mr. Knoblauch burned trade waste and household waste from another source at the Property. This burning was not an isolated incident, but occurred extensively for an extended period of time.

2. Iowa Code section 455B.307(1) prohibits the depositing of any solid waste in an area other than a sanitary landfill or an area that has been granted a permit by the DNR. The facts of this case show Mr. Knoblauch was in violation of this section. Notably, Mr. Knoblauch deposited waste generated from his businesses and from households of associates at the Property. These deposits occurred over an extended period of time. Additionally, Mr. Knoblauch deposited waste previously located at the 103rd Street Site.

3. Iowa Code section 455B.109 and 567 IAC chapter 10 authorize the DNR to assess administrative penalties for violations of the laws and rules under the DNR's jurisdiction.

4. Iowa Code section 455B.146 allows for penalties of up to \$10,000.00 per violation per day for violations of Iowa Code chapter 455B, Division II and all rules promulgated from that division.

5. Iowa Code section 455B.307(3) allows for penalties of up to \$5,000.00 per violation per day for violations of Iowa Code chapter 455B, Division IV, Part I and all rules promulgated from that part.

V. ORDER

THEREFORE, the DNR orders the following:

1. Mr. Knoblauch shall in the future comply with all laws and regulations regarding air quality and solid waste as they pertain to any of his businesses, residences, properties, or other areas owned or managed by Mr. Knoblauch.

2. Mr. Knoblauch shall pay an administrative penalty of \$10,000.00 for the violations of the Iowa Code and the IAC, as detailed below. This amount shall be payable to the Director of the DNR within 60 days of the date this Order is signed by the Director.

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VI. PENALTY

1. The DNR orders Mr. Knoblauch to pay a total administrative penalty of \$10,000.00 for violations of Iowa Code chapter 455B, Division II and all rules promulgated from that division, and for violations of Iowa Code chapter 455B, Division IV, Part I and all rules promulgated from that part.

2. The following factors were considered in the assessment of this total administrative penalty:

a. Economic Benefit: Mr. Knoblauch has engaged in the illegal dumping and burning of waste at the Property for an extended period of time. As the owner of two businesses, the economic benefit from failing to comply with solid waste regulations with both businesses over an extended period of time is extremely large. Additionally, Mr. Knoblauch gained economic benefits from failing to properly dispose of the fence waste from the 103rd Street Site. A total penalty of \$4,000.00 is assessed for this factor.

b. Gravity: The burning of solid waste threatens the integrity of not only the air quality program but the solid waste program as well. The burning of solid waste emits pollutants and may cause health concerns in neighboring communities. The improper disposal of solid waste causes a nuisance. To engage in this conduct for an extended period of time amplifies these harms substantially. A penalty of \$3,000.00 is assessed for this factor.

c. Culpability: The DNR does not find Mr. Knoblauch's assertion that he was merely storing the fencing material to be credible. In the 2016 investigation, Mr. Knoblauch had over a year and a half to properly dispose of the fencing material, yet failed to do so. Yet when Ms. Schepers initiated the 2017 investigation, Mr. Knoblauch disposed of the fencing material within a month. There is a strong inference from these timeframes that Mr. Knoblauch never intended to properly dispose of the fencing materials on his own and did so only due to the threat of additional enforcement.

Mr. Knoblauch has been told multiple times by DNR staff to comply with solid waste and open burning laws and regulations. He was told not "earlier this summer [2017]," but rather starting in January of 2016. With respect to Administrative Consent Order No. 2017-SW-16/No. 2017-AQ-24, Mr. Knoblauch failed to properly and legally dispose of the waste located at the 103rd Street Site as he agreed. Mr. Knoblauch instead disposed of that waste at the Property. Mr. Knoblauch is highly culpable in this matter. A penalty of \$3,000 is assessed for this factor.

d. Aggravating and Mitigating Factors: None.

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VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.138(1) and 455B.308 and 567 IAC chapter 7, a written Notice of Appeal may be filed with the Director, at the address provided above, within 30 days of your receipt of this Order. The Notice of Appeal 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.



CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 18th day of
December 2017