IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

WHITE CONSTRUCTION, LLC
Mitchell County, Iowa

ADMINISTRATIVE CONSENT ORDER
NO. 2019-AQ-25
NO. 2019-SW-13

To: White Construction, LLC
3900 East White Avenue
Clinton, Indiana 47842

CC: White Construction, LLC
P.O. Box 249
Clinton, Indiana 47842

To: CT Corporation System, Registered Agent
400 E Court Avenue
Des Moines, Iowa 50309

I. SUMMARY

This Administrative Consent Order (Order) requires White Construction, LLC (White Construction) to pay a penalty in the amount of $10,000.00 and in the future comply with the laws of the State of Iowa, including the laws and rules governing the open burning of material and the disposal of solid waste.

Questions regarding this Order should be directed to:

Relating to technical requirements:
Carl Berg
DNR Field Office 2
Iowa Department of Natural Resources
2300 15th St. SW
Mason City, Iowa 50401
(641) - 424 - 4073

Relating to legal requirements:
Noah Poppelreiter
Attorney, DNR Legal Services
Iowa Dept. of Natural Resources
502 9th St. Wallace State Office Building
Des Moines, IA 50319
(515) - 725 - 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 50309
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 Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. White Construction is a contractor with Turtle Creek Wind Farm, LLC. Among other duties, White Construction is responsible for the disposal of crane mats and other support timber (jointly, C&D Waste) used to create temporary platforms for the operation of cranes used in the construction of wind turbines.

2. On November 14, 2018, DNR Field Office 2 in Mason City received an anonymous complaint regarding an open burn at the Turtle Creek Wind Farm construction site near Saint Ansgar (Property).

3. On November 16, 2018, DNR Field Office 2 environmental specialist Carl Berg investigated the Property. At the Property, Mr. Berg met with Mark Davis, the project manager for White Construction in charge of the construction activities related to this Order. Mr. Davis informed Mr. Berg that White Construction was burning C&D Waste as a cost saving measure.

4. On December 7, 2018, Mr. Berg again discussed this matter with Mr. Davis. Mr. Davis stated that the Saint Ansgar Fire Chief had agreed to the open burning of the C&D Waste. Reviewing the text messages sent between Mr. Davis and the Saint Ansgar Fire Chief, Mr. Berg confirmed that a minimum of three days of open burning occurred. Mr. Davis estimated that White Construction saved $4,200.00 per day of open burning.

5. On December 13, 2018, the DNR issued a Notice of Violation to White Construction.

IV. CONCLUSIONS OF LAW

The DNR and White Construction agree the following Conclusions of Law are applicable to this matter:
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 noted in 567 IAC 23.2(3). The facts of this case show White Construction was in violation of rule 567 IAC 23.2(1).

2. Iowa Code section 567 IAC 100.4 prohibits the dumping or 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 White Construction was in violation of this rule.

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 and White Construction agrees to the following:

1. White Construction, including any and all of its employees, shall not unlawfully burn combustible material.

2. White Construction, including any and all or its employees, shall comply with all laws and regulations regarding open burning and solid waste disposal.

3. White Construction shall remove any remaining illegally disposed waste and properly dispose of it at the appropriate landfill. White Construction shall provide the DNR with receipts of this disposal.

4. White Construction 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 30 days of the date this Order is signed by the Director.

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. Iowa Code section 455B.146A provides for more serious criminal sanctions for the air quality violations. 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 DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: WHITE CONSTRUCTION, LLC

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 the Order with a $10,000.00 penalty. The administrative penalty assessed by this Order is determined as follows:

a. **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 “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.” The DNR estimates that White Construction conducted open burning on three days. Mr. Davis estimated a total of $4,200.00 was saved per day by burning the C&D Waste. In the interest of resolving the violations administratively, a penalty of $10,000.00 is assessed for this factor.

b. **Gravity:** 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. The improper disposal of solid waste creates risk for ground and surface water contamination, creates health risks and other social harms, and threatens the integrity of the solid waste program that promotes a healthy environment and community. There was a high volume of solid waste in this case, and the burning was severe enough to cause concerns in the local community. In the interest of settling this matter via administrative consent order, the DNR elects to assess no penalty for this factor.

c. **Culpability:** It has been unlawful to illegally dispose of solid waste outside of a landfill for over 40 years. It has been unlawful to burn solid waste in a manner not allowed by law for an equally long time. As a corporation operating within the State of Iowa, White Construction is responsible for knowing and abiding by the laws and regulations of Iowa. White Construction’s culpability in this matter is mitigated by the improper information provided by Saint Ansgar Fire Chief. For that reason, and in the interest of settling this matter via administrative consent order the DNR elects to assess no penalty for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

Iowa Code sections 455B.138 and 455B.308 and 561 IAC 7.4(1), as adopted by reference by 567 IAC 7.1, authorize a written notice of appeal to the Environmental Protection
Commission. This Order is entered into knowingly by and with the consent of White Construction. By signing this Order, all rights to appeal this Order are waived.

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.

[Signature]
BRECK TRAUTMAN, ACTING DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

[Signature]
Kayla Lyon, Director

for White Construction, LLC.

Dated this 4th day of September, 2019

Dated this 19th day of August, 2019

Field Office #2; Noah Peppelreiter; EPA; VI.C and VII.C.1