

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

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
NEW COOPERATIVE, INC.	NO. 2020-AQ- 15 NO. 2020-SW- 07

TO: NEW Cooperative, Inc.
Keith Jensen, Registered Agent
2626 1st Avenue S
Fort Dodge, Iowa 50501

NEW Cooperative, Inc.
Jon Wells, Environmental Health and Safety Manager
2626 1st Avenue S
Fort Dodge, Iowa 50501

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and NEW Cooperative, Inc. (NEW Cooperative) for the purpose of resolving solid waste and air quality violations. 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:

David Miller
Iowa Department of Natural Resources
Field Office 2
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641-424-4073

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-238-3429

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 administrative consent order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to 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. NEW Cooperative owns and operates a grain elevator located at 12 Humboldt Avenue in Bode, Iowa. The facility is located in the SE ¼ of the NE ¼, Section 17, Delana Township, in Humboldt County, Iowa.

2. On May 20, 2020, the United States Environmental Protection Agency forwarded to DNR Field Office (FO) 2 a complaint they had received from a Bode, Iowa, area resident. DNR FO2 spoke via telephone with the complainant, who stated that NEW Cooperative routinely brings solid waste, including plastic agricultural chemical barrels, from its Bode grain elevator to an abandoned farmstead located approximately ¼ mile from that facility (the site). At the site, NEW Cooperative burns the solid waste, often releasing thick black smoke.

3. On May 21, 2020, Environmental Specialist Senior David Miller of FO 2 investigated the complaint and spoke in-person to the complainant. The complainant identified the location where the open burning took place, on a nearby farmstead. Mr. Miller went to the site and observed a large burn pile. The burn pile contained melted plastic, metal hoop top closures from chemical barrels, and the remnants of a wide variety of solid waste. Mr. Miller observed that there was a house on the farmstead, but it looked unoccupied.

4. Mr. Miller later confirmed that the house was unoccupied, so none of the solid waste burned at the site was subject to the residential waste exemption to the open burning prohibition contained in 567 IAC 23.2(3)"f".

5. Mr. Miller then went to the NEW Cooperative facility in Bode, and NEW Cooperative employee Andrew Olsen admitted taking solid waste from that facility to the site and burning it.

6. On May 26, 2020, NEW Cooperative emailed DNR FO 2 and admitted taking pallets from their operation and open dumping them at the site. Mr. Miller responded in a May 26, 2020, via email, stating that materials other

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than pallets had been burned at the site, given the black smoke plumes described by the complainant, who had stated that the open burning "happens a lot". Mr. Miller stated that he had observed melted plastic and several hoop closures from plastic barrels in the burn pile at the site. Mr. Miller included pictures with the email, showing drum hoops and a melted plastic jug in the burn pile.

7. A May 29, 2020, Notice of Violation letter (NOV) was issued to NEW Cooperative, directing NEW Cooperative to clean up the site and to properly dispose all of the remnants of the burn pile at a landfill. NEW Cooperative also was directed in the NOV to provide to DNR copies of the landfill receipts and photographs of the cleaned-up site by no later than June 30, 2020. The landfill receipts and photographs documenting proper disposal the burn pile remnants were received by FO 2 on June 4, 2020.

8. NEW Cooperative has a history of violating the prohibitions against illegal open dumping and illegal open burning of trade waste. On June 20, 2009, DNR issued Administrative Consent Order 2009-AQ-26/2009-SW-17. This Administrative Consent Order, agreed upon between and signed by DNR and NEW Cooperative, was issued for the purpose of resolving issues associated with NEW Cooperative tearing down a building with no required asbestos inspection or abatement procedures being following, and transporting it to another location and illegally open burning it at that location. The Administrative Consent Order included a penalty in the amount of \$8,500.00.

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 subrule 23.2(2) (variances) and subrule 23.2(3) (exemptions). The illegal open burning of trade waste is specifically prohibited by the provisions of 567 IAC 23.2. The open burning of solid waste materials and trade waste, by NEW Cooperative, as described above, is a violation of the provisions of 567 IAC 23.2.

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. 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

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depositing of any solid waste at any place other than a sanitary disposal project approved by the director. The facts in this case demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and NEW Cooperative agrees to the following:

1. NEW Cooperative shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at the site and 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;

2. Within 30 days of the date this order is signed by the director, NEW Cooperative shall pay a penalty of \$10,000.00.

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. 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 type of 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 \$10,000.00 penalty. The administrative penalty assessed by this order is determined as follows:

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.”

It is not known how much trade waste was burned or solid waste disposal cost was avoided, but eight tons of ash/burn pile remnant were properly disposed of at the landfill. Assuming that the average weight reduction by burning solid waste

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is 90%, this suggests that 80 tons of solid waste might have been burned, which would have cost \$3,200.00 to dispose at the landfill, plus transportation costs. However, it cannot be demonstrated whether the burn pile remnants were 100% from NEW Cooperative.

Therefore, the economic benefit for failing to properly dispose of all materials is assessed at \$2,000.00.

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. As indicated above, substantial civil penalties are authorized by statute. Improper solid waste disposal and illegal open burning can degrade air and water quality and contribute contaminants to both land and water resources as well as threaten public health.

Smoke from burning trade waste degrades the air quality in the surrounding area and releases toxins and other pollutants. Melted plastic and plastic chemical barrel top closures were found in the burn pile, suggesting that pesticide and/or herbicide barrels were burned, likely releasing those chemicals into the air. The burning of non-exempted waste, including but not limited to trade waste, threatens the integrity of the air quality and solid waste programs that promote healthy communities and environment.

Therefore, \$3,000.00 is assessed for the gravity of the violations.

Culpability – Factors to be considered in determining the amount to be assessed for culpability include the degree of intent or negligence; the standard of care required by the laws of the state; and whether the violator has taken remedial measures or mitigated the harm caused by the violations.

NEW Cooperative has a duty to remain knowledgeable of DNR regulations and to be alert to the probability that its conduct is subject to DNR's rules. Open burning prohibitions have been in place for over 45 years and improper solid waste disposal regulations have been in place for many years. NEW Cooperative signed an Administrative Consent Order in 2009 to settle previous illegal open burning and illegal open dumping violations at this facility, so NEW Cooperative was well aware of the requirements.

Therefore, \$4,000.00 is assessed for culpability.

Aggravating Factors – As stated above, NEW Cooperative signed an Administrative Consent Order in 2009 to settle previous illegal open burning and illegal open dumping violations at this facility, so NEW Cooperative was well aware of the requirements.

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For these reasons, \$1,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of NEW Cooperative. For that reason, NEW Cooperative waives its right 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.



Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 10th day of
November, 2020.



Environmental Health & Safety Mgr.
NEW Cooperative, Inc.

Dated this 9th day of
November, 2020.

DNR Field Office 3; Anne Preziosi; VI.C; VII.C.1.