

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

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| IN THE MATTER OF: DEAN WOOD JONES COUNTY, IOWA | ADMINISTRATIVE CONSENT ORDER NO. 2022-AQ-23 |
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To: Dean Wood
9941 Forest Chapel Road
Anamosa, Iowa 52205

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Dean Wood, 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:

Andrea Errthum, Field Office 1
Iowa Department of Natural Resources
1101 Commercial Court, Suite 10
Manchester, Iowa 52051
Phone: 653-927-2640

Relating to legal requirements:

Anne Preziosi, Attorney for 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

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorizes 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.

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III. STATEMENT OF FACTS

1. Dean Wood is the property developer for a house located in 9458 212th Street, Anamosa, Iowa 52205. The house is being built on the corner of Huntington Hills and 212th Street in Anamosa, Jones County, Iowa (the site).

2. On June 2, 2022, DNR Field Office No. 1 (FO1) received a complaint, involving three separate phone calls, regarding an illegal open burning of trade waste occurring at the corner of Huntington Hills and 212th Avenue in Anamosa. The complainant stated that the burning was resulting in black smoke. One of the complainants texted photos to FO1.

3. Also, on June 2, Andrea Errthum from FO1 investigated the site. When Ms. Errthum arrived at the site, Dean Wood was not present. Ms. Errthum observed Dean Wood's employees putting siding on the back of the house. The construction crew on site confirmed that they were employees of Dean Wood at the time of the site visit. Ms. Errthum observed ashes, burned debris, and pieces of siding around the edges and poking out of where the burning debris was covered with soil. Ms. Errthum took photos at the site.

4. Mr. Wood's employees told Ms. Errthum that the Jones County Sheriff's Office had visited the site and instructed them to cover the burning trade waste with soil to extinguish the fire. One of Mr. Wood's employees, Jeff Jenkins, stated initially that they had been burning paper, but later clarified that there had been siding in the burn pile as well.

5. After leaving the site, Ms. Errthum went to the Jones County Sheriff's Office and spoke with Deputy Brian Eckhardt. Deputy Eckhardt confirmed that the Jones County Sheriff's Office had received several phone calls from complainants. Deputy Eckhardt visited the site on June 2 and observed when he arrived that the pile of debris was giving off dark smoke. Deputy Eckhardt stated that he had instructed Dean Wood's employees to cover the fire with dirt to extinguish it, and the employees had complied. Deputy Eckhardt provided Ms. Errthum several phone numbers for Dean Wood, but they were out of service or disconnected when she tried to contact him. A June 6, 2022, Notice of Violation letter was sent to Mr. Wood, citing illegal open burning.

6. Dean Wood has a history of illegal open burning. On May 8, 2018, FO1 received a complaint that Dean Wood of Anamosa, a contractor, had been observed digging holes and burying paint buckets, plastic, and tires across the street from the complainant's home. Chris Gelner of FO1 responded to the complaint and issued Dean Wood a Notice of Violation letter for illegal open burning using tires to start a brush fire. Mr. Gelner offered Dean Wood handouts regarding the DNR's open burning and open

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dumping regulations, but Dean Wood declined them. While at the site, Mr. Gerner did not observe a hole filled with debris, but noted the soil had recently been disturbed.

7. On January 13, 2017, FO1 received a complaint that Dean Wood and Wood Construction had improperly disposed of a demolished building, Furniture Mart, at 21597 County Road E34, Anamosa. Chad Kehrli from FO2 spoke with Dean Wood via phone, and Mr. Wood stated that he had demolished an addition that had been built onto the Furniture Mart and that he had burned it on site. Mr. Wood stated that there was approximately half a dump truck of ash and burnt debris left on site. Mr. Kehrli explained to Mr. Wood that he could not burn trade waste or demolition waste and that the remains must be taken to a landfill. Mr. Wood told Mr. Kehrli that he would not burn demolition waste or trade waste in the future.

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 open burning of solid waste materials, as described above, is a violation of the provisions of 567 IAC 23.2. The open burning of trade waste and tires is specifically prohibited.

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 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 Dean Wood agrees to the following:

1. Dean Wood shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at the sites described above and at any site in the state of Iowa; and shall comply in the future with the regulations concerning disposal of solid waste and open burning;

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2. Within 30 days of the date this order is signed by the director, Dean Wood shall collect and dispose of or recycle all solid waste materials remaining at the Anamosa site described above and investigated in June 2022, and Mr. Wood shall obtain and provide copies of landfill and recycling receipts to FO1 to document proper disposal of the solid waste;

3. Within 30 days of the date this order is signed by the director, Dean Wood shall pay a penalty of \$3,000.00.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, the director is authorized to assess administrative penalties, 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 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 \$3,000.00 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, DNR 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.”

Dean Wood has saved time and money by burning the solid waste in lieu of transportation to and disposal at a permitted landfill.

The Jones County Landfill currently charges \$55.00 per ton for disposal. The Jones County Landfill looked at charge accounts for customers who primarily bring in construction trade waste and the estimated tonnage per load is three tons because customers typically don't bring in half loads; they wait until they are full. A 3-ton disposal from a construction job at \$55.00 per ton would make a load of trade waste cost

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\$165.00 to dispose of at the Jones County Landfill. If the three instances when Dean Wood was caught doing improper disposal are multiplied by \$165.00, then \$495.00 was saved by not taking those three loads to the landfill.

A penalty of \$495.00 is assessed for this factor.

Gravity of the Violation – Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program. Open burning of solid waste threatens both the environment and human health. It damages air quality and can cause significant acute and chronic health effects. Particulate matter from the open burning of tires, appliances and construction wastes can release toxic substances into the air. Open dumping damages the environment and prevents proper management of the solid waste stream. Allowing parties to burn solid waste rather than properly disposing of it in a landfill may encourage or inspire others to do the same.

Dean Wood has been instructed on the proper ways to dispose of trade waste multiple times by the DNR, and yet the DNR has repeatedly received and responded to complaints from the public over the last several years regarding Dean Wood open burning and improperly disposing of trade waste.

A penalty of \$1,000.00 is assessed for this factor.

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. A maximum of \$3,000.00 may be assessed for culpability.

Dean Wood has a duty to remain knowledgeable of DNR regulations and to be alert to the probability that his conduct is subject to DNR's rules. Mr. Wood has been offered handouts regarding DNR illegal open dumping and open burning regulations and has declined to accept them and then later has been found to be still open burning trade waste. He has also verbally agreed to cease burning trade waste and later been found to still be open burning trade waste.

A penalty of \$1,505.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Dean Wood. For that reason, Dean Wood waives his right to appeal this order or any part thereof.

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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 section 455B.146. 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

Zedd Wood POA
Dean Wood

Dated this 6 day of
December, 2022.

DNR Field Office 1; Anne Preziosi; VII.B.2.