

Jurisdiction

Solid Waste Regulations

5. Iowa Code section 455B.307(1) and 567 Iowa Admin. Code 100.4 prohibit dumping or depositing or permitting dumping or depositing of solid waste at any place other than a facility permitted by the DNR, unless otherwise permitted by rule.

6. Under Iowa Code section 455B.304, the Environmental Protection Commission of the DNR is required to establish rules for the proper administration of Iowa Code chapter 455B, Division IV, Part 1, relative to the treatment and disposition of solid waste. Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 100-119 concerning solid waste management and disposal.

7. The Attorney General is authorized under Iowa Code section 455B.307(2), on request of the DNR, to institute any legal proceedings necessary in obtaining compliance with an order of the director or prosecuting any person for a violation, of Iowa Code chapter 455B, Division IV, Part 1, or the rules issued under that part. Under Iowa Code section 455B.307(3), any person who violates any provision of Iowa Code chapter 455B, Division IV, Part 1, or any rule or any order adopted pursuant to that part is subject to a civil penalty for each day of violation not to exceed five thousand dollars for each day of violation.

Air Quality Regulations

8. Under Iowa Code section 455B.133(2), the Environmental Protection Commission of the DNR is required to adopt rules pertaining to the evaluation, abatement, control, and prevention of air pollution. Pursuant thereto, the Commission has adopted 567 Iowa Admin. Code chapters 20-30 concerning air quality.

9. 567 Iowa Admin. Code 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, unless a variance has been granted under 567 Iowa Admin. Code 23.2(2), or one of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies.

10. Under Iowa Code section 455B.146, the Attorney General is authorized, on request of the DNR, to institute a civil action in district court for injunctive relief to prevent any further violation of any order, permit, or rule of the department, or for the assessment of a civil penalty for each day of violation not to exceed Ten Thousand Dollars (\$10,000.00) for each day of violation, or for both injunctive relief and civil penalties.

Facts

11. On December 11, 1995, a Washington County Deputy Sheriff observed a burning tractor tire on defendant's property in Kalona, Iowa. The sheriff's report was sent to DNR Field Office #6 in Washington, Iowa, which responded by issuing on December 28, 1995, a Notice of Violation for the December 11 open burning violation. The letter explained the open burning regulations and informed defendant that future violations could result in further enforcement actions from the DNR central office.

12. On September 15, 2000, DNR officials observed a mobile home fire being extinguished by the Washington Fire Department at the Hidden Valley Mobile Home Park in Washington, Iowa. On October 2, 2000, DNR officials received an anonymous complaint that defendant had burned the mobile home on September 15, and that he was currently burning the remains of an old shed at the mobile home park. In response, DNR officials contacted defendant, who admitted he was burning parts of the old mobile home on September 15 and

October 2, 2000. DNR officials subsequently issued a Notice of Violation to defendant on October 23, 2000, for the improper burning of the mobile home and debris. The Notice of Violation explained the open burning regulations and warned defendant of further action if there were more open burning violations.

13. On November 7, 2002, DNR officials received a complaint alleging that defendant was disposing of material improperly and burning auto salvage on his property, resulting in a large amount of black smoke. DNR officials investigated the complaint on November 20, 2002, and determined that defendant had been burning trade waste from his salvage operation in a drum by his shop. In response, DNR officials issued a Notice of Violation to defendant on December 3, 2002, for the open burning of trade waste. The Notice of Violation explained the open burning regulations and stated that failure to comply with the regulations would result in further enforcement.

14. On March 26, 2003, DNR officials received a complaint from a City of Kalona official who indicated the city was receiving complaints from its residents regarding open burning of illegal material by defendant in a large open tank on his property in Kalona.

15. On April 2, 2003, DNR officials received a complaint alleging that defendant was burning material in a large metal tank on his property. The complainant stated that the smoke was very black and that defendant had been burning quite frequently. In response, DNR officials inspected defendant's property that day and observed radiant heat venting from a large metal tank approximately 100 feet from a shop on defendant's property. The tank was approximately 6 feet high and 6 feet in diameter, with a metal catwalk providing access to the top of the tank. The tank contained smoldering and charred waste that appeared to be a mixture of wood,

insulation and metal. DNR officials further observed a pile of charred solid waste, including tire belts, metal, insulation, wood, gypsum board, and vinyl flooring, in a pile next to the tank. Defendant advised DNR officials at that time that he used tires to help burn demolition waste from mobile homes. DNR officials informed defendant at that time that he was to take the remaining solid waste to a landfill and that the matter was being referred for further enforcement.

16. On May 6, 2003, DNR officials issued a Notice of Violation to defendant for the improper solid waste disposal and open burning violations observed during the April 2, 2003 investigation. The Notice of Violation further informed defendant that he was required to dispose of the remaining waste at a landfill, and that the matter was being referred for further enforcement.

17. On July 21, 2003, the DNR issued Administrative Order No. 2003-AQ-26/2003-SW-15 to defendant. The order required defendant to stop any and all open burning of combustible materials in the State of Iowa unless the burning is allowed by a specific exemption or variance in accordance with 567 Iowa Admin. Code 23.2; to stop any and all improper disposal of solid waste at any property in the State of Iowa; to properly dispose of the remaining solid waste on defendant's property within 30 days of receipt of the order; to dispose of all solid waste in a manner consistent with 567 Iowa Admin. Code 23 and 100.4; and to pay an administrative penalty of Ten Thousand Dollars (\$10,000.00) subject to appeal rights stated in the order. A copy of Administrative Order No. 2003-AQ-26/2003-SW-15 is attached hereto as Exhibit A, and by this reference incorporated herein. Defendant did not appeal the order, and as a result it became final on September 25, 2003, sixty (60) days after it was served on defendant. An Order Granting Judgment against defendant for the unpaid balance of the administrative penalty and

accrued interest was subsequently entered by the Washington County District Court on July 30, 2004. A copy of the Order Granting Judgment is attached hereto as Exhibit B, and by this reference incorporated herein. Defendant has not paid any portion of the administrative penalty or interest.

18. On November 1, 2004, DNR officials inspected defendant's facility and observed evidence that plastic covered (insulated) copper wire had been burned in a stove inside defendant's shop. An employee of defendant admitted burning wire in the stove. In response, DNR officials sent defendant a Notice of Violation requiring him to immediately stop burning any material not exempted by Iowa open burning rules.

19. On November 29, 2004, Washington County Sheriff's Office officials received and investigated a complaint of open burning at defendant's facility. Defendant admitted to the sheriff's office officials that he had been burning the plastic insulation off of copper wire. Defendant further advised the sheriff's office officials that he had received permission from the DNR to conduct such burning. Washington County Sheriff's Office officials forwarded a copy of their report to DNR officials, who responded by issuing a Notice of Violation to defendant in which they reiterated that it is illegal to burn insulation off of copper wire.

20. On August 7, 2006, Washington County Sheriff's Office officials received and investigated a complaint of open burning at defendant's facility. Photographs taken by the sheriff's office at that time show a pile of solid waste on fire, as well as a pile of shingles dumped on the east side of defendant's property. On August 8, 2006, the Washington County Sheriff's Office, accompanied by DNR officials, visited defendant's facility and observed and photographed the burn location and the pile of dumped shingles. In response, DNR officials sent

defendant a Notice of Violation requiring him to immediately stop illegally disposing of solid waste and open burning solid waste on his property or any other property. The Notice of Violation further advised defendant to either recycle or properly dispose of all solid waste on his property by September 22, 2006, and to submit disposal or recycling receipts to DNR Field Office #6 by that date.

21. Defendant failed to submit receipts to DNR Field Office #6 by September 22, 2006, verifying that the solid waste on his property has been properly disposed or recycled.

Violations

22. Defendant has violated Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order No. 2003-AQ-26/2003-SW-15 by dumping or depositing or permitting the dumping or depositing of solid waste on the property described in paragraph four (4) above, and by failing to remove and properly dispose of solid waste from the property described in paragraph four (4), above.

23. Defendant has violated 567 Iowa Admin. Code 23.2(1) and Administrative Order No. 2003-AQ-26/2003-SW-15 by allowing, causing, or permitting open burning of combustible materials on the property described in paragraph four (4), despite the fact that no variance has been granted under 567 Iowa Admin. Code 23.2(2), and none of the exemptions listed in 567 Iowa Admin. Code 23.2(3) applies.

WHEREFORE, plaintiff requests that the Court:

- a. assess civil penalties against defendant not to exceed the statutory maximum pursuant to Iowa Code section 455B.146 for each day of violation of 567 Iowa Admin. Code 23.2(1) and Administrative Order No. 2003-AQ-26/2003-SW-15;

- b. assess civil penalties against defendant not to exceed the statutory maximum pursuant to Iowa Code section 455B.307(3) for each day of violation of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order No. 2003-AQ-26/2003-SW-15;
- c. issue a permanent injunction pursuant to Iowa Code section 455B.146 enjoining defendant from further violations of the provisions of 567 Iowa Admin. Code 23.2(1) and Administrative Order No. 2003-AQ-26/2003-SW-15; and,
- d. issue a permanent injunction pursuant to Iowa Code section 455B.307(2) enjoining defendant from further violations of the provisions of Iowa Code section 455B.307(1), 567 Iowa Admin. Code 100.4, and Administrative Order No. 2003-AQ-26/2003-SW-15.

Plaintiff further requests that the Court tax the costs of this action to defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

DAVID R. SHERIDAN
Assistant Attorney General



DAVID L. DORFF, AT0002110
Assistant Attorney General
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ATTORNEYS FOR PLAINTIFF

*Albert Miller
SW File*

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

JUL 28 2003

<p>IN THE MATTER OF:</p> <p>ALBERT MILLER</p>	<p>ADMINISTRATIVE ORDER</p> <p>NO. 2003-AQ- 26</p> <p>NO. 2003-SW-15</p>
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TO: Albert Miller
710 14th Street N.
Kalona, Iowa 52257

I. SUMMARY

This order requires you to stop any and all open burning of combustible material in the State of Iowa unless the burning is allowed by a specific exemption or variance in accordance with 567 Iowa Administrative Code (IAC) 23.2; to stop any and all improper disposal of solid waste at any property in the State of Iowa; to properly dispose of the remaining solid waste stored on your property within 30 days of receiving this order; to dispose of all solid waste in a manner consistent with 567 IAC 23 and 567 IAC 100.4 in the future; to comply with the asbestos NESHAP requirements in the future; and to pay a penalty of \$10,000.00 subject to your appeal rights stated in this order.

Relating to technical requirements:
Shane Dodge, Field Office 6
Iowa Department of Natural Resources
1004 W. Madison
Washington, Iowa 52353
Phone: 319/653-2135

Relating to appeal rights:
Kelli Book
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Appeal, if any, addressed to:
Director, Iowa Dept. of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

Payment of penalty to:
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. STATEMENT OF FACTS

CURRENT VIOLATIONS:

1. On March 26, 2003, DNR Field Office 6 received a complaint from Doug Morgan with the City of Kalona. Mr. Morgan stated the city was receiving complaints from its residents regarding open burning by Albert Miller at his residence located at 710 14th Street in Kalona. The complaints alleged Mr. Miller was burning illegal material in a large open tank on his property.

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2. On April 2, 2003, DNR Field Office 6 received a complaint alleging that Mr. Miller was burning something in a large metal tank on his property. The complainant stated the smoke was very black and that Mr. Miller had been burning quite frequently.

3. On April 2, 2003, Shane Dodge, DNR Field Office 6, investigated the complaints against Mr. Miller. Mr. Dodge observed radiant heat venting from a large metal tank approximately 100 feet from a shop on Mr. Miller's property. The tank was approximately 6 feet high and 6 feet in diameter, with a metal catwalk providing access to the top of the tank. The tank contained smoldering and charred solid waste that appeared to be a mixture of wood, insulation, and metal. Mr. Dodge observed a pile of charred solid waste, including tire belts, metal, insulation, wood, gypsum board, and vinyl flooring, in a pile next to the tank. During the investigation, Mr. Dodge spoke to Mr. Miller on the telephone. Mr. Miller told Mr. Dodge that he had been hired by a mobile home park in Coralville, Iowa to remove and dispose of mobile homes from the closed park. He stated that he transported at least two of the mobile homes to his property in Kalona. He demolished one of the trailers with most of the non-recyclable waste being burned in the metal tank. Mr. Dodge asked why there were tire belts in the solid waste pile by the tank. Mr. Miller stated that he used tires to help burn demolition waste from the mobile homes. Mr. Dodge informed Mr. Miller that he was to take the remaining solid waste to a landfill and that the matter was being referred for further enforcement.

4. On May 6, 2003, DNR Field Office 6 issued a Notice of Violation letter to Albert Miller for improper solid waste disposal and open burning violations noted by Mr. Dodge during his April 2, 2003 investigation. The letter informed Mr. Miller of the violations and required him to dispose of the remaining solid waste at a landfill. The letter also informed Mr. Miller the matter was being referred for further enforcement.

5. On June 8, 2003, DNR asbestos NESHAP coordinator, Marion Burnside, conducted a complaint-based inspection at the mobile home park in Coralville where Mr. Miller was the contractor for removing the mobile homes. Mr. Burnside observed several mobile homes being demolished and the demolition debris was being removed from the site. Subsequent investigation by Mr. Burnside indicated there was not asbestos NESHAP demolition notice and there had been no asbestos inspection prior to the demolition of the mobile homes.

6. On July 8, 2003, DNR issued a Notice of Violation letter to Mr. Miller as the contractor for the demolition project at the mobile home park in Coralville. The letter cited the asbestos NESHAP violations of failing to thoroughly inspect prior to a demolition and failing to provide notice to the DNR of the demolition.

PAST VIOLATIONS:

7. Mr. Miller has prior knowledge of the open burning regulations. He has received numerous Notice of Violation letters in the past for open burning violations.

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8. On December 11, 1995, a Washington County Deputy Sheriff observed a burning of a tractor tire at Mr. Miller's property in Kalona. The sheriff's report was sent to DNR Field Office 6 for follow up action. On December 28, 1995, DNR Field Office 6 issued a Notice of Violation letter for the open burning violation observed on December 11, 1995. The letter explained the open burning regulations to Mr. Miller and informed him that future violations could result in further enforcement actions from the DNR central office.

9. On September 15, 2000, DNR Field Office 6 observed a mobile home fire being extinguished by the Washington Fire Department at the Hidden Valley Mobile Home Park in Washington, Iowa. The field office observed the fire and took pictures of the remaining debris. On October 2, 2000, DNR Field Office 6 received an anonymous complaint alleging that Mr. Miller burned the mobile home on September 15 and currently he was burning the remains of an old shed at the mobile home park. DNR Field Office 6 responded to the complaint by going to the mobile home park. A pile of smoldering ashes was observed and the mobile home park manager told DNR Field Office 6 that Mr. Miller had burned the mobile home on site on September 15, 2000. DNR Field Office 6 spoke with Mr. Miller on the telephone and he admitted that he was burning parts of the old mobile home on September 15 and October 2. During the telephone conversation, Mr. Miller was told of the open burning regulations. On October 23, 2000, DNR Field Office 6 issued a Notice of Violation letter to Mr. Miller for the improper burning of the mobile home and debris on September 15 and October 2. The letter explained the open burning regulations to Mr. Miller and it also warned Mr. Miller of further enforcement from DNR central office if there were more open burning violations.

10. On November 7, 2002, DNR Field Office 6 received a complaint alleging Mr. Miller was disposing of material improperly and was burning auto salvage debris creating a large amount of black smoke. On November 20, 2002, DNR Field Office 6 investigated the complaint and determined Mr. Miller had been burning trade waste from his salvage operation in a drum by his shop. On December 3, 2002, DNR Field Office 6 issued a Notice of Violation letter to Mr. Miller for the open burning of the trade waste. The letter explained the open burning regulations and stated that failure to comply with the open burning regulations in the future would result in further enforcement.

III. CONCLUSIONS OF LAW

1. This order is issued pursuant to 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 chapter 455B, Division IV, Part 1 (solid waste) and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties.

2. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-30 relating to air quality.

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3. 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). On several occasions, DNR Field Office 6 has observed Mr. Miller burning prohibited solid waste, including trade waste, tires and various other types of solid waste. On several occasions, Mr. Miller admitted to burning the prohibited solid waste. The above facts disclose several violations of this provision.

4. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-121.

5. 567 IAC 100.4 prohibits a private or public agency 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. On several occasions, DNR Field Office 6 observed prohibited solid waste disposed of at Mr. Miller's property in Kalona. The above facts demonstrate several violations of this provision.

6. Iowa Code section 455B.133 provides for the Environmental Protection Division to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC chapter 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

7. 40 CFR section 61.145(b)(1) requires written notification of demolition must be submitted to the DNR prior to beginning demolition. The specific requirements for this notification are contained in the subsection. DNR has no record of receiving the required notification for the demolition of the mobile homes by Mr. Miller. The above facts indicate a violation of this provision.

8. 40 CFR 61.145(a) specifies that the owner or operator of a demolition or renovation activity shall thoroughly inspect a regulated facility for the presence of asbestos prior to commencement of demolition or renovation. The Department has no evidence that Mr. Miller conducted the asbestos inspection prior to beginning the demolition of the mobile homes. The above facts indicate a violation of this provision.

IV. ORDER

THEREFORE, it is hereby ordered Albert Miller do the following:

1. Immediately stop any and all open burning of combustible material in the State of Iowa unless the burning is allowed by a specific exemption or variance in accordance with 567 IAC 23.2;

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2. Immediately stop any and all improper disposal of solid waste at any property in the State of Iowa;
3. Properly dispose of the remaining solid waste stored on your property within 30 days of receiving this order;
4. Dispose of all solid waste in a manner consistent with 567 IAC 23 and 567 IAC 100.4 in the future;
5. Comply with the asbestos NESHAP requirements in the future; and
6. Pay a penalty of \$10,000.00, subject to your appeal rights stated in this order.

V. 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 \$10,000.00 is assessed effective 30 days from receipt of this order by Albert Miller unless this order is appealed within that time, as provided in Part VI of this order. The penalty shall be paid within 60 days of receipt of this order, unless a timely appeal is filed. 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 violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations.

Iowa Code section 455B.109 authorizes the Environmental Protection 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 Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Administrative Order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Mr. Miller saved time, labor, and landfill fees by not properly disposing of the mobile home and other solid waste at a landfill. Rather, Mr. Miller chose on numerous occasions to violate the regulations and burn the solid waste instead of taking the material to a landfill. In addition to the landfill fees, Mr. Miller also saved money by failing to hire someone to perform the required asbestos inspections prior to the demolition of the mobile homes. Based on these considerations, \$5,000.00 is assessed for this factor.

Gravity of the Violation – Improper disposal of the solid waste and the open burning of the mobile homes, tires, and other solid waste can release toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The open

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burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. The violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste disposal regulations is required of all persons in this state. Mr. Miller has been issued three prior Notice of Violation letters in December 1995, October 2000, and December 2002 for the same violations as those cited in this order. With each Notice of Violation letter, the regulations were explained to Mr. Miller. The integrity of the asbestos NESHAP program is threatened when demolition notifications are not received and when asbestos inspections are not performed prior to demolition. Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to inspect for asbestos and notify prior to demolition has caused possible asbestos fibers to be released into the air through the demolition of the mobile homes. Based on the above considerations, \$2,000.00 is assessed for this factor.

Culpability – Mr. Miller has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. He has been informed of the open burning regulations in 1995, 2000, and 2002, yet he has shown a blatant disregard for the open burning and solid waste disposal regulations. Even though the DNR has given Mr. Miller numerous chances to comply with the open burning and solid waste disposal regulations, Mr. Miller continues to violate the regulations by his continuous open burning of prohibited solid waste. Based on the above considerations, \$3,000.00 is assessed for this factor.

VI. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.138 and 567 IAC 7.5(1), a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this order. The Notice of Appeal should be filed with the Director of the Department and 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.

VII. NONCOMPLIANCE

Failure to comply with this order 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. The Department reserves the right to request that the Attorney General initiate legal action based on the violations alleged in this order as well as any subsequent violations if the order is violated, including failure to timely pay any penalty.



JEFFREY R. VONK, DIRECTOR
Iowa Department of Natural Resources

Dated this 21 day of
July, 2003.

IN THE IOWA DISTRICT COURT FOR WASHINGTON COUNTY **FILED**

04 JUL 30 PM 12:03

STATE OF IOWA, ex rel., IOWA)
DEPARTMENT OF NATURAL)
RESOURCES, 99AG23542,)
)
Movant,)
)
vs.)
)
ALBERT C. MILLER,)
)
Respondent.)

Law No. CVEQ4022
IOWA DISTRICT COURT
WASHINGTON COUNTY IOWA

ORDER GRANTING JUDGMENT

On the 30 day of July, 2004, hearing was held before the Court on Movant's Motion for Judgment pursuant to Iowa R. Civ. P. 1.982. Movant appeared and was represented by Assistant Attorney General David L. Dorff. Respondent [~~did not appear~~]/[appeared pro se]/[~~appeared and was represented by _____~~].

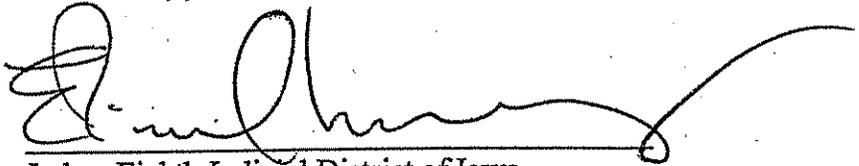
Movant's motion requests that the Court enter judgment against Respondent Albert C. Miller for the unpaid administrative penalty in the amount of Ten Thousand and no/100 Dollars (\$10,000.00), assessed by Iowa Department of Natural Resources (DNR) Administrative Order No. 2003-AQ-26/2002-SW-15, plus interest at the rate of one and one-half percent (1½%) per month or part of a month on the unpaid balance, as authorized under Iowa Code section 455B.109(3). The Court, having reviewed the record and being fully advised in the premises, FINDS:

- 1) DNR Administrative Order No. 2003-AQ-26/2003-SW-15 became a final administrative action on August 26, 2003, as a result of respondent's failure to appeal the order, and thus, by its terms and the provisions of Iowa Code section 455B.109(3), the administrative penalty was to be paid on or before September 25, 2003.

2. Respondent has not paid any part of the \$10,000.00 penalty imposed against him by Administrative Order No. 2003-AQ-26/2003-SW-15.

IT IS THEREFORE ORDERED that Movant's Motion for Judgment is granted in the amount of Ten Thousand and no/100 dollars (\$10,000.00), plus interest at the rate of one and one-half percent (1½) per month or part of a month on the unpaid balance since September 25, 2003, as provided for under Iowa Code section 455B.109(3). Costs are assessed against Respondent. - \$100.

JOUX



Judge, Eighth Judicial District of Iowa

Copies to:

David L. Dorff
Assistant Attorney General
Lucas State Office Building
321 E. 12th St., Ground Floor, Room 18
Des Moines, IA 50319

Albert C. Miller
710 14th Street N.
Kalona, IA 52247

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all adverse parties to the above-entitled cause, or upon said parties where no attorney of record appears, by enclosing the same in an envelope addressed to each such attorney or party at their respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States depository or hand delivered on this

30 day of July 20 04

By: Albert C. Miller