

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: DUSTIN NICHOLS Marion County	ADMINISTRATIVE ORDER NO. 2025-AQ-10 NO. 2025-SW-05
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To: Dustin Nichols
 1201 West Howard Street
 Knoxville, IA 50138

I. SUMMARY

 This Administrative Order (“Order”) requires Dustin Nichols to comply with the terms of Section V of this Order.

 Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Env. Spec. Malia Schepers
DNR Field Office 5
Iowa Department of Natural Resources
6200 Park Ave., Ste. 2
Des Moines, IA 50321
515-725-0268

Relating to legal requirements:

Noah Poppelreiter
Attorney, DNR Legal Services
Iowa Dept. of Natural Resources
6200 Park Ave., Ste. 2
Des Moines, IA 50321
(515) 669-8752

Send payment of penalty to:

Director of the Iowa DNR
Iowa Dept. of Natural Resources
6200 Park Ave., Ste. 2
Des Moines, IA 50321

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.

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III. STATEMENT OF FACT

1. Mr. Nichols owns and rents property at 1999 McKimber Street, Harvey, Iowa (Property).
2. On or about September 6, 2024, the DNR received a complaint from Marion County that the Property was being used for the illegal disposal of solid waste and the open burning of solid waste.
3. On September 9, 2024, DNR environmental specialist Malia Schepers visited the property to investigate the complaint. Upon arriving at the property, Ms. Schepers made contact with the renter of the property, Phillip¹, who stated that he and Mr. Nichols were in the scrap metal business together.
4. While at the Property, Ms. Schepers noted a large burn pile located behind the residence with evidence of recent open burning. Ms. Schepers observed solid waste in the burn pile and elsewhere at the property, including scrap metals, waste furniture, waste plastics, appliances, and other unidentifiable waste.
5. Ms. Schepers attempted to make contact with Mr. Nichols by phone. She was unable to do so, but left a message.
6. Mr. Nichols did not return Ms. Schepers phone call.
7. On September 12, 2024, the DNR issued Mr. Nichols a Notice of Violation (NOV) detailing Ms. Schepers observations and the violations of law witnessed at the Property. The NOV instructed Mr. Nichols to properly dispose of solid waste at the Property to avoid further enforcement action and provided Mr. Nichols a deadline of October 10, 2024, to do so.
8. Separately, Marion County issued Mr. Nichols an NOV on September 27, 2024, related to the illegal burning and disposal of solid waste and instructing Mr. Nichols to remove the solid waste at the Property to bring it into compliance with applicable county ordinances.
9. On October 10, 2024, Mr. Nichols called Ms. Schepers and stated that the property was, by his estimation, 97% cleaned up. He also stated that his truck broke down and that he needed an extension. Ms. Schepers agreed to allow Mr. Nichols additional time to dispose of the solid waste.
10. The following spring, on March 13, 2025, Ms. Schepers conducted a follow-up inspection of the Property. At the time of the inspection, no one was present at the Property. Ms.

¹ Phillip's last name was not provided to Ms. Schepers and is currently unknown to the DNR.

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Schepers attempted to make contact with Mr. Nichols, but the phone number previously used by Mr. Nichols was no longer in service.

11. While at the Property, Ms. Schepers observed and documented via photograph the previously observed burn pit with burned tire remnants in the pit. The pit had not been cleaned since the investigation the prior fall. Additionally, Ms. Schepers noted that there had been no reduction in the volume of solid waste at the Property.

12. On March 17, 2025, the DNR issued Mr. Nichols a second NOV. This NOV detailed Ms. Schepers' observations and the violations of law witnessed at the Property. The NOV noted the prohibitions on open burning and open dumping in the State of Iowa, and informed Mr. Nichols the matter was being referred for further enforcement action.

13. Separately, Marion County issued Mr. Nichols a second NOV on April 7, 2025, related to the illegal burning and disposal of solid waste and instructing Mr. Nichols to immediately contact the county zoning administrator with a plan of action to bring the Property into compliance with applicable county ordinances.

IV. CONCLUSIONS OF LAW

The following Conclusions of Law are applicable to this matter:

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 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 show a violation of this rule.

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(1) and 567 IAC 100.4 prohibit 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 a violation of these laws.

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V. ORDER

THEREFORE, the DNR orders the following:

1. Mr. Nichols shall not allow, cause, or permit the unlawful open burning of combustible material at the property.
2. Mr. Nichols shall comply with all laws and regulations regarding open burning and solid waste disposal, including but not limited to ceasing the illegal collection, damage, storing, and/or disposing of waste appliances at the property.
3. Within 60 days of this order, Mr. Nichols shall properly dispose of all non-recyclable solid waste located on the Property, including but not limited to burned debris, unburned tires, and appliances that are solid waste. Mr. Nichols shall provide copies of disposal receipts from the appropriate lawfully operating landfill to DNR Field Office #5. In the sole discretion of the field office, and upon request by Mr. Nichols, this deadline may be extended, provided Mr. Nichols has engaged in activities to bring the Property into compliance prior to any request for an extension.
4. Within 60 days of the date the Director signs this order, Mr. Nichols shall pay an administrative penalty of \$5,000.00.

VI. PENALTY

1. Iowa Code section 455B.146 provides for civil penalties of up to \$10,000.00 per day for each violation of Iowa Code chapter 455B, subchapter II (Air Quality) and applicable rules. Iowa Code § 455B.307 provides for civil penalties of up to \$5,000.00 per day for each violation of Iowa Code chapter 455B, subchapter IV, part 1 (Solid Waste) and applicable rules.

2. 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 authorizing the Director to assess administrative penalties at 567 IAC 10. Pursuant to this chapter, the 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 an administrative penalty of \$5,000.00.

3. 567 IAC 10 establishes the criteria that the DNR must consider in determining whether an administrative penalty is warranted, and if so how much the penalty should be. The general categories for consideration are the economic benefit of the alleged non-compliance by the violator, the gravity of the alleged violation, and the culpability of the violator. 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 10.30(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

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includes penalties which at least offset the economic benefit.” 567 IAC 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Using reasonable estimates for the proper disposal of the volume of waste observed by Ms. Schepers, including transport costs and tipping fees, \$1,000 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 of disposal of solid waste causes a nuisance and creates the potential for ground water contamination. Accordingly, \$2,000 is assessed for this factor.

c. Culpability: It has been illegal to burn solid waste, and specifically tires, for several decades. Mr. Nichols has a duty to comply with open burning and solid waste disposal laws. Accordingly, \$2,000 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code sections 455B.138(1), 455B.175(1)(a), 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, 455B.186, and/or 455B.307.

Kayla Lyon, Director
Iowa Department of Natural Resources