

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

<p>IN THE MATTER OF:</p> <p>JOHN MEYER POWESHIEK COUNTY, IOWA</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2016-AQ-06 NO. 2016-SW-04</p>
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TO: John Meyer
704 North Street
Brooklyn, Iowa 52211

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and John Meyer 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:

Anthony Bigger
Iowa Department of Natural Resources
Field Office No. 5
7900 Hickman Road, Suite 200
Windsor Heights, Iowa 50324
Phone: (515)-725-0268

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50324
Phone: 515-725-9551

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 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

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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. On April 11, 2016, DNR Field Office No. 5 received a complaint that open burning of rubber tires was occurring along Highway 6, in an open field located on the north east corner of Brooklyn, Iowa, just south of the Brooklyn Industrial Park and along Little Bear Creek (the site). The site is owned by John Meyer. Also on April 11, DNR Environmental Specialist Anthony Bigger investigated the complaint.

2. As he approached the site, Mr. Bigger observed several plumes of black smoke. At the site, Mr. Bigger observed several large burning brush piles with many steel belts from tires in each burning pile. Rubber tires could be seen actively burning in the burn piles, as well.

3. Mr. Bigger met with Jon Meyer at the site. Mr. Meyer stated that he was burning tress, branches and other brush that he had removed from the stream bank along Little Bear Creek. Mr. Meyer was adding tires to, and dumping diesel fuel on, the burn piles, to ensure that the brush piles continued to burn.

4. Mr. Bigger informed Mr. Meyer of the prohibition against illegal open burning. During the conversation, Mr. Meyer was sitting on the seat of a front end loader. Mr. Bigger directed Mr. Meyer to extinguish the fire immediately by dumping dirt on the burning piles with the front end loader. However, Mr. Meyer refused to extinguish the fires. He informed Mr. Bigger that the fires would burn out within a few hours. Mr. Meyer stated that the brush piles were too green and the fire wouldn't burn without the tires. Mr. Meyer agreed that he would not conduct illegal open burning after April 11. While at the site, Mr. Bigger took photographs to document the violations.

5. Mr. Bigger sent an April 13, Notice of Violation (NOV) letter to Mr. Meyer, citing the April 11 illegal open burning. The April 13 NOV included a copy of the DNR regulations prohibiting illegal open burning.

6. Also, on the evening of April 13, two separate complaints were filed with DNR Field Office No. 5 regarding the open burning of tires at the site. The complainants stated that large amounts of black smoke could be seen coming from brush piles at the site.

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7. On April 14, 2016, Mr. Bigger re-visited the site, where he found two additional large burning, piles of brush containing many sets of steel belts and metal wheels that had been burned the prior evening. Mr. Meyer was again informed of the prohibition against illegal open burning. While at the site, Mr. Bigger again took photographs to document the violations. DNR estimates that at least three tons of tires were burned in the burn piles observed by DNR on April 11 and April 13.

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 23.2(2) (variances) and 23.2(3) (exemptions). The illegal open burning of rubber tires in this case demonstrates a violation of this provision.

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 illegal open dumping of solid waste in this case demonstrates non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and Jon Meyer agrees to do the following:

1. Jon Meyer shall pay a penalty of \$5,610.00 within 45 days of the date this order is signed by the Director;

2. Jon Meyer shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials 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; and

3. Within 30 days of the date that this administrative consent order is signed by the Director, Jon Meyer shall properly dispose of all ashes and residue

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from burning at the site; shall remove all waste remaining at the site by disposal at the Poweshiek County Sanitary Landfill; and shall provide disposal receipts to DNR Field Office No. 5.

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 \$5,610.00 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Jon Meyer received an economic benefit of at least \$610.00 by avoiding landfill and transportation costs. DNR estimates that at least three tons of tires were burned at the site. The landfill tipping fee is \$170.00 per ton, and transportation costs would be at least \$100.00. Therefore, \$610.00 is assessed for economic benefit.

Gravity of the Violation – Open burning damages air quality in Iowa and can cause significant acute and chronic health effects. Particulate matter from the open burning of solid wastes released toxic substances into the air. This fire and related open burning threatens the integrity of the state's environmental programs and efforts to protect natural valuable resources. The complaints indicate that the illegal open burning conducted at the site was causing a nuisance and possibly health effects on people in the area. Therefore, \$2,500.00 is assessed for the gravity of the violations.

Culpability – Open burning prohibitions have been in place for over 35 years. It is the responsibility of Jon Meyer to know and abide by these rules. Further, Mr. Meyer was informed specifically of the state prohibition against illegal open burning verbally at the site on April 11, 2016, and he refused to extinguish the fire when directed to do so, even though he had the means at hand. Mr. Meyer also was provided with an NOV for illegal open burning and a copy of the Iowa

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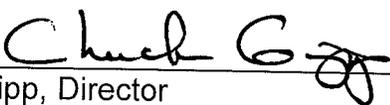
laws prohibiting illegal open burning. Finally, Mr. Meyer stated to Mr. Bigger on April 11 that he would cease open burning in the future, following April 11. Yet, Mr. Meyer created more burn piles and burned more tires on the evening of April 13. Therefore, \$2,500.00 is assessed for culpability.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Jon Meyer. For that reason, Jon Meyer waives his 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.



Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 8ND day of
AUGUST, 2016.



Jon Meyer

Dated this 2ND day of
AUGUST, 2016.

DNR Field Office 5; Anne Preziosi; VII.C.2