IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF: **Donald, Ronald, Anne and Ericka Breuer**	ADMINISTRATIVE ORDER NO. 2016-SW- 05 NO. 2016-AQ- 07

To: Ronald E. & Anne Breuer
6097 108th Avenue
Burlington, Iowa 52601

Donald & Erika Breuer
4512 148th St.
Burlington, Iowa 52601

RE: Illegal disposal and open burning of solid waste at 5391 Summer Street, Burlington, Iowa

I. SUMMARY

This administrative consent order (Order) follows the issuance of a Notice of Violation (NOV) to the above-referenced co-owners (Co-owners) of the parcels located at 5391 Summer Street in Burlington, Iowa (parcels 16-19-400-003 & 16-19-400-002) (the Property). The NOV addressed illegal disposal of solid waste and illegal open burning of solid waste including waste tires. The Co-owners are considered jointly and severally liable for all requirements of this Order.

This Order requires the Co-owners to cease all illegal dumping of solid waste, to remove and properly dispose of all solid waste remaining on the Property, to provide the Department of Natural Resources (DNR) Field Office (FO) 6 with access to the Property to confirm removal has occurred, to provide disposal receipts to DNR FO 6, and to pay an administrative penalty of $7,694.50.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
John Ryk, Environmental Specialist
Iowa Department of Natural Resources
Field Office 6
1004 W. Madison
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:
David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Division
Wallace State Office Building
502 E. 9th St.
Des Moines, IA 50319
Phone: 515-725-8239

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 Order is issued pursuant to Iowa Code § 455B.307(2) which authorizes the Director of the DNR to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste) and the rules and regulations adopted pursuant to that part; Iowa Code § 455D.23 which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of the provisions of Iowa Code chapter 455D, and the rules adopted pursuant to that chapter; Iowa Code §§ 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 division; and, Iowa Code § 455B.109 and 567 Iowa Administrative Code (IAC) 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

The following relevant facts are stated in chronological order:

1. On June 18, 2016, the Burlington, Iowa, fire department responded to an illegal burning incident at the Property which was putting out large volumes of black smoke.

2. On June 20, 2016, DNR FO6 received documentation concerning the June 18 illegal open burning incident from the fire department. Documentation was also received concerning an August 6, 2011, incident involving illegal burning of tires and other solid waste on the Property.

3. On June 24, 2016, DNR staff inspected the Property with members of the Burlington Fire Department. They witnessed and photographed evidence of illegally-burned truck tires and other solid waste. DNR estimated 103 passenger tire equivalents (PTEs) were burned on the Property on June 20, 2016. In addition to the tires, there was a flat screen television or computer monitor and one other unidentified appliance that was observed in the burn area.

4. On July 5, 2016, DNR issued a Notice of Violation (NOV) to Ronald, Anne, Donald and Ericka Breuer as co-owners of the Property. The NOV addressed illegal open dumping and open burning of solid waste at the Property, required all

solid waste on the Property to be removed, and instructed the owners to cease, and prevent future, open burning. The NOV also noted that due to the illegal open burning of tires, the matter was being referred to the DNR Legal Services Bureau for administrative enforcement.

5. On July 22, 2016, the owners of the Property submitted a note to DNR FO6 stating that the Property had been cleaned up and that solid waste at the Property had been property disposed of.

IV. CONCLUSIONS OF LAW

1. Iowa Code § 455B.307 prohibits a private entity 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 unless the entity has been granted a permit by the DNR which allows the dumping or depositing of solid waste on land owned or leased by the entity. The above-stated facts establish a violation of this statutory prohibition.

2. Iowa Code § 455D.11(2) prohibits the land disposal of waste tires unless the tires have been processed in a manner established by the DNR. The above-stated facts establish a violation of this statutory prohibition.

3. Iowa Code § 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 Iowa Administrative Code (IAC) chapters 100-123.

4. The Commission has adopted 567 IAC 117 for the regulation of waste tire management by the DNR, including disposal, collection, storage, processing and beneficial reuse. Subrule 117.3(1) specifically prohibits the land disposal of waste tires at any location in the state of Iowa other than a permitted sanitary landfill. The above-stated facts establish violations of this regulatory requirement.

5. Additionally, the Commission has adopted 567 IAC 100.4 for the regulation of open dumping in Iowa. The provision prohibits a private entity from dumping or depositing, or permitting the dumping or depositing, of any solid waste at any place other than a sanitary disposal project approved by the Director and pursuant to the terms of a permit granted by the DNR authorizing the disposal of solid waste. The above-stated facts establish multiple and continued violations of this prohibition on open dumping.

6. The Commission has adopted 567 IAC 23.2 for the regulation of open burning of solid waste in Iowa. The regulation specifically prohibits individuals from allowing, causing or permitting open burning of combustible materials in

Iowa, except in certain situations that are not applicable. The above stated facts establish violations of this prohibition.

V. ORDER

THEREFORE, the Director of the DNR orders:

1. The Co-owners shall immediately cease, and prevent any future, disposal of solid waste at the Property or anywhere else in the state of Iowa.

2. The Co-owners shall immediately cease, and prevent any future, open burning of solid waste at the Property or anywhere else in the state of Iowa.

3. The Co-owners shall immediately remove all solid waste at the Property, including any burned or partially-burned tires or other wastes, and dispose of them at a DNR-approved disposal or recycling facility.

4. The Co-owners shall provide DNR FO6 with copies of all disposal receipts within fifteen (15) days of this Order being signed by the Director of the DNR.

5. Upon demand, the Co-owners shall provide DNR with access to the Property to inspect the adequacy of site remediation and removal.

6. The Co-owners shall pay an administrative penalty of $7,694.50 within thirty (30) days of this Order being signed by the Director of the DNR.

VI. CIVIL PENALTY

1. Iowa Code § 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.

2. Additionally, Iowa Code § 455B.307(3) provides for civil penalties of up to $5,000.00 per day for solid waste violations. Iowa Code § 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 § 455B.146A. The DNR reserves its right to pursue additional penalties pursuant to this section if the Co-owners fail to comply with the terms of this Order, or to refer the matter to the Iowa Attorney General for civil judicial enforcement.

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 of 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. These categories are addressed below and the administrative penalty is determined as follows:

a) Economic Benefit: Based on discussions with the Des Moines County Landfill and a certified waste tire hauler in Iowa, the per-tire cost for transportation and disposal is $6.50. Thus the cost for disposal of the tires, including transportation, would be $669.50 ($6.50 x 103). Disposal of the monitor and appliance located on the Property would amount to $15.00 and $10.00, respectively. Therefore, based on the estimates obtained, the total economic benefit is $694.50.

b) Gravity of the Violations: Open burning of tires results in thick, black smoke that damages air quality and can cause significant acute and chronic health effects due to the toxicity of the released particulate matter and toxic fumes. Open burning of solid waste also threatens the integrity of DNR's solid waste disposal program, air emission permitting program, and poses a significant risk to human health and the environment. Therefore, $3,000.00 is assessed for this factor. $2,000.00 is assessed for the open burning violation and another $1,000.00 is assessed for the open dumping violation.

c) Culpability: Open burning and open dumping prohibitions have been in place in Iowa for more than 40 years. This is a repeat violation. $4,000.00 is assessed for this factor.

4. Failure to assess an administrative penalty for the violations listed above would threaten the integrity of DNR regulatory programs by not providing a financial incentive for citizens to comply. In this case, a penalty of $7,694.50 is less than the DNR could impose administratively but it is assessed due to the fact that the violating party has taken steps to clean-up the Property.

VII. APPEAL RIGHTS

A written Notice of Appeal may be filed with the Director within 30 days of your receipt of this Order. A contested case hearing will then be commenced pursuant to Iowa Code § 17A and 561 IAC 7. Please note that failure to file a timely appeal within 30 days will result in you forfeiting the right to appeal this Order.

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code §§ 455B.146 and 455B.307. Compliance with Section V (Order) of this Order constitutes full satisfaction of all

requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.

Chuck Gipp

Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 17th day of August, 2016

CC: DNR Field Office 6; Amie Davidson; VI.C., VII.C.1.