

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:  <b>Vicki J. Wood</b>	ADMINISTRATIVE CONSENT ORDER  NO. <del>2016</del> -SW- <u>07</u> NO. <del>2016</del> -AQ- <u>09</u>
---	---

To: Vicki J. Wood  
4650 250<sup>th</sup> Avenue  
Webb, Iowa 51102

I. SUMMARY

This administrative consent order (Order) follows a Notice of Violation (NOV) issued to Vicki J. Wood on June 30, 2016 addressing alleged illegal open dumping and illegal open burning of tires at Ms. Wood's property located at 4830 330<sup>th</sup> Avenue near Webb, Iowa (the Property).

Due to Ms. Wood's prompt response to the concerns raised by Iowa Department of Natural Resources' (DNR) Field Office 3 (FO3), including removal and proper disposal of the solid waste at issue, this Order imposes an administrative penalty in the amount of \$750.00, requires Ms. Wood to cease any and all open dumping and open burning activities at the Property and anywhere else in Iowa, and to provide DNR FO3 with a copy of all disposal receipts.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**  
Bryon Whiting, Env. Specialist Senior  
Iowa Department of Natural Resources  
Field Office 3  
1900 N. Grand Avenue  
Spencer, Iowa 51301  
Phone: 712-262-4177

**Relating to legal requirements:**  
David Scott, Attorney  
Iowa Department of Natural Resources  
Legal Services Division  
Wallace State Office Building  
502 E. 9<sup>th</sup> 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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: VICKI WOOD

**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 DNR and Vicki Wood agree on the following facts:

1. On June 21, 2016, DNR FO3 Supervisor Ken Hessenius received an anonymous complaint (the Complaint) alleging the occurrence of illegal dumping of waste tires and appliances at the Property.

2. On June 23, 2016, DNR FO3 Environmental Specialist Senior Bryon Whiting investigated the Complaint and observed illegally-dumped waste tires of various sizes (more than 500 tires or tire equivalents), an illegally-discarded washing machine, and a burn pit with a scrap metal pile evidencing numerous tire band remnants which would result from the burning of tires. The Property was abandoned and no one was present at the time of the inspection. There was a gate located at the ingress to the Property which was open.

3. On June 27, 2016, Mr. Whiting returned to the Property to take pictures. No one was present at the Property during this inspection; however, there was evidence of significant and intentional activity at the Property since the prior inspection. Mr. Whiting observed that the waste tires had been moved into a higher pile than he observed during his initial June 23, 2016 inspection with what appeared to be a skid-loader. Mr. Whiting also observed that the tire bands in a burn pile in the burn pit area had been moved since his initial June 26, 2016 site inspection to the adjoining scrap metal pile. Further, Mr. Whiting observed newly-installed no trespass signage.

4. On June 30, 2016, DNR issued a notice of Violation (NOV) to Ms. Wood addressing the alleged illegal dumping and illegal burning occurring on the Property. The NOV required immediate cessation of open dumping and open burning, removal and proper disposal of all solid waste on the Property, and that copies of disposal receipts be provided to DNR FO3 within 30 days.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: VICKI WOOD

5. On July 8, 2016, Ms. Wood spoke with DNR staff regarding the allegations contained in the June 30, 2016 NOV.

6. On July 18, 2016, Mr. Whiting returned to the Property and found the entrance gate unlocked and evidence of additional dumping and open burning on the property.

7. On August 8, 2016, Ms. Wood's attorney provided photos to the DNR showing that the solid waste at the Property had been removed.

8. On August 9, 2016, Ms. Wood's attorney provided copies of disposal receipts for the solid waste removed from the Property, evidencing proper disposal.

9. Ms. Wood's attorney stated that Ms. Wood had no intention of violating Iowa law. Ms. Wood also contests DNR's allegation that any open burning of tires took place at the Property while it was owned by Ms. Wood.

10. Upon review of the materials submitted by Ms. Wood's attorney, DNR agreed that a negotiated settlement of \$750.00 is reasonable based on Ms. Wood's prompt response, understanding that any repeated violations of Iowa law will result in more significant penalties.

#### 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 § 455D.11B requires an owner or operator of a waste tire collection or processing site to obtain a permit from the DNR prior to operating the site. A "tire collector" is defined for the purposes of the permitting requirement of § 455D.11B as, in relevant part, "a person who owns or operates a site used for the storage, collection or deposit of more than 500 waste tires." Iowa Code § 455D.11(1)(d). Vicki Wood does not have a permit. The above-stated facts establish a violation of these requirements.

4. Iowa Code § 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: VICKI WOOD

disposal of solid waste. The Commission has adopted such rules at 567 Iowa Administrative Code (IAC) chapters 100-123.

5. 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. Subrule 117.4(1) prohibits the accumulation of more than 500 passenger tire equivalents (PTEs) on a site without a waste stockpile permit issued by the DNR, and limits the quantity and amount of time tires may be temporarily stored on a property. The above-stated facts establish violations of these regulatory requirements.

6. 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.

7. 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. DNR's position is that the above stated facts establish violations of this prohibition; however, Ms. Wood contests that any open burning of tires took place on her property while she was the owner of the property.

**V. ORDER**

**THEREFORE**, the Director of the DNR orders and Vicki Wood agrees to the following:

1. Vicki Wood shall pay a penalty of \$750.00 within 30 days of the date this order is signed by the Director.
2. Vicki Wood shall immediately cease disposal of solid waste and burning of solid waste at the Property, whether conducted by Ms. Wood or by another party.
3. Vicki Wood shall be responsible for the removal and proper disposal of all solid waste on the Property, including all tires, appliances, and any remnants resulting from the burning of such solid waste, and for providing copies of disposal receipts to Bryon Whiting in FO3 within 30 days of this Order being signed by the Director of the DNR.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: VICKI WOOD

**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 Vicki Wood fails 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: The economic benefit of disposal by open burning is primarily the cost of properly disposing of the waste tires and discarded appliance. DNR estimates a minimum of one ton of waste tires of various sizes were burned. Disposal of waste tires, including transportation cost, is estimated at \$200.00 per ton. Therefore, \$200.00 is assessed for economic benefit.

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 and poses a significant risk to human health and the environment. However, Ms. Wood contests whether open burning of tires occurred on the Property when she was the owner. \$1,500.00 is assessed for the gravity of the violations.

c) Culpability: Open burning and open dumping prohibitions have been in place in Iowa for more than 40 years. It is Vicki Wood's responsibility to know and abide by these rules. However, Ms. Wood did promptly work with DNR to address DNR's concerns as set out above. Therefore \$50.00 is assessed for culpability of the violations.

d) Mitigating Factors: 567 IAC 10 allows for the DNR to

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
ISSUED TO: VICKI WOOD

decrease a penalty by up to \$1,000.00 for mitigating factors. Because of Ms. Wood's prompt response to DNR's concerns, DNR has reduced the penalty by \$1,000.00.

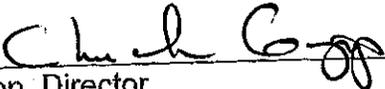
4. Therefore the total penalty assessed by this Order is \$750.00.

**VII. APPEAL RIGHTS**

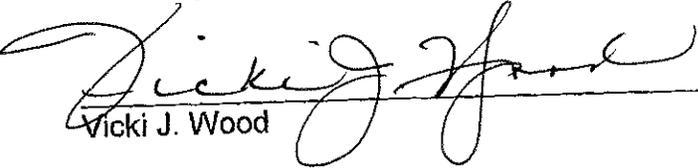
Since the parties have entered this Order voluntarily, there is no right of appeal.

**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, Director  
Iowa Department of Natural Resources

Dated this 2<sup>nd</sup> day of  
September, 2016

  
\_\_\_\_\_  
Vicki J. Wood

Dated this 29<sup>th</sup> day of  
August, 2016

CC: DNR Field Office 3; Amie Davidson; VI.C; VII.C.1