IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
Engel Agri-Sales Company	NO. 2019-SW- 10 NO. 2019-AQ- 22

To: Engel Agri-Sales Company
Stephen Engel, Registered Agent
1717 West Main St.
Sac City, Iowa 50583

Re: Open burning of solid waste/ Illegal disposal of solid waste.

I. SUMMARY

This administrative consent order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Engel Agri-Sales Company of Sac City, Iowa, for the purpose of resolving certain solid waste disposal and open burning violations.

As detailed below, Engel Agri-Sales Company shall cease any and all open burning of combustible materials in the state of Iowa, shall properly dispose of all remaining tires and other debris on the property located at 1717 West Main Street in Sac City, Iowa, and shall pay an administrative penalty of $6,000.00. The basis for this penalty is explained herein.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Michelle Sabatini-Rosacker, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 3
1900 N Grand Ave, Gateway Mall North
Spencer, IA 51301
Phone: (712) 262-4177

Relating to legal requirements:
David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Bureau
Wallace State Office Building
502 E. 9th St.
Des Moines, Iowa 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
[Include Order Number with Payment]

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 §§ 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 facts are presented in chronological order:

1. Engel Agri-Sales Company (Engel) is located at 1717 West Main Street in Sac City, Iowa.

2. On May 26, 2010, a Notice of Violation (NOV) was issued to Mr. Steve Engel for open burning at the Engel property, including the burning of creosote pallets. Mr. Steve Engel was the owner and manager of the company at that time.

3. On April 17, 2019, Dave Engel—the current manager of the company—called the DNR Emergency Response telephone number and spoke with DNR staff to report a fire that had occurred at the company's property. Mr. Engel reported that a worker had started a pile of pallets and cardboard on fire, which then spread to a pile of tires. The Sac City Fire Department responded to the fire.

4. On April 18, 2019, DNR staff spoke with Sac City Fire Chief Dale Duncan. Chief Duncan estimated at least 50 tires and an adjacent tree had burned in the fire. He also reported that there is a city ordinance against open burning.

5. On the same day, DNR staff investigated the site of the fire and took photographs. Someone had pushed dirt over the tires to smother the fire. Staff observed some areas where the fire was still smoldering. DNR staff also noted a nearby dumpster with unburned pallets.

6. On May 15, 2019, an NOV and notice of referral was issued to the company explaining, among other things, that open burning of combustible material is a violation of Iowa law.

7. On July 8, 2019, DNR staff responded to another complaint concerning open burning on Engel's property. DNR witnessed open burning of pallets, cardboard boxes and tree waste that did not originate on the property. Additionally DNR witnessed evidence of open burning of waste feed. Mr. Engel was again informed that open burning of this nature is illegal under Iowa law. Another NOV was issued to Dave Engel on July 9, 2019.

IV. CONCLUSIONS OF LAW

1. Iowa Code § 455B.301(23) defines solid waste as garbage, refuse, rubbish, and other similar discarded solid or semi-solid materials including but not limited to materials resulting from industrial and commercial activities such as construction and demolition debris.

2. Iowa Code § 455B.307(1) prohibits a person 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 of 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 IAC chapters 100-123.

4. The Commission has adopted 567 IAC 100.4 for the regulation of open dumping in Iowa. The provision prohibits a person 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 agency authorizing the disposal of solid waste. The above stated facts establish violations of this regulatory prohibition.

5. The Commission has adopted 567 IAC 23.2 which regulates open burning of combustible materials 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 to this matter. DNR staff witnessed evidence of illegal open burning on the property that was confirmed by the local fire chief. The above stated facts establish violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Engel agrees to the following:

1. All solid waste observed on the company's property including remnants of, and ash from, burned material, must be removed and properly

disposed of at a landfill or recycling center. The company must provide receipts for proper disposal to DNR FO 3 within 30 days of disposal.

2. Engel Agri-Sales Company shall pay an administrative penalty of $6,000.00 within 30 days of the date this Order is signed by the Director.

3. Engel Agri-Sales Company shall cease the illegal disposal of solid waste and the illegal open burning of combustible material and must comply with all applicable Iowa regulations in the future.

VI. 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. Iowa Code § 455B.307(3) provides for civil penalties of up to $5,000.00 per day for solid waste violations. Additionally, 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. The DNR reserves the right to pursue additional penalties pursuant to this section if Engel Agri-Sales Company fails to comply with the terms of this Order.

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 fine 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. DNR has determined that in this instance based on the facts above, a penalty of $5,000.00 is warranted pursuant to these criteria as explained below.

a) Economic Benefit: 567 IAC 10 requires the DNR to consider and recoup the costs saved or likely saved due to non-compliance. The chapter authorizes the DNR to estimate economic benefit if clear data is unavailable. In this matter, Engel avoided paying landfill disposal fees for proper disposal of the solid waste referenced above, including transportation costs. Based on the amount of waste observed on the visit to the property and reported by Chief Duncan, a minimum of 50 wagon and truck tires and other trade waste were disposed of in the fire. These expenses would be expected to be approximately $1,000.00. As such, $1,000.00 is assessed for this factor.

b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include, but are not limited

to, the actual or threatened harm to the environment or public health and safety, whether the violation threatens the integrity of the regulatory program, and the penalty amount authorized. Illegal disposal of solid waste by open dumping threatens both the environment and human health. Improperly disposing of solid waste damages the environment, prevents proper management of the solid waste stream, and may encourage or inspire others to open dump. Open dumping also threatens the integrity of DNR's environmental regulatory program. Additionally, open burning damages air quality in Iowa and can cause significant acute and chronic health effects. The incidents of open burning referenced in this Order threaten the integrity of the regulatory program and DNR efforts to protect human health and natural resources in the state of Iowa. A penalty of $2,000.00 is assessed for the gravity of these violations.

c) Culpability: The factors to be considered in determining the "culpability" of the violator include the degree of intent or negligence, whether this is a repeat violation, and whether the violator has taken remedial measures to address the harm caused by the violations. Open dumping and open burning prohibitions have been in place in Iowa for more than 40 years. Mr. Dave Engel was notified of DNR's open burning regulations in May of 2019. DNR witnessed illegal open burning on the property less than a month later. Therefore, a penalty of $3,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

As this Order is entered by consent of the parties, 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.307 and 455B.146. Compliance with Section V (Order) of this Order constitutes full satisfaction of all

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

Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 1 day of August, 2019.

For Engel Agri-Sales Company

Dated this 16 day of July, 2019.

CC: DNR Field Office 3; David Scott; VI.C; VII.C.