TO: Conrad Lundsgaard, Inc.
    John P. Loughlin, Registered Agent
    231 W. Maple
    Cherokee, Iowa 51012

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Conrad Lundsgaard, Inc., 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:
Scott Wilson
Iowa Department of Natural Resources
Field Office No. 3
1900 Grand Avenue, Suite E17
Spencer, Iowa 51301
Phone: 712-262-4177

Relating to legal requirements:
Anne Preziosi
Attorney for the DNR
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
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 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. Conrad Lundsgaard, Inc. owns a rural property located at 1916 620th Street, Aurelia, Iowa (the site). This property contains several grain bins but no residence, and was observed to have a burn pit on August 24, 2018.

2. On August 24, 2018, Sheila Kenny of DNR Field Office No. 3 observed thick black smoke coming from the site. The resulting smoke exceeded 40% opacity and was close to 100% opacity. Ms. Kenny entered the site and observed and photographed a burn pile fire, which contained plastic materials and an estimated two dozen tires, including a few large tractor tires. No one was present on site at the time of the investigation.

3. An August 30, 2018, a Notice of Violation letter was sent to Conrad Lundsgaard, Inc., for open burning and improper disposal of solid waste. The letter required that the remaining solid waste be taken to a landfill for disposal and requested that the landfill receipts be submitted to DNR Field Office No. 3 as proof of proper disposal of the solid waste at the site.

4. On September 25, 2018, Conrad Lundsgaard, Inc., provided a landfill receipt showing proper disposal of solid waste from the site, as well as photographs showing the site after cleanup. On October 1, 2018, Conrad Lundsgaard, Inc., provided an invoice from Deer Valley Excavating for the excavation work conducted at the site to remove solid waste. The amount of $1,461.00 was spent to excavate the property to fill in the burn pit, and $550.00 was spent in landfill fees.

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 tires is specifically prohibited by the provisions of 567 IAC 23.2. The open burning of tires and plastics on property owned by Conrad Lundsgaard, Inc., is a violation of the provisions of 567 IAC 23.2.

3. 567 IAC 23.3(2)"d" provides that no person shall allow, cause or permit the emission of visible air contaminants into the atmosphere from any equipment, internal combustion engine, premise fire, open fire or stack, equal to or in excess of 40 percent opacity, unless those emissions are allowed by conditions not applicable in this case. The visible emissions from the fire in this case exceeded 40% opacity, which is a violation of 567 IAC 23.3(2)"d".

4. 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.

5. 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 Conrad Lundsgaard, Inc., agrees to the following:

1. Conrad Lundsgaard, Inc., 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

2. Within 30 days of the date this order is signed by the Director, Conrad Lundsgaard, Inc., shall pay a penalty of $1,000.00.

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 $1,000.00 penalty. The administrative penalty assessed by this order is determined as follows:

**Economic Benefit** – As stated above, approximately $2,000.00 was spent to clean up the property and fill in the burn pit. Therefore, no amount is assessed for economic benefit.

**Gravity of the Violation** – Improper solid waste disposal and illegal open burning can degrade air and water quality and contribute contaminants to both land and water resources as well as threaten public health. Open burning of tires results in emission of particulates to the ambient air. Particulate matter from the open burning of tires and other solid waste releases toxic substances into the air. In this case, there were numerous tires present in the fire and the resulting thick plumes of smoke were observed. Finally, failure to properly dispose of solid waste threatens the integrity of the regulatory program. The amount of $250.00 is assessed for illegal open dumping, and the amount of $500.00 is assessed for illegal open burning, for a total of $750.00 assessed for this factor.

**Culpability** – Conrad Lundsgaard, Inc., has a duty to remain knowledgeable of DNR regulations and to be alert to the probability that its conduct is subject to DNR’s rules. Open burning and open dumping prohibitions, including the specific prohibition against the open burning of tires, have been in place for many years. This open burning appears to have been a willful violation of these rules. Therefore, $250.00 is assessed for culpability.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Conrad Lundsgaard, Inc. For that reason, Conrad Lundsgaard, Inc., waives its right to appeal this order or any part thereof.

**VIII. NONCOMPLIANCE**
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CONRAD LUNDSGAARD, INC.

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.

Kayla Lyon, Director
Iowa Department of Natural Resources

Conrad Lundsgaard, Inc.

DNR Field Office 3; Anne Preziosi

Dated this 07 day of
                                  AUGUST, 2019.