IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:
Pretty Perry Properties, LLC

ADMINISTRATIVE CONSENT ORDER
NO. 2019-SW- 15
NO. 2019-AQ- 29

To:  Mr. Beau Perry
      Pretty Perry Properties, LLC
      13769 N. 63rd Avenue West
      PO Box 133
      Mingo, Iowa  50168

      Emily Perry, Registered Agent
      Pretty Perry Properties, LLC
      2501 Grand Avenue
      Des Moines, Iowa  50312

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

I. SUMMARY

This administrative consent order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Pretty Perry Properties, LLC, (the company) for the purpose of resolving certain solid waste disposal and open burning violations that occurred on property owned by the company located south of 105 South Station Street in Mingo, Iowa.

As detailed below, the company shall cease any and all illegal disposal of solid waste and illegal open burning of solid waste in the state of Iowa, shall properly dispose of all solid waste referenced in this Order, and shall pay an administrative penalty of $1,000.00. The basis for this penalty is explained below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Bill Gross, Env. Specialist Senior
Iowa Department of Natural Resources
Field Office No. 5
502 E. 9th Street
Des Moines, Iowa  50319
Phone: 515-725-0271

Relating to legal requirements:
David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Bureau
1023 W. Madison Street
Washington, Iowa  52353
Phone: 319-653-2135
IOWA DEPARTMENT OF NATURAL RESOURCES
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ISSUED TO: PRETTY PERRY PROPERTIES, LLC

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. On November 29, 2018, Iowa DNR Field Office 5 (FO5) staff observed a large pile of construction, demolition and trade wastes (pallets, cardboard, plastic, etc.) with remnants of a tree in an excavation on an open lot about a half block south of Main Street in Mingo, Iowa, owned by the company.

2. On December 21, 2018—after attempting to contact the company by telephone—DNR issued a notice of violation (NOV) letter to the company including copies of Iowa open burning and solid waste disposal regulations. The NOV required the company to submit proof of proper disposal by January 31, 2019. There was no response.

3. On March 15, 2019, FO5 staff received an email from the Mingo city clerk indicating that the pile remained on the property.

4. On March 25, 2019, FO5 staff received an email from the Mingo city clerk containing photos of the pile being burned three days before.

5. On March 27, 2019, FO5 staff re-visited the property and confirmed the pile had been burned.
6. On April 5, 2019, FO5 sent a certified NOV letter to the company indicating that the matter was being referred to DNR Legal Services for enforcement.

7. On April 15, 2019, FO5 staff spoke by phone with Mr. Bob Perry with the company. Mr. Perry stated that he had received the certified letter. He reported that he pulled some of the non-tree debris off the pile before burning. He also stated that others also dumped debris onto the pile.

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 continued violations of this regulatory prohibition.

5. Additionally, 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. The above stated facts establish violations of this provision.

V. ORDER

THEREFORE, the DNR orders and the company agrees to the following:
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: PRETTY PERRY PROPERTIES, LLC

1. The company shall immediately discontinue illegal open burning of solid wastes anywhere in the state of Iowa.

2. Hereafter, the company shall properly reuse, recycle, or dispose of all solid wastes in a manner consistent with Iowa law.

3. Within 60 days of this Order being signed by the Director, the company shall remove from the property and properly dispose of all solid wastes. Copies of disposal receipts shall be submitted to Bill Gross in DNR FO 5 at the address above. Any solid waste (including ashes) that has been buried must either be excavated and taken to a permitted sanitary landfill, or else a record of this burial site must be recorded permanently with the deed for this property.

4. The company shall pay an administrative penalty of $1,000.00 in monthly installments of $250 until the debt is settled. The first payment is due on October 1, 2019, and the remaining payments are due the first of each successive month. Failure to make a timely payment will be considered a violation of this Order.

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 the 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.

   a) Economic Benefit: The economic benefit element of a penalty is intended to recoup the economic benefit a party enjoyed as a result of non-compliance. Conservatively estimating that the unburned waste weighed one ton, a landfill tipping fee of $50.00 per ton and hauling costs for one load to the landfill at Newton of $25.00 results in an economic benefit for non-compliance of $75.00.
b) **Gravity of the Violations:** Elements to consider when determining the gravity of a violation include the actual or threatened harm to the environment or public health and safety, and whether the violation threatens the integrity of the regulatory program. 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. Burning construction, demolition and other trade wastes emits potentially harmful pollutants to the atmosphere in the immediate area (especially in town). It also contributes to the degradation of large-scale ambient air quality. State and federal air quality and solid waste disposal regulatory programs to protect health and environment are undermined by improper open burning and solid waste disposal. As such, $225.00 is assessed for this factor.

c) **Culpability:** The factors to be considered in determining the “culpability” of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. The prohibition against open burning of debris, and unpermitted burial of that debris are long-standing state regulations. $700.00 is assessed for this factor.

4. It is the DNR’s position that failure to assess an administrative penalty for these violations would threaten the integrity of the regulatory program by not providing a financial incentive for owners/operators to comply.

**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. 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.

Kayla Lyon, Director Iowa Department of Natural Resources

Beau Perry

For Pretty Perry Properties, LLC

CC: DNR Field Office 5; David Scott; VI.C.; VII.C.1.