IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER

IN THE MATTER OF:
MICHAEL MATTHEWS
EMMET COUNTY

ADMINISTRATIVE ORDER
NO. 2019-AQ- 28

TO: Michael Matthews
1640 340th Ave.
Estherville, IA 51334

I. SUMMARY

This order requires you to comply with all open burning and solid waste regulations, and to pay a penalty of $4,630.00, subject to your appeal rights stated in this order.

Any questions regarding this administrative order should be directed to:

Relating to technical requirements:
Amber Wolf
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 order is issued pursuant to the provisions of 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. Michael Matthews is a tenant on property located at 1640 340th Avenue, Estherville, Emmet County, Iowa. Mr. Matthews operates Matthews Cattle Company at this location (the site).

2. On December 4, 2018, the Emmet County Sheriff’s Department received a report that a member of the public was traveling westbound on Highway 9 near the Emmet and Dickinson County lines and observed a large amount of black smoke from the site. Emmet County Deputy Sheriff Josh Zigrang also observed the black smoke and went to the site. At the site, he observed an unattended open burn pile containing approximately 50-60 black rubber tires. Deputy Zigrang took pictures of the burn pile. Deputy Zigrang knocked on the door of the residence at the site, but no one answered. Deputy Zigrang contacted Emmet County Emergency Manager Travis Sheridan, who contacted Environmental Specialist Amber Wolf at DNR Field Office No. 3. Ms. Wolf requested that Deputy Zigrang and Mr. Sheridan meet her at the site. At Ms. Wolf’s request, the Estherville Fire Department was dispatched to extinguish the fire.

3. DNR investigated the complaint on December 4, 2018, and observed the open burning of tires. When Ms. Wolf was at the site, the fire was unattended, and Mr. Matthews was not home. Ms. Wolf took pictures at the site.

4. While at the site on December 4, Ms. Wolf spoke to Kevin Swalve, the City of Superior Fire Chief. While he was at the site on December 4, Mr. Swalve contacted Mr. Matthews via phone and informed Mr. Matthews that Ms. Wolf would be contacting him. However, when Ms. Wolf called Mr. Matthews on the afternoon of December 4, the call was unanswered and a voice mailbox had not been set up.

5. During his December 4 visit to the site, Mr. Swalve informed Ms. Wolf that he also had responded to a fire at the site on November 23, 2018. Mr. Swalve spoke to Mr. Matthews at the site on November 23, and Mr. Matthews stated that the fire on November 23 was a “controlled burn” of trees.

6. On December 5, 2018, Ms. Wolf called to Mr. Matthews again, and the call was unanswered. Ms. Wolf also sent a text message to Mr. Matthews, requesting that he call her to discuss the December 4, 2018, fire at 1640 340th Ave., Estherville. Matthews did not respond to the phone call or text message.

7. A December 17, 2018, Notice of Violation letter (NOV) was sent by DNR to Michael Matthews for illegal open burning. The NOV was sent to Mr. Matthews by certified mail, and was returned to DNR.
8. DNR sent a draft administrative consent order to Mr. Matthews on February 12 and August 12, 2019, but Mr. Matthews did not respond. DNR visited the site or September 18, 2019, and found that the site was cleaned up. In recognition of the cost of site clean-up, DNR has reduced the economic benefit contained in the proposed administrative consent order by $500.00.

9. Mr. Matthews has violated environmental protection laws in the past. Mr. Matthews was referred on September 29, 2017, for the illegal discharge of manure from Superior Feedlots, located at 3370 150th St. Estherville. Administrative Consent Order No. 2018-AFO-03 was issued on March 12, 2018.

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 by Michael Matthews is a violation of the provisions of 567 IAC 23.2.

V. ORDER

THEREFORE, DNR orders agrees to do the following:

1. Michael Matthews 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, Michael Matthews shall pay a penalty of $4,630.00.

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.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 order with a $4,630.00 penalty. The administrative penalty assessed by this order is determined as follows:

**Economic Benefit** – 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.” Mr. Matthews saved time and money on transportation and disposal fees. The nearest disposal facility for tires is the Dickinson County Recycling Center. According to Deputy Zigang, there appeared to be 50-60 tires in the burn pile. The disposal fee per tire varies at the Dickinson County Recycling Center. The average disposal fee among all tire sizes is $16.00. The distance from 1640 340th Ave., Estherville to the recycling center at 2260 220th St., Milford, is 17 miles.

- Estimating at least 60 tires and tire remnants in the burn pile, the economic benefit is $960.00 (60 x $16.00).

- Trucking costs at the rate of $5.00 per loaded mile for 34 miles (roundtrip) would be $170.00.

Therefore, the economic benefit for failing to properly dispose of all materials is assessed at $1,130.00. DNR visited the site on September 18, 2018, and found that the site was cleaned up. Therefore, the economic benefit is reduced by $500.00. The amount of $630.00 is assessed for economic benefit.

**Gravity of the Violation** – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Illegal open burning can degrade air quality as well as threaten public health. Open burning of tires results in the emission of particulates and toxic substances into the ambient air. In this case, there were numerous tires present in the fire and the resulting thick
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ISSUED TO: MICHAEL MATTHEWS

plumes of smoke were observed. Additionally, failure to properly dispose of solid waste threatens the integrity of the regulatory program. Therefore, $3,000.00 is assessed for the gravity of the violations.

**Culpability** – Michael Matthews has a duty to remain knowledgeable of DNR regulations and to be alert to the probability that his conduct is subject to DNR’s rules. Open burning prohibitions have been in place for over 45 years. Therefore, $1,000.00 is assessed for culpability.

**VII. APPEAL RIGHTS**

Pursuant to Iowa Code sections 455B.138 and 455B.308 and 561 IAC 7.4(1), a written notice of appeal to the Commission may be filed within 30 days of receipt of this order. The notice of appeal should be filed with the Director of DNR and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

**VIII. NONCOMPLIANCE**

Failure to comply with this administrative 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 order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section “IV. Conclusions of Law” of this administrative order.

Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 23 day of September, 2019.

DNR Field Office 3; Anne Preziosi; VII.C.2