IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE-consent ORDER

IN THE MATTER OF:

RICHARDSON FAMILY
LIMITED PARTNERSHIP
and ERIC RICHARDSON,
CALHOUN COUNTY

ADMINISTRATIVE-consent ORDER
NO. 2019-AQ-30

TO: Richardson Family Limited Partnership
John D. Richardson, Registered Agent
1440 345th Street
Auburn, Iowa 51433

Eric Richardson
1531 365th Street
Lake City, Iowa 51449

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Richardson Family Limited Partnership and Eric Richardson for the purpose of resolving 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 N. Grand Avenue
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 587 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The Richardson Family Limited Partnership owns a parcel of ground located along 345th Street near Auburn, Calhoun County, Iowa (the site). The legal description of the site is the NW ¼ of Section 4, Jackson Township (T96N, R34W), Calhoun County, Iowa. Eric and Barbara Richardson are the contact people for the site.

2. On March 28, 2017, at approximately 3:00 pm, DNR Field Office 3 Inspector Sheila Kenny observed and photographed thick black smoke coming from an active fire located between 330th and 345th Streets and between Elkland and Fletcher Avenues, near Auburn, Iowa. The smoke coming from the site appeared to exceed the 40% opacity, as the smoke seemed to obscure all light.

3. On March 28 and 31, 2017 Ms. Kenny went to the site to investigate. During her March 31st visit, she observed and photographed the remains of three separate burn pile locations at the site. There were numerous tires in each of the burn piles. It appeared that trees and brush have been recently removed from a ravine and were subsequently burned along with a number of tires. Photographs were taken of all three fire locations.

4. On April 20, 2017, during a telephone conversation between Mr. Richardson and Ms. Kenny, Mr. Richardson indicated that he was the one conducting the burning of trees at this location and that he was present during the fires. He indicated that the tires were from his silage pile, and that he did not know how many were burned. Mr. Richardson stated that he thought he was allowed to burn a few tires in the process of getting the trees to burn.

5. An April 25, 2017, Notice of Violation letter was sent to Eric Richardson, citing the illegal open burning violations. The site has been cleaned up and reseeded.
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). 567 IAC 23.2(2) "d" allows for an exception to the prohibition against open burning for the disposal by open burning of landscape waste originating on the premises. However, 567 IAC 23.2(2) "d" specifically states that tires shall not be used to ignite landscape waste. Further, the open burning of tires is specifically prohibited in six places in the DNR’s rules. The illegal open burning of tires in this case demonstrates a violation of this provision.

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 open burning equal to or in excess of 40 percent opacity. The smoke from the fires observed by Ms. Kenny on March 28, 2017, was assessed by the DNR Field Office 3 Inspector to exceed 40 percent opacity.

V. ORDER

THEREFORE, DNR orders and Richardson Family Limited Partnership and Eric Richardson agree to the following:

1. Richardson Family Limited Partnership and Eric Richardson shall cease 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 open burning; and

2. Within 30 days of the date this administrative consent order is signed by the Director, Richardson Family Limited Partnership and Eric Richardson shall provide documentation to DNR Field Office 3 that the location has been cleaned up and reseeded; and
3. Within 30 days of the date this administrative consent order is signed by the Director, Richardson Family Limited Partnership and Eric Richardson shall pay a penalty of $2,000.00.

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.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 $2,000.00 penalty. The administrative penalty assessed by this order is determined as follows:

**Economic Benefit** – Richardson Family Limited Partnership and Eric Richardson have received economic benefit and saved time by conducting illegal open dumping and illegal open burning at the site. Because the fire consumed most of the combustible materials, the total number of tires burned is unknown. Richardson Family Limited Partnership and Eric Richardson saved time and money on transportation and landfill disposal fees. Therefore, the economic benefit for failing to properly dispose of all materials is assessed at $150.

**Gravity of the Violation** – The open burning of tires can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. It further threatens the integrity of our environmental programs and efforts to protect our valuable natural resources. A significant number of tires were burned. Therefore, $1,250 is assessed for the gravity of the violations.

**Culpability** – Open burning prohibitions (including those for waste tires) have been in place for many years. It is the responsibility of Richardson Family Limited Partnership and Eric Richardson to remain knowledgeable of the DNR’s rules and to abide by them. Therefore, $600 is assessed for culpability.
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Richardson Family Limited Partnership and Eric Richardson. For that reason, Richardson Family Limited Partnership and Eric Richardson waive the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

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

Eric Richardson
Richardson Family Limited Partnership

DNR Field Office 3; Anne Preziosi

Dated this 7th day of October, 2019.
Dated this 30th day of September, 2019.
Dated this 30th day of September, 2019.