# IOWA DEPARTMENT OF NATURAL RESOURCES
## ADMINISTRATIVE CONSENT ORDER

**IN THE MATTER OF:**

**Wisecup Trucking, LLC**

**ADMINISTRATIVE CONSENT ORDER**

NO. 2019-SW- 16
NO. 2019-AQ- 31

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To: Tyler S. Wisecup, Registered Agent  
Wisecup Trucking, LLC  
802 Leaf Road  
Boone, Iowa  50036

Re: Illegal open burning of combustible material/ Illegal disposal of solid waste/ Asbestos demolition violations; Redfield, Iowa.

## I. SUMMARY

This administrative consent order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Wisecup Trucking, LLC (the Company) for the purpose of resolving illegal open burning, illegal solid waste disposal, and asbestos violations at the properties located at 29743 and 29745 El Paso Avenue in Redfield, Iowa.

As detailed below, the Company shall cease any and all illegal open burning of combustible material and the illegal disposal of solid waste anywhere in Iowa, and shall comply with all asbestos regulations in the future. Additionally, the Company shall pay an administrative penalty of $ 5,000.00. The basis for this penalty is further explained herein.

Any questions regarding this Order should be directed to:

<table>
<thead>
<tr>
<th>Relating to technical requirements:</th>
<th>Relating to legal requirements:</th>
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<tbody>
<tr>
<td>Bryan Bunton, Env. Specialist</td>
<td>David Scott, Attorney</td>
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<tr>
<td>Iowa Department of Natural Resources</td>
<td>Iowa Department of Natural Resources</td>
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<tr>
<td>Field Office No. 5</td>
<td>Legal Services Bureau</td>
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<tr>
<td>Wallace State Office Building 502 E. 9th Street</td>
<td>Wallace State Office Building 502 E. 9th St.</td>
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<tr>
<td>Des Moines, Iowa 50319</td>
<td>Des Moines, Iowa 50319</td>
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<td>Phone: 515-725-0105</td>
<td>Phone: 515-725-8239</td>
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</tbody>
</table>
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ADMINISTRATIVE CONSENT ORDER
ISSUED TO: WISECUP TRUCKING, 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 April 11, 2019, staff from DNR Field Office (FO) 5 witnessed the remains of two homes located at 29743 and 29745 El Paso Avenue in Redfield, Iowa, that had been demolished and burned. Several large piles of demolition waste remained on the properties and some of the piles were still smoldering. According to the Dallas County Assessor’s office, the properties are owned by Ms. Susan Ledbetter.

2. On April 22, 2019, DNR FO5 staff issued a Notice of Violation (NOV) to Ms. Ledbetter for the illegal open burning and illegal solid waste disposal that occurred on her properties.

3. On May 1, 2019, Ms. Ledbetter contacted FO5 staff and stated that she received the NOV, and that Wisecup Trucking, LLC was hired to do the demolition. She stated that the Company had removed the metals from the properties for recycling and buried the remaining material on the property. She also indicated that she had an asbestos assessment completed prior to demolition.

4. On May 1, 2019, FO5 issued an NOV to the Company for the illegal open burning and illegal solid waste disposal that occurred on the Ledbetter properties.
5. On May 8, 2019, Ms. Ledbetter contacted FO5 staff asking permission to proceed with installation of a modular home on her property. Permission was granted.

6. On May 16, 2019, Mr. Tyler Wisecup of the Company sent an email to FO5 staff and attached copies of the landfill receipts from this demolition, as well as a copy of the asbestos abatement that was completed prior to demolition. The email stated that Ms. Ledbetter removed asbestos herself, and that there was no demolition contract between Wisecup Trucking, LLC and Ms. Ledbetter.

7. On July 5, 2019, DNR's Air Quality Bureau issued an NOV to the Company for failing to submit asbestos notifications of demolition—and corresponding notification fees—to the DNR prior to demolition. The NOV required that the $100.00 fees be retroactively submitted for each residence that was demolished.

8. On July 12, 2019, DNR Air Quality Bureau staff contacted Mr. Wisecup by email and proposed hosting an informational meeting to review air quality and solid waste regulations.

9. On August 5, 2019 DNR FO5 staff and staff from the DNR Air Quality Bureau met with Mr. Wisecup to discuss the alleged violations, the facts of the matter, and the proposed penalty. In response, Mr. Wisecup acknowledged his obligations and the violations related to open burning, open dumping and asbestos regulation, stated that the responsibility was his and not the property owners', agreed that a penalty was warranted, and presented a host of processes he intends to implement to ensure future compliance.

In addition to the above-stated facts in this matter, the Company has the following history of enforcement/ non-compliance:

1. On May 21, 2012, DNR issued an Administrative Consent Order to the Company for illegal disposal of solid waste, illegal open burning, and for operating an air emission source without first obtaining a construction permit.

2. On September 18, 2014, DNR FO5 issued an NOV to the Company for failing to apply a unique marking to a de-manufactured appliance as required by DNR's de-manufacturing regulations.

3. On October 7, 2015, FO5 issued an NOV to the Company for failing to store appliances upright and orderly, for storing more than 50 appliances on-site under a temporary permit, and for failing to de-manufacture appliances within 270 days of receiving them.

4. On August 17, 2017, DNR FO5 issued an NOV to the Company for collection and de-manufacturing of cathode ray tubes without authorization, for
failing to store appliances in an upright and orderly manner, for storing more than 50 appliances on-site under a temporary permit, and for failing to de-manufacture appliances within 270 days of receiving them.

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. Iowa Code § 455B.133 authorizes the Commission to establish rules governing air quality and emission standards. 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.

6. The Commission has also adopted 567 IAC § 23.1(3), which adopts by reference the federal regulations regarding asbestos removal. 40 CFR § 61.145(b) outlines certain notification requirements. The Company failed to properly notify the DNR prior to demolishing structures.

V. ORDER

THEREFORE, the DNR orders and the Company agrees to the following:
ICWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: WISECUP TRUCKING, LLC

1. The Company shall cease and prevent the illegal disposal of solid waste and the illegal open burning of combustible material in Iowa and shall comply with all applicable Iowa regulations in the future.

2. The Company shall comply with all Iowa regulations governing asbestos management in the future.

3. The Company shall pay an administrative penalty of $5,000.00 within 30 days of the date this Order is signed by the Director.

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 or the commitments made during the August 5 meeting.

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. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a $5,000.00 penalty. The administrative penalty assessed by this Order is determined as follows:

a) 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." In this case, the Company was able to avoid landfill tipping fees for the portions of the residences that were burned and for the debris that was buried. Tipping fees at the Metro Park West Sanitary Landfill for construction and demolition material are $38.00 per ton. Since the
material was not transported to the landfill, a savings in fuel costs was also realized. This allowed the company to use these funds for some other purpose. Asbestos notification fees were deferred which allowed the company to use these funds for some other purpose. For the reasons stated above, $1,500.00 should be 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. 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. Asbestos is a known carcinogen. Failing to comply with DNR’s asbestos regulations exposes citizens to serious health risk, and failing to notify the DNR threatens the integrity of the entire asbestos program. As such, $2,000.00 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, whether this is a repeat violation, and whether the violator has taken remedial measures to address the harm caused by the violations. The Company entered a consent order for similar, in not identical, violations in 2012. This is a repeat offense. In fact, open dumping and open burning prohibitions have been in place in Iowa for more than 40 years. However, in determining the penalty for this factor the DNR has taken into account the results of the August 5 meeting with Mr. Wisecup and his efforts to ensure future compliance. Should non-compliance continue, however, DNR will issue a follow-up order with a more significant penalty. Therefore, a penalty of $1,5000.00 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.146 and 455B.307. 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

Dated this 16 day of October, 2019.

Tyler Wisecup
WiseCup Trucking, LLC

Dated this ____ day of __________, 2019.

CC: DNR Field Office 5; David Scott; VI.C; VII.C.1; VII.C.4.
IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: WISECUP TRUCKING, LLC

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Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this ______ day of ________, 2019.

Tyler Wisecup
Wisecup Trucking, LLC

Dated this ______ day of ________, 2019.

CC: DNRF Field Office 5; David Scott; V.I.C. 1; V.I.C. 4