IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

Roger Engstrom

ADMINISTRATIVE
CONSENT ORDER

NO. 2010-AQ-38
NO. 2019-SW-18

To: Roger Engstrom
122 Johnson Street
Ames, Iowa 50010

Re: Illegal open burning of combustible material/ 57646 210 Street, Nevada, Iowa.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Mr. Roger Engstrom to resolve violations of Iowa open burning regulations.

As detailed below, Mr. Engstrom shall cease any and all illegal open burning of combustible material in the state of Iowa, shall pay an administrative penalty of $3,000.00, and shall properly dispose of all remaining solid waste located on the property, including ashes from the fires. The basis for this Order and the penalty is further explained herein.

Any questions regarding this Order should be directed to:

Relating to technical requirements:
Dennis Thielen, Env. Specialist Senior
Iowa Department of Natural Resources
Field Office No. 5
502 East 9th Street
Des Moines, Iowa 50319
Phone: 515-250-1798

Relating to legal requirements:
David Scott, Attorney
Iowa Department of Natural Resources
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-653-2135

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]
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II. JURISDICTION

This Order is issued pursuant to 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; 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; 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 relevant to this matter:

1. On July 16, 2019, the Nevada Fire Department received a call reporting open burning at 57646 210th Street, Nevada, Iowa. The property is owned by Roger Engstrom. The fire department arrived to find the owner burning a large tractor tire and 3 inch insulation foam board. Ray Reynolds, the fire chief for the Nevada Fire Department, instructed Mr. Engstrom to stop burning and as the fire department was leaving the property, Chief Reynolds noted that Mr. Engstrom “walked over to get more foam board and throw it on the fire and I stopped him.”

2. On July 23, 2019, staff from the Nevada Fire Department contacted DNR Field Office (FO) 5 to report the open burning at Mr. Engstrom’s property in Nevada.

3. On July 26, 2019, DNR FO5 staff conducted an onsite investigation. While onsite, staff observed a burn pile at the south end of the property behind the barn. The burn pile contained ashes and steel belts from the burned tire. No one was at the site during the investigation.

4. Also on July 26, 2019, FO5 staff issued a Notice of Violation (NOV) to Roger Engstrom for illegal open burning. This certified letter included a copy of Iowa’s open burning regulations and required a plan be submitted by August 13, 2019, to FO5 addressing proper disposal of the remaining debris located on the property.

5. On August 1, 2019, the Nevada Fire Department was again dispatched to 57646 210th Street in Nevada. The fire department arrived to find a garage fully engulfed with flames. The Cambridge and Huxley fire departments also responded. Chief Reynolds indicated that Mr. Engstrom stated he started
the wood paneling of the mobile home on fire in order to scrap it. He then went to work on a lawn mower and did not realize his garage caught fire.

6. On August 2, 2019, Mr. Engstrom signed for the certified NOV issued on July 26.

7. On August 3, 2019, Chief Reynolds contacted FO5 to provide details of the August 1, 2019 fire. According to Chief Reynolds, the property owner had stated he was burning a mobile home and some wood paneling.

8. On August 6, 2019, staff from DNR FO5 conducted another onsite investigation. While onsite, staff provided Mr. Engstrom with a copy of the open burning regulations and Mr. Engstrom stated he had received a copy in the mail with the NOV. Staff discussed proper disposal for the remaining debris with Mr. Engstrom. Mr. Engstrom noted he was beginning to clean up the site and provided a list of items taken to the landfill and items he recycled.

9. On August 13, 2019, DNR issued another NOV to Mr. Engstrom for open burning violations observed on August 6, 2019.

10. On August 16, 2019, DNR received an email from Mr. Engstrom stating he did not burn the mobile home, but was burning some paper, magazines and a few wood scraps and a spark must have ignited the green house.

**IV. CONCLUSIONS OF LAW**

1. The Iowa Environmental Protection 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.

   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 violations of this provision.

**V. ORDER**

**THEREFORE**, the DNR orders and Mr. Engstrom agrees to the following:
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1. Mr. Engstrom shall pay an administrative penalty of $3,000.00 within 30 days of the date this Order is signed by the Director.

2. Mr. Engstrom shall cease the illegal open burning of combustible material and shall comply with all applicable Iowa regulations in the future.

3. Mr. Engstrom shall dispose of any solid waste remaining on the property, including remnants of, and ash from, burned material, at a licensed solid waste disposal facility.

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.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. Iowa Code § 455B.307(3) provides for civil penalties of up to $5,000.00 per day for solid waste violations. The DNR reserves the right to pursue additional penalties pursuant to these sections if Mr.Engstrom 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. 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 $3,000.00 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.”

Mr. Engstrom gained an economic benefit by avoiding costs for disposal of the solid waste on his property, including a tractor tire
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and mobile home. Burning these items allowed him to save the landfill fees, transportation to the landfill, and cost of properly demolishing the mobile home.

As such, $2,000.00 is assessed for this factor.

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 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.

Therefore, $1,000.00 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, and whether the violator has taken remedial measures to address the harm caused by the violations. Open burning prohibitions have been in place in Iowa for more than 40 years.

There is no exemption of any kind that allows for the burning of the materials burned by Mr. Engstrom. Therefore, $1,000.00 is assessed for this factor.

d) Mitigating Factor: DNR is authorized to consider mitigating or aggravating factors when determining a penalty amount. Mr. Engstrom has worked with the DNR to address the violations on the property and to clean up the property. As such, DNR is decreasing the penalty due by $1,000.00.

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. 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

Roger Engstrom

Dated this 10 day of November, 2019.

Dated this 29 day of Oct, 2019.

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