IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: Duane Magnussen

ADMINISTRATIVE CONSENT ORDER
NO. 2019-AQ- 34
NO. 2019-SW- 19

To: Duane Magnussen
1945 560th Street
Newell, Iowa  50568

Re: Illegal open burning of combustible material and illegal solid waste
disposal; 5622 220th Avenue, Newell, Iowa.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa
Department of Natural Resources (DNR) and Mr. Duane Magnussen to resolve
violations of Iowa open burning and solid waste disposal regulations.

As detailed below, Mr. Magnussen shall cease any and all illegal open
burning of combustible material in the state of Iowa, shall pay an administrative
penalty of $3,156.00, and shall properly dispose of any remaining solid waste
located on the property, including ashes, as directed below. 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:
Amber Wolf, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 3
1900 N. Grand Ave., Suite E17
Spencer, Iowa  51301
Phone: 712-262-4177

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]
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 8, 2019, DNR Field Office (FO) 3 staff was notified by Buena Vista County Solid Waste and Recycling that Mr. Duane Magnussen was hauling demolition debris out of Truesdale, Iowa. The County questioned where the waste was being disposed.

2. On July 9, 2019, the complaint/question was forwarded to the Buena Vista County Sanitarian for review. The Sanitarian reported that Mr. Magnussen had hauled the demolition waste to his property at 5622 220th Avenue in Newell (the property), where it accidentally caught fire.

3. On July 16, 2019, DNR FO3 staff met with Mr. Magnussen at the property and investigated the complaint. Mr. Magnussen informed staff that he had demolished a residence at 108 Railroad Avenue in Truesdale, Iowa, and hauled it to his property for disposal on July 8, 2019. Mr. Magnussen informed staff that while hauling the last load of demolition waste, he received a call from his son who told him the debris pile had caught fire. Mr. Magnussen stated that he called the Buena Vista County Communications Center to report the fire. While at the property, DNR staff observed remnants of an old barn (torn down on site), large trees, and miscellaneous farm waste.

4. On July 29, 2019, A Notice of Violation (NOV) was sent to Mr. Magnussen. The NOV noted that the matter would be forwarded to DNR’s Legal Services Bureau for further enforcement action.

5. On August 13, 2019, Mr. Magnussen called DNR FO3 to request assistance with the proper disposal of a residential property in Lakeside, Iowa. Mr. Magnussen was informed of the solid waste regulations and agreed to dispose of the waste properly.
6. DNR notes that Mr. Magnussen has been cooperative throughout DNR's investigation of this matter.

IV. CONCLUSIONS OF LAW

1. The Iowa Environmental Protection Commission (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. Magnussen agrees to the following:

1. Mr. Magnussen shall pay an administrative penalty of $3,156.00 within 30 days of the date this Order is signed by the Director.

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

3. Mr. Magnussen shall dispose of any solid waste resulting from the demolition of the structure that was hauled to the property from Truesdale, Iowa, that remains on the property, including ash from burned material. Disposal shall only occur 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.

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 $3,156.00 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. Magnussen saved money on disposal fees. The nearest permitted disposal facility is the Buena Vista County Transfer Station, which charges $55.00 per ton for construction and demolition waste disposal. The demolished house was a 1,960 square foot, single story dwelling. On average, a single family dwelling generates 50 pounds of demolition waste per square foot. This would amount to approximately 98,000 pounds (39.2 tons) of solid waste. 39.2 tons of waste at $55.00 per ton totals $2,156.00 saved by improper disposal.

As such, the economic benefit for failing to properly dispose of the demolition waste is assessed at $2,156.00.

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.

Smoke from demolition debris degrades the air quality in the surrounding area and releases toxins and other pollutants. The open dumping and burning of non-exempted waste threatens the
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Integrity of the air quality and solid waste programs that promote healthy communities and environment.

As such, $500.00 is assessed for this element.

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 dumping and open burning prohibitions have been in place in Iowa for over 45 years. It is the responsibility of Mr. Magnussen to know and abide by these rules.

Therefore, $500.00 is assessed for this element.

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

Duane Magnussen

Dated this 12th day of December, 2019.

Dated this 9th day of December, 2019.

CC: DNR Field Office 3; David Scott; VI.C, VII.C.1.