IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

BUCHANAN COUNTY FAIR ASSOCIATION, dba BUCHANAN COUNTY FAIR & LIVESTOCK ASSOCIATION

ADMINISTRATIVE CONSENT ORDER
NO. 2019-AQ- 35
NO. 2019-SW- 20

TO: Buchanan County Fair Association,
dba Buchanan County Fair & Livestock Association
Kelly Peyton, Registered Agent
1204 – 12th Street NE
PO Box 258
Independence, Iowa 50644

Buchanan County Fair Association,
dba Buchanan County Fair & Livestock Association
Rick Wendling, Board Member
1749 Golf Course Blvd, Lot 19
Independence, Iowa 50644

Buchanan County Fair Association,
dba Buchanan County Fair & Livestock Association
Stephanie A. Sailer, Attorney
2349 Jamestown Avenue, Suite #4
Independence, Iowa 50644

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the Buchanan County Fair Association, dba Buchanan County Fair & Livestock Association, (Buchanan County Fair Association) for the purpose of resolving solid waste and 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:
Brenda Streicher
Iowa Department of Natural Resources
Field Office No. 1
909 West Main Street, Suite 4
Manchester, Iowa 52057
Phone: 563-827-2640

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: 515-725-9851
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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 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. The Buchanan County Fairgrounds (fairgrounds) are located at 1204 12th Street NE, Independence, Iowa. The fairgrounds are governed by the Buchanan County Fair Association. The Buchanan County Fair Association is registered with the Iowa Secretary of State as a domestic non-profit organization. The Buchanan County Fair Association owns land which is part of the fairgrounds and where illegal open dumping and open burning have occurred. The Buchanan County Fair & Livestock Association also owns land which is part of the fairgrounds and where illegal open dumping and open burning have occurred, according to Buchanan County Assessor records.

2. The Buchanan County Fair Association is comprised of volunteers. However, in July 2019, as a result of discussions with DNR, the Buchanan County Fair Association hired a fair manager, who will oversee conduct of the Association with the intent to ensure compliance with DNR regulations.

3. On April 1, 2019, DNR Field Office 1 received an anonymous complaint regarding open burning occurring at the fairgrounds. The anonymous caller stated the previous day, on Sunday, March 31, 2019, fairgrounds personnel had dumped and burned garbage, tires, and hay cleaned out from the fairgrounds buildings. The fire was still smoldering at the time of the call, and the
complainant stated it smelled terrible. The complainant stated the smoke was very black on Sunday, and it was most likely from burning tires. The complainant stated that other people had complained to DNR in the past, but fairgrounds personnel still burn garbage every year.

4. Field Office 1 environmental specialist, Brenda Streicher received the initial complaint call on April 1, 2019. Ms. Streicher investigated the complaint and visited the site on April 4, 2019. The fairgrounds area was muddy and unable to be traversed by car. Ms. Streicher walked the fairgrounds area and located the burn site in question. The burn site was located in the northeast corner of the fairgrounds. The burn site is west of the Falcon Civic Center and the Independence Dog Park. The location also is surrounded by residential homes. The remains of tires, garbage, lumber, and metal objects that had the combustible parts burned off were visible at the burn site during the April 4, 2019, investigation. The burn site was not ablaze at the time of the inspection.

5. On April 5, 2019, Ms. Streicher contacted Rick Wendling, a member of the Buchanan County Fair Association, by telephone. Ms. Streicher informed Mr. Wendling of the complaint and of her findings made during the April 4, 2019, investigation. Mr. Wendling had little to say. Ms. Streicher stated that a Notice of Violation letter (NOV) and report would be forthcoming. Mr. Wendling stated that the NOV and report could be mailed to his attention at his address and he would share the information with the rest of the Buchanan County Fair Association members.

6. An April 9, 2019, NOV was issued to the Buchanan County Fairgrounds Association, citing open burning violations. The NOV required that the solid waste be removed from the fairgrounds within 10 days and that evidence of proper disposal of the solid waste be provided to DNR Field Office 1 within 30 days. The required evidence was provided to DNR Field Office 1 on April 17, 2019.

7. The fairgrounds personnel have a previous history of open burning at the fairgrounds. On April 13, 2017, DNR Field Office 1 environmental specialist senior, Brian Jergenson, received an anonymous call regarding open burning at the Buchanan County Fairgrounds. The complainant (Complaint # 24129) stated that:

Fairgrounds staff dug a big hole and started burning unknown materials yesterday, 4-12-17. It is still smoldering today and is causing air quality issues. Complainant also states there have been children playing in the area close to the pit and complainant is concerned for their safety. The pit is between the skate park and track.
8. DNR Field Office 1 environmental specialist, Rick Martens, investigated the complaint (Complaint #24129) on April 14, 2017. Mr. Martens observed a recently dug hole in the northeast corner of the fairgrounds containing smoking burned material. Fairgrounds personnel on site stated that the Independence Fire Department had put out the fire earlier in the morning. Mr. Martens contacted Rick Wendling for details.

9. An April 14, 2017, a NOV was issued to the Buchanan County Fairgrounds Association for open burning. The NOV was mailed to Mr. Wendling, representing the Buchanan County Fair Association. The DNR’s open burning rules were provided in the letter.

10. On April 17, 2017, Mr. Wendling stated to Mr. Martens that the burned debris had been taken away and any additional material properly disposed.

11. On April 18, 2017, DNR Field Office 1 received an anonymous complaint that open burning of tires was occurring at the same site at the fairgrounds. Mr. Martens contacted the fairgrounds representative the same day and was informed that a nearby farm was burning materials. He was informed that fairgrounds personnel would visit the fairgrounds site and make sure that no materials were being burned. Mr. Martens visited the fairgrounds the following day, on April 19, 2017, and did not view any open burning. Therefore, no NOV letter was issued.

12. On October 30, 2019, Ms. Streicher of DNR Field Office 1 visited the site and observed that no dumping signs have been posted and the gates were locked.

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 and other solid waste materials by the Buchanan County Fairgrounds
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Association on the fairgrounds property, as described above, is a violation of the provisions of 567 IAC 23.2.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The facts in this case demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and the Buchanan County Fair Association agrees to the following:

1. The Buchanan County Fair Association shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at the Buchanan County Fairgrounds and 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;

2. Within 10 days of the date this order is signed by the Director, the Buchanan County Fair Association shall remove all remaining solid waste from the Buchanan County Fairgrounds to a permitted sanitary landfill or recycling center;

3. Within 30 days of the date this order is signed by the Director, the Buchanan County Fair Association shall submit receipts showing proper disposal of all solid waste to DNR Field Office 1; and

4. At least annually, the Buchanan County Fair Association shall provide notice of and training to its members regarding the law prohibiting illegal open dumping and illegal open burning;

5. The Buchanan County Fair Association shall place and maintain signs in the areas where illegal burning and dumping has occurred as described in this administrative consent order, and the signs shall state that no open dumping or illegal burning may occur; and
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6. Within 30 days of the date this order is signed by the Director, the Buchanan County Fair Association shall pay a penalty of $4,500.00.

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.307(3) authorizes the assessment of civil penalties of up to $5,000.00 per day of violation for the type of solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to adopt 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 $4,500.00 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."

The Buchanan County Fairgrounds Association saved time and money on transportation, and recycling and landfill disposal fees. Additionally, funds were saved on employee salary time that would have been spent gathering, sorting, and transporting the debris for proper disposal. In July 2019, as a result of discussions with DNR, the Buchanan County Fair Association hired a fair manager, who will oversee conduct of the Association with the intent to ensure compliance with DNR regulations. Therefore, the economic benefit for failing to properly dispose of all materials is assessed at $1,000.00.

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. Improper solid waste disposal and illegal
open burning can degrade air and water quality and contribute contaminants to both land and water resources as well as threaten public health.

The open burning of the materials at the Buchanan County fairgrounds released significant air pollutants to the environment. Additionally, the burning was done within a short distance of the Falcon Civic Center and the Independence Dog Park. Nearby residents and all those attending the civic center and dog park were exposed to significant air pollutants. The location also is surrounded by residential homes.

Of particular gravity is the burning of tires. Open burning of tires results in the emission of particulates and toxic substances into the ambient air. Particulate matter from the open burning of tires and other solid waste releases toxic substances into the air. Exposure to tire fire smoke contains a number of known carcinogens.

Additionally, failure to properly dispose of solid waste threatens the integrity of the regulatory program. Therefore, $2,000.00 is assessed for the gravity of the violations.

**Culpability** – Factors to be considered in determining the amount to be assessed for culpability include the degree of intent or negligence; the standard of care required by the laws of the state; and whether the violator has taken remedial measures or mitigated the harm caused by the violations.

The Buchanan County Fair Association has a duty to remain knowledgeable of DNR regulations and to be alert to the probability that its conduct is subject to DNR’s rules. Open burning prohibitions have been in place for over 45 years and improper solid waste disposal regulations have been in place for many years.

The Buchanan County Fairgrounds Association was aware that the State of Iowa open burning rules exist from a previous FO1 open burning investigation in 2017. In 2017, the Association was issued an NOV that additionally provided a copy of the open burning rules. Although the second open burning complaint received in 2017 did not result in an NOV, contact from DNR regarding that complaint was yet another reminder to the Buchanan County fairgrounds personnel that illegal open burning is prohibited. Therefore, $1,500.00 is assessed for culpability.
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Buchanan County Fair Association. For that reason, Buchanan County Fair Association waives its right to appeal this 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

Molly Zmudka, Fair Manager
Buchanan County Fair Association

Dated this 20th day of December, 2019.

DNR Field Office 1; Anne Preziosi; VI.C; VII.C.1