

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

RECEIVED
MARCH 8 2020
DNR F06

IN THE MATTER OF:

BRANDON STEWART

ADMINISTRATIVE
CONSENT ORDER

NO. 2020-AQ- 01
NO. 2020-SW- 01

To: Brandon Stewart
605 South Johnson Street
Charles City, Iowa 50616

Re: Illegal open burning of combustible material and illegal solid waste disposal; 3171 140th Street, Charles City, Iowa.

I. SUMMARY

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

As detailed below, Mr. Stewart 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 any remaining solid waste located on the property referenced above, including tires and 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:

Kayla Beck, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 2
2300 15th Street, SW
Mason City, Iowa 50401
Phone: 641-424-4073

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 November 2, 2019, Floyd County Sheriff Deputy Brian Tiedemann was dispatched to a noise complaint. Deputy Tiedemann arrived at 3171 140th Street in Charles City, Iowa and observed the smoldering remnants of a large fire. Deputy Tiedemann identified multiple burned tire beads, as well as the remains of a vehicle, and he identified Brandon Stewart as the responsible party for the fire.

2. On November 5, 2019, DNR Field Office (FO) 2 received notice of the complaint investigation from Deputy Tiedemann.

3. On November 7, 2019, DNR FO2 staff attempted to contact the responsible party at 3171 140th Street, Charles City, Iowa. The main residence appeared to be uninhabited. The burn site was visible from the driveway. Staff observed the burned material, which contained approximately 40 tire beads. Burned material also included a car, mattress springs, paint can lids, and aerosol cans. A large tire pile containing an estimated 100 tires was located within 10 feet of the burn site.

4. On November 13, 2019, DNR FO2 staff contacted Deputy Tiedemann to gather Mr. Stewart's current address and phone number. Deputy Tiedemann stated that he had not collected that information during his interaction with Mr. Stewart on the property. DNR staff searched for Brandon Stewart on the internet and found a link to his Facebook account where there was a short video of the fire in question. In addition, comments associated with the post confirmed a car was burned in the fire.

5. On November 15, 2019, a Notice of Violation (NOV) was issued to Mr. Stewart for the open burning violation. The NOV noted that further enforcement action, including a monetary penalty, was being considered. The

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certified letter was signed for by Mr. Stewart. A copy of the NOV was also sent to Ms. Patti Stewart, the property owner where the alleged open burning occurred.

6. As of December 3, 2019, neither Ms. Stewart nor Mr. Stewart have contacted DNR to discuss 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.

2. 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.

3. 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.

4. The Commission has also adopted 567 IAC 100.4 for the regulation of open dumping in Iowa. The provision prohibits an individual 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 prohibition.

V. ORDER

THEREFORE, the DNR orders and Mr. Stewart agrees to the following:

1. Mr. Stewart shall pay an administrative penalty of \$3,000.00 within ~~30~~ days of the date this Order is signed by the Director. *Payment Plan BS DGS ✓*

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

3. Mr. Stewart shall dispose of any solid waste that remains on the property, including tires and ash from burned material, within ~~30~~ days of this Order being signed by the Director. Disposal shall only occur at a licensed solid waste *90 BS ✓ DGS*

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disposal facility and disposal receipts will be provided to DNR FO2 within 15 days of disposal.

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 \$3,000.00 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."

The Chickasaw County Landfill in Elma, Iowa, serves the Floyd County area. The tire disposal fee is \$3.00 per tire. Based on the estimate of 40 tires being burned, economic benefit was a minimum of \$120.00.

As such, the economic benefit for failing to properly dispose of the tires is assessed at \$120.00.

- 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.

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Open burning of waste tires and other solid waste results in the release of toxins into the air that can harm human health and pollute the environment. Open burning of solid waste and waste tires also threatens the integrity of the DNR's solid waste disposal program.

As such, \$1,440.00 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 burning and solid waste disposal regulations have been in place in Iowa for decades. It is the responsibility of all Iowans to know and comply with existing law.

Therefore, \$1,440.00 is assessed for this element.

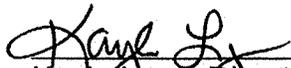
VII. APPEAL RIGHTS

As this Order is entered by consent of the parties, there is no right of appeal.

This Order is also subject to Iowa Rule of Evidence 5.408 concerning settlement offers.

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

Dated this 23 day of
March, 2020.



Brandon Stewart

Dated this 09 day of
March, 2020.

CC: DNR Field Office 2; David Scott; VI.C, VII.C.1.

Payment Plan

Brandon Stewart agrees to pay \$100 per month, due on the first of each month, until the penalty amount of \$3,000.00 is satisfied. Payment shall be sent to the address on the front of the consent order (Wallace state office building), and the payment shall reference the Order number. DNR will consider rescinding the remaining payments if the first twelve (12) payments are paid on time. The first payment is due on **May 1, 2020**.