

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

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| IN THE MATTER OF: SHORT & TALL ENTERPRISES, INC. | ADMINISTRATIVE CONSENT ORDER NO. 2020-AQ-02 NO. 2020-SW-04 |
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TO: Short & Tall Enterprises, Inc.
Kent Vickery, Registered Agent and Owner
518 9th Avenue
Sibley, Iowa 51249

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Short & Tall Enterprises, Inc. (Short & Tall Enterprises) 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:

Amber Wolf
Iowa Department of Natural Resources
Field Office 3
1900 N. Grand Ave., Suite E17
Spencer, Iowa 51301
Phone: 712-262-4177

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: 515-725-9551

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

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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. Kent Vickery owns and operates Short and Tall Enterprises. The commercial site is located at 1114 Industrial Drive, Sibley, Iowa (the site).
2. On November 15, 2019, DNR Field Office 3 received a complaint from an Osceola County Sheriff's Deputy that open burning of tires was occurring at the site. The complaint was accompanied by pictures of the burn pile on fire.
3. On November 20, 2019, DNR Environmental Specialist Amber Wolf visited the site and spoke with Mr. Vickery, who admitted that he burned tires and other solid waste, including trade waste. Ms. Wolf accompanied Mr. Vickery to the burn pile and observed a partially burned tire, remnants of at least three other tires, metal cans, and other miscellaneous trade waste.
4. A November 26, 2019, Notice of Violation letter was sent to Mr. Vickery at Short and Tall Enterprises, citing Short and Tall Enterprises for illegal open burning at the site.

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 subrule 23.2(2) (variances) and subrule 23.2(3) (exemptions). The illegal open burning of tires and trade waste is specifically prohibited by the provisions of 567 IAC 23.2. The open burning of tires and other solid waste materials, including trade waste, by Short and Tall Enterprises, 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.

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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 Short & Tall Enterprises agrees to the following:

1. Short & Tall Enterprises shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at the site 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, Short & Tall Enterprises shall remove all remaining solid waste from the site to a permitted sanitary landfill or recycling center;
3. Within 30 days of the date this order is signed by the director, Short & Tall Enterprises shall submit receipts to DNR Field Office 3 showing proper disposal of all solid waste; and
4. Within 30 days of the date this order is signed by the director, Short & Tall Enterprises shall pay a penalty of \$797.00.

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 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 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

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consent order with a \$797.00 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.”

Short & Tall Enterprises saved time and money on transportation and disposal fees. The nearest disposal facility is the Northwest Iowa Area Solid Waste Agency located at 4540 360th Street, Sheldon, Iowa. The minimum charge at this landfill for a commercial load under 2,000 pounds is \$35.00. The disposal fee for car and truck tires is \$3.00 each. Estimating at least 2,000 pounds of waste (\$35.00) and tire fees for four tires (\$12.00), the economic benefit for failing to properly dispose solid waste is \$47.00. Therefore, the economic benefit for failing to properly dispose of all materials is assessed at \$47.00.

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.

Smoke from burning tires and trade waste degrades the air quality in the surrounding area and releases toxins and other pollutants. The burning of non-exempted waste, including but not limited to trade waste, threatens the integrity of the air quality and solid waste programs that promote healthy communities and environment. Therefore, \$500.00 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.

Short & Tall Enterprises 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. Therefore, \$250.00 is assessed for culpability.

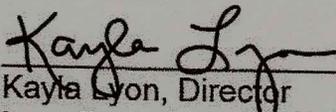
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VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Short & Tall Enterprises. For that reason, Short & Tall Enterprises waives its right to appeal this order or any part thereof.

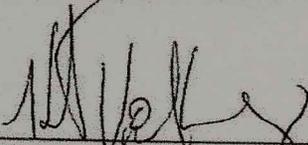
VIII. NONCOMPLIANCE

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

Dated this 10th day of
April, 2020.



Short & Tall Enterprises

Dated this 30 day of
March, 2020.

DNR Field Office 3; Anne Preziosi; VI.C; VII.C.1.