

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

<p>IN THE MATTER OF:</p> <p>JOHNNY MAC KEMPF</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2020-AQ- 06 NO. 2020-SW- 05</p>
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TO: Johnny Mac Kempf
c/o Mr. Stephen R. Smith, Esq.
322 W. 5th Street
Ottumwa, Iowa 52501

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Johnny Mac Kempf 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:

Mark Heiderscheid
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison
Washington, Iowa 52353
Phone: 319-653-2135

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

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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. Johnny Mac Kempf (Mr. Kempf) owns property located at 11915 Angle Road, in Ottumwa, Wapello County, Iowa (the site).
2. On March 21, 2019, DNR Field Office 6 received a complaint from Wapello County regarding the dumping of tree waste by a local tree service. The complainant stated that a large amount of tree waste had been dumped at the site. On March 25, 2019, DNR Field Office 6 conducted a site visit, and left a business card since Mr. Kempf was not at the site.
3. On March 26, 2019, Mr. Kempf telephoned DNR Field Office 6. Mr. Kempf stated that he had asked a tree service, named Cliff's Tree Service, for the tree waste. Mr. Kempf stated that he intended to chip off the smaller debris and chop up the logs and larger branches for firewood to burn in a wood stove. Mr. Kempf was informed by DNR that the amount of trees stockpiled for firewood was excessive, and that DNR has rules regarding the disposal of trade waste generated by a tree service. DNR Field Office 6 instructed Mr. Kempf to remove the tree waste from his property and dispose of it at a properly permitted facility. A March 26, 2019, letter was sent by DNR to Mr. Kempf containing DNR's rules regarding solid waste disposal and open burning.
4. On January 3, 2020, the Wapello County Engineer contacted DNR Field Office 6 regarding a follow-up visit conducted by the county. Wapello County provided DNR Field Office 6 with photographs taken at the site by the county. The photographs indicate that the tree waste had been burned at the site, along with some tires.
5. DNR Field Office 6 conducted site visits on January 8 and February 11, 2020, and took photographs. The burned tree waste and other waste materials had not been removed from the site.
6. On February 25, 2020, a Notice of Violation letter was issued by DNR Field Office 6 to Mr. Kempf for violations of air quality and solid waste requirements. Mr. Kempf has not responded to the Notice of Violation letter.
7. DNR Field Office 6 conducted a site visit on July 9, 2020, and observed that the ash pile, burn site, and tire threads have not been removed

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from the site. Pictures were taken to document these observations. Also on July 9, 2020, DNR Field Office 6 spoke with the Wapello County Engineer, who stated that the burned trees have been pushed into two piles during the last week. Additional waste tires are located at the site at this time, as well as the remains of previously burned tires.

8. During the weekend of July 11-12, 2020, illegal open burning occurred at the site involving one of the two piles of previously burned trees.

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 tree waste and tires, along with other waste materials, by Mr. Kempf, 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 Johnny Mac Kempf agrees to the following:

1. Johnny Mac Kempf shall immediately cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at the site

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and at any location in the State of Iowa, and he shall comply in the future with the regulations concerning disposal of solid waste and open burning;

2. Within 60 days of the date this order is signed by the Director, Johnny Mac Kempf shall remove all remaining solid waste from the site, including but not limited to all tree waste, the remains of tires from open burning that has occurred at the site, and all unburned waste tires that are located on the site; and Mr. Kempf shall properly dispose of the solid waste at a permitted sanitary landfill;

3. Within 75 days of the date this order is signed by the Director, Johnny Mac Kempf shall submit receipts showing proper disposal of all solid waste to DNR Field Office 6; and

4. If the remaining waste is not removed from the site within 60 days and receipts are not submitted to DNR Field Office 6 within 75 days of the date this order is signed by the Director, then Johnny Mac Kempf shall pay stipulated penalties of \$200.00 per month until these actions are completed, for a total of not to exceed \$10,000.00. The parties hereby agree: 1) to the stipulated penalties; 2) that no additional notice or further justification or action by the DNR shall be necessary to impose such penalty, and 3) that any failure of the DNR to immediately seek collection of stipulated penalties does not deem the penalties waived or limit the accrual of additional penalties.

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 consent order with stipulated penalties of \$200.00 per month until these actions are completed, for a total of not to exceed \$10,000.00. These penalties were determined as follows:

- a. Economic Benefit. 567 IAC 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. Mr. Kempf

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saved time and money by not arranging for the proper disposal of the above-cited waste. In order to resolve this matter consensually, the DNR and Mr. Kempf have agreed to the stipulated penalties set forth herein.

- b. Gravity of Violation. Illegal solid waste disposal and illegal open burning can degrade air and water quality, and also threaten public health. In order to resolve this matter consensually, the DNR and Mr. Kempf have agreed to the stipulated penalties set forth herein.
- c. Culpability. It is the intent of DNR and Mr. Kempf to establish a framework to ensure future compliance. The stipulated penalties established by this Administrative Order are based, in part, upon the culpability attributable to Mr. Kempf for any future failure to comply with the schedule established by this Administrative Order.

VII. RESERVATION OF RIGHTS

In lieu of collecting stipulated penalties, DNR reserves the right to issue an administrative order or to pursue referral to the Attorney General, to obtain injunctive relief and penalties or fines, pursuant to Iowa Code section 455B.146 or 455B.146A.

Additionally, DNR reserves the right to bring enforcement action or to pursue referral to the Attorney General, to obtain injunctive relief and penalties or fines, pursuant to Iowa Code section 455B.146 and 455B.146A, for alleged violations not addressed in this administrative consent order that may have occurred at the site.

VIII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Johnny Mac Kempf. For that reason, Johnny Mac Kempf waives his right to appeal this order or any part thereof.

IX. 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

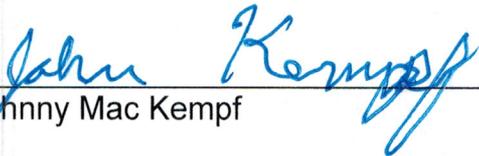
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penalties pursuant to Iowa Code sections 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.



Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 21st day of
July, 2020.



Johnny Mac Kempf

Dated this 20th day of
July, 2020.

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