

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

<p>IN THE MATTER OF:</p> <p>Larry Dolezal</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2020-SW- <u>06</u> NO. 2020-AQ- <u>14</u></p>
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To: Larry Dolezal
3618 G Avenue
Tama, Iowa 52339

Re: Illegal disposal of solid waste/ Open burning of solid waste

I. SUMMARY

This administrative consent order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Larry Dolezal for the purpose of resolving certain solid waste disposal and open burning violations that occurred on property in Tama, Iowa.

As detailed below, Mr. Dolezal shall cease any and all illegal disposal of solid waste and illegal open burning of solid waste in the state of Iowa, and shall pay an administrative penalty of \$2,000.00. The basis for this penalty is explained below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Malia Schepers, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 5
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-725-0370

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Bureau
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-321-8504

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]

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LARRY DOLEZAL

II. JURISDICTION

This Order is issued pursuant to 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; 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; 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 presented in chronological order:

1. On September 3, 2020, DNR Field Office (FO) 5 received an anonymous complaint that there had been a large fire at 3618 G Avenue in Tama, Iowa, on the night before with large amounts of black smoke emanating from it for nearly an hour.

2. On that day, DNR FO 5 staff visited the property and upon entering, went to the house to speak to the residents. No one answered the door. DNR staff left a business card in the door asking to be contacted. From the residence, the burn area was visible to the west. Inspection of the remaining ash and debris showed items burned included car tires, tractor tires, metals, shingles, and fiberglass.

3. On September 9, 2020, a Notice of Violation (NOV) was sent to the recorded property owner, Irene Dolezal.

4. On September 14, 2020, Mr. Larry Dolezal contacted DNR staff. During the conversation he stated he knew there were tires in the pile and that he should not burn them. Mr. Dolezal stated that a shed had come down during the August 2020 Derecho and that he had pushed the debris in a pile and burned it. He further stated that the majority of the shingles on the shed had been scattered from the storm, retrieved and taken to the Tama County Landfill for disposal. Metal siding and remaining rims and cords were taken to Berman in Grinnell for recycling. Copies of these receipts were requested.

5. On September 15, 2020, receipts were sent in by Mr. Dolezal. Receipts indicate that remaining ash and debris were taken to the Tama County Landfill on September 14, totaling \$198.55.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LARRY DOLEZAL

IV. CONCLUSIONS OF LAW

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 a violation of this statutory prohibition.

3. Iowa Code § 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. The Commission has adopted 567 IAC 100.4 for the regulation of open dumping in Iowa. The provision 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 and pursuant to the terms of a permit granted by the agency authorizing the disposal of solid waste. The above stated facts establish continued violations of this regulatory prohibition.

5. Additionally, the 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.

V. ORDER

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

1. Mr. Dolezal shall immediately discontinue and cease any future illegal open burning of solid wastes anywhere in the state of Iowa.

2. Hereafter, Mr. Dolezal shall properly reuse, recycle, or dispose of all solid wastes in a manner consistent with Iowa law.

3. Within 60 days of the Director signing this Order, Mr. Dolezal shall pay an administrative penalty of \$2,000.00.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LARRY DOLEZAL

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.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations. Additionally, 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. The DNR reserves the right to pursue additional penalties pursuant to this section if the company fails to comply with the terms of this Order.

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.

- a) Economic Benefit: The economic benefit element of a penalty is intended to recoup the economic benefit a party enjoyed as a result of non-compliance. It is estimated there were a minimum of 10 tires in the burn site, including several tractor tires. Assuming cost for disposal of tires is \$20.00 per tire for normal tires and \$50.00 per tire for tractor tires, the savings for the tire disposal would be a minimum of \$260.00. This does not include transportation costs for the tires or costs associated with proper disposal of the remaining debris that was burned. As such, \$1,000.00 is assessed for this factor.
- 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. Illegal disposal of solid waste by open burning threatens both the environment and human health. Burning tires or demolition wastes emits potentially harmful pollutants to the atmosphere in the immediate area. It also contributes to the degradation of large-scale ambient air quality. State and federal air quality and solid waste disposal regulatory programs to protect health and environment are undermined by improper open burning and solid waste disposal. As such, \$1,000.00 is assessed for this factor.
- c) Culpability: The factors to be considered in determining the "culpability" of the violator include the degree of intent or

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: LARRY DOLEZAL

negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. The prohibition against open burning of debris is a long-standing state regulation. As such, \$1,000.00 has been assessed for this factor.

- d) Mitigating factor: Mr. Dolezal's property had been impacted by the August 2020 Derecho. Mr. Dolezal admitted to burning the tires, but stated his judgement was impacted by the amount of damage sustained by the storm to his property. When contacted, he acted quickly to clean up and properly dispose of the remaining debris, including the ash. Receipts were provided that indicated proper disposal. There was no sign that open burning is routinely conducted on this property. As such, a penalty reduction of \$1,000.00 is assessed for this factor.

4. A penalty of \$2,000.00 is warranted in order to settle this matter administratively.

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. 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 3rd day of
November, 2020.



Larry Dolezal

Dated this 27 day of
October, 2020.

CC: DNR Field Office 5; David Scott; VI.C; VII.C.1.

