

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

<p>IN THE MATTER OF:</p> <p>Larry and Joyce Egemo</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2020-SW- <u>08</u> NO. 2020-AQ- <u>16</u></p>
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To: Larry and Joyce Egemo
709 Elm Avenue
Story City, Iowa 50248

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 and Joyce Egemo (the Egemos) for the purpose of resolving certain solid waste disposal and open burning violations that occurred on property in Story City, Iowa.

As detailed below, the Egemos shall cease any and all illegal disposal of solid waste and illegal open burning of solid waste in the state of Iowa, shall properly dispose of all solid waste referenced in this Order, 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]

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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 July 31, 2020, the DNR received a complaint from the Boone County Sheriff's Department of a large fire burning on the Egemo's property. The fire had been reported to the Story City Fire Department by the tenants of the property and extinguished by the Fire Department.

2. On August 3, 2020, staff from DNR Field Office (FO) 5 investigated the complaint. Staff documented solid waste deposited in the east driveway. The solid waste included soil, debris, and large bundles of shingles. Staff also located a large excavation on the north portion of the property where a fire was still smoldering. Burned items identified included shingles, metal, plastic, construction and demolition materials, and multiple 55-gallon metal drums.

3. Prior to leaving the site, DNR received a phone call from the tenant of the property, Mr. Adolf Spencer. Mr. Spencer confirmed that Larry Egemo started the fire and deposited the solid waste in the driveway. Mr. Spencer further stated that he contacted Story City Fire Department because of the large amount of noxious smoke that was blowing directly into their home on the property, and he stated that Mr. Egemo routinely burns materials at the site.

4. DNR staff called Mr. Egemo the same evening. Mr. Egemo admitted that the 55-gallon drums contained basement waterproofing tar. He stated the fire wasn't supposed to happen, and was accidentally started. Mr. Egemo stated he used to work as a contractor and the materials burned were primarily old construction materials.

5. On August 13, 2020, DNR staff conducted a follow-up site visit. Mr. Egemo and Mr. Wirth were both on site at this time. Mr. Wirth owns a backhoe and was actively excavating burned materials. Several dump trucks were present during this investigation, which were being loaded and exiting with full loads of

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burned materials. The area that had been excavated was largely clear of burned solid waste materials.

6. On August 26, 2020, A Notice of Violation (NOV) was sent to the recorded property owners, Larry and Joyce Egemo.

7. On September 9, 2020, receipts were received from Mr. Egemo. Receipts indicate that \$3,267.40 was spent at the Boone County Landfill for disposal, and \$2,945.00 was spent for trucking costs for a total of \$6,212.40. This total does not include the costs of the backhoe operator.

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 the Egemos agree to the following:

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1. The Egemos shall immediately discontinue and cease any future illegal open burning of solid wastes anywhere in the state of Iowa.
2. Hereafter, the Egemos 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, the Egemos shall pay an administrative penalty of \$2,000.00.

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. DNR estimates an economic benefit of \$1,000.00 due to delayed costs and a decrease in the amount of material that needed to be disposed of at the landfill due to the burning of the material.
- 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 dumping threatens both the environment and human health. Improperly disposing of solid waste damages the environment, prevents proper management of the solid waste stream, and may encourage or inspire others to open dump. Open dumping also threatens the integrity of DNR's environmental regulatory program. Burning construction,

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demolition and other trade wastes emits potentially harmful pollutants to the atmosphere in the immediate area (especially in town). 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, \$500.00 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 negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. The prohibition against open burning of debris, and unpermitted burial of that debris are long-standing state regulations. As such, \$500.00 is assessed for this factor.


4. As such, in order to settle this matter administratively, an administrative penalty of \$2,000.00 is warranted.

VII. APPEAL RIGHTS

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

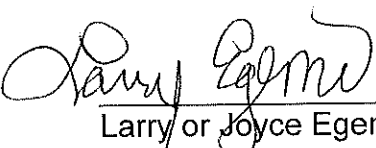
VIII. NONCOMPLIANCE WITH THIS ORDER

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 2nd day of
December, 2020.



Larry or Joyce Egemo

Dated this 12th day of
November, 2020.

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

