

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

IN THE MATTER OF: Charles Manning	ADMINISTRATIVE CONSENT ORDER NO. 2021-SW- <u>01</u> NO. 2021-AQ- <u>01</u>
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To: Charles Manning
30594 191st Drive
Woodward, Iowa 50276

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 Charles Manning (Mr. Manning) for the purpose of resolving certain solid waste disposal and open burning violations that occurred on property owned by Mr. Manning in Woodward, Iowa.

As detailed below, Mr. Manning 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 \$5,350.00. The basis for this penalty is explained below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Bill Gross, Env. Specialist Sr.
Iowa Department of Natural Resources
Field Office No. 5
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-238-7871

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 18, 2019, a complaint was filed with Iowa DNR Field Office 5 (FO5) through the Dallas County Zoning Department about Mr. Manning stockpiling, landfilling, and burning construction materials at a rural property southeast of Woodward, Iowa.

2. On July 22, 2019, FO5 staff visited the property and found numerous piles of demolition wastes (metal gutters, lumber, concrete, etc.) along with tires, carpeting, appliances, cardboard, and piles of ashes from previous burning.

3. On July 25, 2019, FO5 staff contacted Mr. Manning by phone. Mr. Manning indicated he operates MAFCO Builders and that he brings waste (mainly metal gutters) for recycling to the site. He reported that he will take the metal to a recycler when prices rise.

4. On July 26, 2019, FO5 staff sent Mr. Manning a notice of violation (NOV) letter for improper open burning. The letter included open burning and solid waste disposal regulations. He was given until August 15, 2019, to submit a management and cleanup plan.

5. On August 6, 2019, Mr. Manning contacted FO5 staff by phone and submitted an email response to the NOV indicating that burning would be discontinued, and that a metal baler would be purchased to clean up the stockpiles of metal. He also stated that metal would be removed more frequently before a baler is obtained. DNR staff requested notice of when cleanup of ashes and non-recyclable wastes is completed.

6. On February 21, 2020, FO5 staff re-visited the property and found little or nothing had been removed. Large piles of metal and a few appliances

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remained, with large ash piles strewn with trade wastes such as plastic containers, and cardboard.

7. On February 25, 2020, FO5 staff left a voice message for Mr. Manning regarding the need to clean up the site. Mr. Manning responded by explaining that employees sometimes bring in non-metal construction and trade wastes. He agreed to educate employees, take non-recyclable wastes to a permitted landfill, to remove some metal and to remove more metal in the spring.

8. On August 7, 2020, FO5 staff re-visited the property and observed large piles of metal (mostly gutters) and a new burn area on the west side of the property. Additionally, piles of ashes seen previously had not been removed.

9. On August 19, 2020, FO5 staff spoke with Mr. Manning by phone and followed up via email. Mr. Manning reported he took some metal to a recycler, but he was not aware of new burning. He again reported he would be obtaining a metal baler.

10. On September 16, 2020, FO5 staff re-visited the property and observed piles of charred metal and ashes, additional piles of trade wastes (carpet, cardboard, lumber, plastic, containers, etc.), and larger piles of metal gutter material.

11. On October 5, 2020, FO5 staff spoke to Mr. Manning by phone and explained that due to the ongoing violations, the matter was being referred to DNR legal services for enforcement. Mr. Manning indicated that others had brought in the wastes. He also reported he has a metal baler.

12. On October 6, 2020, FO5 sent Mr. Manning another NOV for improper open burning and solid waste disposal. He was also informed that the matter was being referred to DNR legal services.

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 § 455D.4A prohibits the speculative accumulation of materials for recycling and deems material that is not being legitimately recycled

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to be subject to solid waste regulation. Mr. Manning must not speculatively accumulate material on the property and must otherwise comply with the requirements of this section.

4. 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.

5. 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.

6. 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 Mannings agree to the following:

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

2. Hereafter, Mr. Manning shall properly reuse, recycle, or dispose of all solid wastes in a manner consistent with Iowa law. Additionally, any and all recyclable material shall be stored as a valuable commodity in an orderly manner as required by Iowa's recycling statutory language.

3. Within 60 days of this Order being signed by the Director, Mr. Manning shall remove and properly dispose of all solid wastes located on the property, including ash from burning. Copies of proper disposal receipts shall be submitted to DNR FO 5 within 10 days of disposal.

4. Within 60 days of the Director signing this Order, Mr. Manning shall pay an administrative penalty of \$5,350.00.

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VI. CIVIL 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 Mr. Manning 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 conservatively estimates that 15 tons of waste has been burned. Based on a tipping fee of \$50.00 per ton, and a hauling cost to the Metro Park West Landfill at \$5.00 permit mile for three loads, DNR estimates an economic benefit of \$1,350.00.
- 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. Illegal disposal of solid waste by open burning threatens both the environment and human health. Burning construction and demolition wastes, furniture, tires, and other materials, 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, \$2,000.00 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 negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. The

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prohibition against dumping and open burning of construction/trade wastes are long-standing state regulations. Moreover, Mr. Manning was informed of these regulations, yet continued to violate them or allowed them to be violated. As such, \$2,000.00 is assessed for this factor.


4. The DNR has determined that a penalty of \$5,350.00 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.

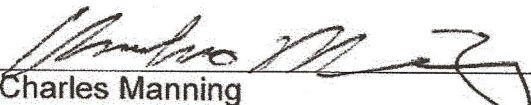
VIII. NONCOMPLIANCE WITH THIS ORDER

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 12th day of
January, 2021.



Charles Manning

Dated this 4th day of
January, 2021.

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