

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

IN THE MATTER OF: CORY SCHAFF AND SHARANE BROWN	ADMINISTRATIVE CONSENT ORDER NO. 2021-SW- <u>03</u> NO. 2021-AQ- <u>03</u>
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To: Cory Schaff
415 East Jefferson Street
Osceola, Iowa 50213

Sharane Brown
2724 Glenwood Drive
Des Moines, Iowa 50321

Re: Illegal open burning of a structure and illegal solid waste disposal.

I. SUMMARY

This administrative consent order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Mr. Cory Schaff and Ms. Sharane Brown (the Parties) for the purpose of resolving certain open burning and solid waste disposal violations that occurred on property in Woodburn, Iowa.

As detailed below, the Parties shall cease any and all illegal open burning of structures and illegal solid waste disposal in the state of Iowa, and shall pay an administrative penalty of \$4,135.00. The Parties are jointly responsible for the penalty payment. If the Parties cannot reach agreement on penalty payment, individual orders will be issued to each party with more significant penalties. The basis for this penalty is explained below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Bryan Bunton, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 5
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-725-0105

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

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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]

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 October 25, 2020, staff from DNR Field Office (FO) 5 received a complaint claiming that a large house fire was occurring at 1702 332nd Avenue in Woodburn, Iowa. The complainant called 911 but was told by the dispatcher that this was a training fire. The fire department did not respond to the blaze.
2. On October 27, 2020, DNR FO 5 staff visited the property and observed the smoldering remains of a single-family residence and an adjoining structure that was apparently being used as a storage shed. The remaining debris included tires, tire rims, fuel tanks, machinery, bricks, a water heater, and other metal objects.
3. On the same day, staff visited the Osceola Fire Department to obtain some additional information regarding the fire. According to Fire Chief Byron Jimmerson, a call came in to the Clarke County dispatch at 10:39 am on October 25, 2020 from Mr. Cory Schaff, who stated that there would be a controlled burn at 1702 332nd Avenue in Woodburn, Iowa. Mr. Jimmerson stated that the fire department, as a general practice, does not respond to controlled burns. He also indicated that this was not a training fire.
4. On October 30, 2020, DNR FO 5 staff spoke with both Ms. Sharane Brown (property owner) and Mr. Schaff by phone and informed them that they would be receiving a notice of violation (NOV) for violating open burning and

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solid waste rules, and advised them not to bury any non-rubble solid waste on site.

5. On November 2, 2020, Mr. Schaff notified DNR that he had started the clean-up process at the property.

6. On November 3, 2020, DNR FO 5 issued an NOV to Mr. Schaff and the property owners (C/O Sharane Brown) for improper open burning and solid waste disposal. The NOV required that a plan for proper disposal of solid waste be submitted by November 15, 2020.

7. On November 6, 2020, DNR FO 5 staff met with Mr. Schaff at the property. Mr. Schaff had removed most of the metals from the property for scrapping. He planned to scrape the ash out of the old house/storage shed, and move all large concrete chunks from the residence into the basement of the shed and then bury it. He would then scrape out the ash from the residence to be landfilled. Receipts obtained at the landfill and for scrapping are to be provided to DNR. This plan was deemed acceptable by DNR, subject to a follow-up visit by DNR.

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

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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 Parties agree to the following:

1. The Parties shall immediately discontinue and cease any future illegal open burning of structures or solid waste anywhere in the state of Iowa.
2. Hereafter, the Parties shall properly reuse, recycle, or dispose of all solid wastes in a manner consistent with Iowa law.
3. Within 30 days of this Order being signed by the Director, the Parties 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, the Parties shall jointly pay an administrative penalty of \$4,135.00.

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. At the request of the property owners, Mr. Schaff open burned a residence, garage, and old house/shed without first removing waste tires and shingles. This material should have been removed and taken to an approved sanitary

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disposal site for proper disposal. In this case, the parties were able to avoid landfill tipping fees for these items. Prairie Solid Waste Agency operates a transfer station that consolidates waste that is collected in Adams, Taylor, Union, and Clarke Counties, which is then hauled daily to the Metro Waste Authority (MWA) East Landfill in Des Moines. Prairie Solid Waste Agency accepts tires at \$0.15 per pound for more than 8 tires. Tipping fees at MWA East are \$25.00 per ton for asphalt shingles that originate outside of the service area. Since the material was not transported to the transfer station, a savings in fuel costs was also realized. Burning the structures prior to removing the shingles also resulted in a savings in labor costs. This allowed the parties to use these funds for some other economic purpose. Based on DNR's estimate, the economic benefit to the parties was \$3,145.00.

- 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.

Improper open burning of waste tires and shingles can degrade air quality in the immediate area and emit potentially harmful pollutants into the atmosphere. Smoke is also aesthetically unpleasing and can cause odors. Ashes and other demolition waste can contaminate ground water, and in some cases lower property values. State and federal regulatory programs that protect public health and the environment are undermined by improper open burning and illegal disposal activities. In addition, Mr. Schaff was able to underbid contractors who properly dispose of such waste, which also undermines environmental protection regulations.

For the reasons stated above, \$500.00 should be 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.

Mr. Schaff has been cited in the past for a number of solid waste violations at his East Side Automotive businesses and has received two NOVs. In addition, during one investigation at the location on Main Street he was informed that using burn barrels to burn car parts and trash was not allowed. Mr. Schaff is or should be aware of Iowa's restrictions on open burning.

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The property owners failed to determine the legality of burning down a residence and adjoining structures prior to hiring a contractor to do so.

For this reason, \$500.00 should be assessed for this factor.

4. The DNR has determined that a penalty of \$4,135.00 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.

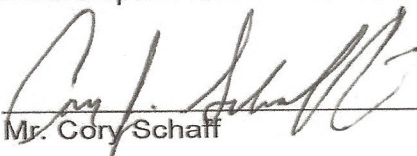
VIII. NONCOMPLIANCE WITH THIS ORDER

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.



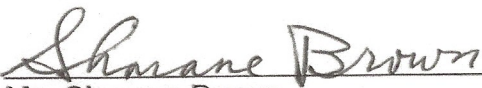
Kayla Lyon, Director
Iowa Department of Natural Resources

Dated this 19th day of
January, 2021.



Mr. Cory Schaff

Dated this 6th day of
January, 2021.



Ms. Sharane Brown

Dated this 6th day of
January, 2021.

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