

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

IN THE MATTER OF:

Rodney Ballhagen

ADMINISTRATIVE
CONSENT ORDER

NO. 2021-SW- 07

NO. 2021-AQ- 08

To: Rodney Ballhagen
PO Box 47
Allison, Iowa 50602

Re: Illegal open burning of solid waste and illegal solid waste disposal at a property in Parkersburg, Iowa.

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Mr. Rodney Ballhagen for the purpose of resolving certain open burning and solid waste disposal violations that occurred on property in Parkersburg, Iowa.

As detailed below, Mr. Ballhagen shall cease any and all illegal open burning of, and illegal disposal of, solid waste in the state of Iowa, and shall pay an administrative penalty of \$3,500.00. The basis for this penalty is explained below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Dan Watterson, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 2
2300 15th Street, SW
Mason City, Iowa 50401
(641) 424-4073

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 relevant to this matter:

1. On June 6, 2012, DNR FO2 staff investigated a complaint concerning open burning on Mr. Ballhagen's property. Staff found evidence of open burning and illegal solid waste disposal. A Notice of Violation (NOV) was issued to Mr. Ballhagen for these violations as well as for the improper composting of dead animals. Following issuance of the NOV, the burn pile was removed and remaining solid waste was properly disposed of.

2. On June 6, 2019, DNR FO2 staff again responded to a complaint regarding the composting of dead animals. An NOV was issued, and Mr. Ballhagen responded stating his view that composting had been properly land applied and that co-compost materials were used to ensure proper composting.

3. On March 5, 2021, DNR conducted a follow-up inspection of the property and discovered an open burn pile near the compost bin. An NOV was issued for prohibited open burning and solid waste disposal.

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

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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. Ballhagen agrees to the following:

1. Mr. Ballhagen shall immediately discontinue and cease any illegal open burning of solid waste anywhere in the state of Iowa. He shall also post informational signs prohibiting disposal of solid waste on the property.

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

3. Within 60 days of this Order being signed by the Director, Mr. Ballhagen shall remove and properly dispose of all solid wastes located on the property, including ash from open burning. Copies of proper disposal receipts shall be submitted to DNR FO2 within 10 days of disposal.

4. Mr. Ballhagen shall pay an administrative penalty of \$3,500.00. Payments of a minimum of \$200.00 will be made by the first of each month starting on August 1, 2021 and continuing until the full penalty amount is satisfied. The payments will be sent to the address on the front of this Order and will include the Order number on the check.

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.

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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 any party 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. The cost to properly recycle the items that were burned was estimated at \$50.00 based on rates listed on the Butler County Transfer Station website. The general trade and residential waste items in the burn pile could have been taken to the transfer station or local landfill at little or no cost other than personal transport expense. The amount of materials in the burn pile indicate the improper disposal likely has been occurring for a year or more. As such, \$100.00 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. The open burning of solid waste can release toxins that pollute the air and groundwater, and pose a risk to human health and the environment. As such, \$1,400.00 is assessed for this factor.
- c) Culpability: The prohibition against dumping and open burning of solid wastes are long-standing state regulations. This is the second time open burning has been documented to have occurred at this facility. Mr. Ballhagen was previously made aware of the open burning and solid waste disposal requirements following a complaint investigation. As such, \$2,000.00 is assessed for this factor.

4. The DNR has determined that a penalty of \$3,500.00 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.

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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



Mr. Rodney Ballhagen

Dated this 20 day of
May, 2021.

CC: DNR Field Office 2; David Scott; VI.C; VII.C.1.

