

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

IN THE MATTER OF: Tim Donham	ADMINISTRATIVE CONSENT ORDER NO. 2021-SW- <u>08</u> NO. 2021-AQ- <u>09</u>
--	---

To: Tim Donham
403 E. Green Street
Winterset, Iowa 50273

Re: Illegal open burning of solid waste.

I. SUMMARY

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

As detailed below, Mr. Donham agrees to cease any and all illegal open burning of, and illegal disposal of, solid waste in the state of Iowa, and to pay an administrative penalty of \$2,500.00. The basis for this penalty is explained below.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Dennis Thielen, Env. Specialist Sr.
Iowa Department of Natural Resources
Field Office No. 5
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-250-1798

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: TIM DONHAM

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 May 5, 2021, staff from DNR's Field Office 5 (FO5) investigated open burning occurring at 2982 Highway 92 in Winterset, Iowa. Staff observed two large active burn piles containing tires, appliances, and other household items. While on site, staff spoke with Mr. Donham who indicated he was paid to clean-up the site. The burn pile at the back of the property was an old mobile home and the remains of a tire and a water heater were observed. DNR staff instructed Mr. Donham to stop all burning and required the remaining debris to be taken to a landfill.
2. On May 6, 2021, FO5 staff issued a Notice of Violation (NOV) to Mr. Donham for violations of Iowa's open burning restrictions.
3. On May 14, 2021, FO5 staff visited the property and observed all the debris and burn piles had been cleaned up.
4. On May 17, 2021, the owner of the property submitted landfill receipts for the cleanup of the remaining debris.

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TIM DONHAM

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 Mr. Donham agrees to the following:

1. Mr. Donham shall immediately discontinue and cease any illegal open burning of solid waste anywhere in the state of Iowa.
2. Hereafter, Mr. Donham shall properly reuse, recycle, or dispose of all solid wastes in a manner consistent with Iowa law.
3. Within 30 days of the Director signing this Order, Mr. Donham shall pay an administrative penalty of \$2,500.00.

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TIM DONHAM

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. Based on a \$35.00 per ton landfill tipping fee, an estimated 17 tons of debris for the mobile home, an estimated 3 tons of additional debris witnessed on the property, and an estimated \$300.00 in transportation the costs, a conservative estimate of economic benefit for burning solid waste is \$1,000.00.
- 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. Burning tires and other solid waste results in the emission of potentially- harmful pollutants to the atmosphere in the immediate area. It also contributes to the degradation of large-scale ambient air quality. Persistent smoke in the air also creates a nuisance condition. Smoke was seen traveling several miles from the site causing a nuisance and possible health problems for neighbors. 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 negligence, and whether the violator has taken remedial measures to address the harm caused by the violations. The prohibition against dumping and open burning of solid wastes are long-standing state regulations. As such, \$500.00 is assessed for this factor.

4. The DNR has determined that a penalty of \$2,500.00 is warranted in order to settle this matter administratively.

VII. APPEAL RIGHTS

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TIM DONHAM

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

Mr. Tim Donham

Dated this _____ day of _____, 2021.

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TIM DONHAM

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

Tim Donham

Mr. Tim Donham

Dated this 11 day of
June, 2021.

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

Order Number - 2021-SW-
2021-AQ-

58307 06/17/21 AM1154