

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

IN THE MATTER OF:

Doug Eichelberger

ADMINISTRATIVE
CONSENT ORDER

NO. 2021-SW- 09

NO. 2021-AQ- 10

To: Doug Eichelberger
1740 215th Street
Muscatine, Iowa 52761

Re: Illegal disposal and burning of solid waste.

I. SUMMARY

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

As detailed below, Mr. Eichelberger agrees to cease any and all illegal open burning, illegal incineration, and illegal disposal of solid waste in the state of Iowa, and to 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:

Anthony Kerker, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison Street
Washington, Iowa 52353
Phone: 515-201-2314

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 March 26, 2021, staff from DNR Field Office 6 (FO6) received an anonymous complaint alleging open dumping located at 1740 215th Street in Muscatine, Iowa. The complainant stated that several different types of solid waste had been disposed of on the property.

2. On March 30, 2021, FO6 staff visited the property. Staff noticed a large pile of solid waste near a maintenance shed, a portion of which had been burned.

3. On April 5, 2021, DNR issued a notice of violation (NOV) to Mr. Eichelberger, the property owner. The NOV explained applicable Iowa law and instructed Mr. Eichelberger to, among other things, cease open burning of solid waste and illegal disposal of solid waste.

4. On April 23, 2021, FO6 staff visited the property to determine the status of compliance. Staff witnessed a large incinerator in the area of the previous burn pile, and noted the former open dump/burn pile had been pushed to the edge of the property. Inside the incinerator, staff noted different types of solid waste.

5. On April 28, 2021, a second NOV was issued to Mr. Eichelberger for illegal disposal of solid waste, open burning, and for the illegal incineration of solid waste.

6. On May 3, 2021, Mr. Eichelberger requested an in-person meeting at his property to discuss the NOVs.

7. On May 4, 2021, DNR staff spoke with Mr. Eichelberger and scheduled an in-person meeting on his property for May 6. During the call, Mr. Eichelberger acknowledged use of the incinerator and he stated that he had been using the incinerator for some time. Mr. Eichelberger subsequently stated he could

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not participate in the May 6 meeting, but that DNR staff were welcome on his property and he would make sure someone was home.

8. On May 6, 2021, FO6 staff visited the property. Staff spoke with Mr. Eichelberger's father about what was going on. Staff then proceeded to check the inside of the incinerator and found that additional items were placed within the incinerator since DNR's last visit to the property. The pile of solid waste also remained on the property.

9. On June 2, 2021, FO6 staff again visited the property following a complaint and determined that use of the incinerator continued and that incinerator ash had been dumped on the ground.

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. 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.

6. Finally, the Commission has adopted 567 IAC 23.4(12) which restricts the use of incinerators in the state of Iowa unless certain criteria

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addressing emissions are complied with. The above-stated facts establish violations of this rule.

V. ORDER

THEREFORE, the DNR orders and the Mr. Eichelberger agrees to the following:

1. Within 30 days of this Order being signed by the Director, Mr. Eichelberger must properly dispose of all solid waste remaining on the property at a permitted solid waste facility (landfill and/or recycling facility). This includes burnt material and ash. Copies of disposal receipts must be provided to FO6 staff within 10 days of proper disposal.
2. All illegal open burning on the property or anywhere else in Iowa shall cease immediately.
3. Use of an unpermitted/uncontrolled incinerator on the property for the purpose of illegally burning solid waste shall immediately cease.
4. Within 30 days of this Order being signed by the Director, Mr. Eichelberger shall pay an administrative penalty of \$3,500.00.

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 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

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result of non-compliance. Mr. Eichelberger avoided paying disposal fees for house-hold trash, business waste and other debris that has been burned for the purpose of disposal. Due to unknown quantity of solid waste burned, DNR estimates an economic benefit of at least \$500.00.

- 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 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. 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 prohibition against dumping, open burning, and incineration of solid wastes are long-standing state regulations. As such, \$1,000.00 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.


VIII. NONCOMPLIANCE WITH THIS ORDER

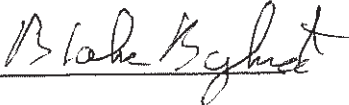
Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties. Compliance with Section V (Order) of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.

Kayla Lyon

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Date: 2021.06.24 09:43:33 -05'00'

Kayla Lyon, Director
Iowa Department of Natural Resources


Mr. Doug Eichelberger



Dated this 16 day of
6, 2021.

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CC: DNR Field Office 6; David Scott; VI.C; VII.C.1.