

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

<p>IN THE MATTER OF:</p> <p><b>Tim Sletten and Stephen Ezell</b></p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2021-SW- <u>12</u> NO. 2021-AQ- <u>11</u></p>
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To: Tim Sletten  
2604 160<sup>th</sup> Street  
Marshalltown, Iowa 50158  
(VIA EMAIL)

Stephen Ezell  
907 W. 8<sup>th</sup> Street  
Newton, Iowa 50208  
(VIA EMAIL)

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

**I. SUMMARY**

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

As detailed below, the Parties agree to cease and prevent any illegal open burning of, and illegal disposal of, solid waste in the state of Iowa, and shall pay jointly an administrative penalty of \$500.00 to settle the allegations in this Order. The Parties state that payment of the penalty is not an admission of guilt, but is instead intended to settle the matter.

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 East Ninth Street  
Des Moines, Iowa 50319-0034  
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

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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 relevant to this matter:

1. In November, 2019, Mr. Tim Sletten was issued a Letter of Non-compliance for improper solid waste disposal and open burning at one of his rural properties. He was informed of applicable regulations at that time.
2. On October 16, 2020, a complaint was filed with DNR Field Office 5 (FO5) about Mr. Sletten bringing rental property renovation wastes out to a pit on his property and burning it.
3. On October 20, 2020, FO5 staff visited the property and found smoldering construction and demolition (C&D) wastes, charred tire rims and wire, and other solid wastes in an earthen pit northeast of the garage.
4. On October 28, 2020, FO5 staff sent Mr. Sletten a Notice of Violation (NOV) for improper open burning and solid waste disposal.
5. On January 8, 2021, FO5 staff visited the property and found additional C&D waste had been dumped into the pit.
6. On January 11, 2021, FO5 staff sent Mr. Sletten an NOV for improper solid waste disposal.

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7. On January 14, 2021, Mr. Sletten contacted FO5 staff by phone. He agreed to send the names of the parties responsible for the illegal disposal. He provided Mr. Ezell's contact information.

8. On January 22, 2021, FO5 staff visited the property and found that C&D waste had been burned and additional waste had been dumped into the pit. Mr. Sletten reported Mr. Ezell was purchasing the property. An improper open burning and solid waste disposal letter was sent to Mr. Ezell. An initial certified letter was not claimed, so an uncertified letter was sent on February 26, 2021.

9. On January 28, 2021, the property was listed as having been sold to Mr. Ezell on contract.

10. On February 4, 2021, FO5 staff contacted Mr. Sletten and Mr. Ezell by phone. Both denied responsibility for the illegal disposal and open burning. Mr. Ezell reported that the disposal site was present before he came onto the property. He also suggested that a contractor hired to renovate the house may have been responsible for the continued illegal activity. Mr. Ezell did not provide confirmation of the name of the contractor.

11. On March 25, 2021, FO5 staff again visited the property and found that the excavation had been backfilled with soil.

12. On March 26, 2021, FO5 staff contacted Mr. Sletten by phone. Mr. Sletten stated that he believed the property's contract buyer, Mr. Ezell, removed the waste before backfilling the excavation. He agreed to send disposal receipts to FO5, but has not done so.

13. On June 7, 2021, Mr. Sletten excavated the area where solid waste was previously located to establish that no waste had been buried. DNR FO5 staff visited the property and confirmed no solid waste was buried.

#### **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 the Parties agree to the following:

1. The Parties shall cease any illegal open burning of 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 the Director signing this Order, the Parties shall pay an administrative penalty of \$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

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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. \$500.00 is conservatively 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. 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. State and federal air quality and solid waste disposal regulatory programs are intended to protect health and environment and are undermined by improper open burning and solid waste disposal. However, in the interest of settlement, the DNR has determined that no penalty will 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. The prohibition against dumping and open burning of solid wastes are long-standing state regulations. However, in the interest of settlement, the DNR has determined that no penalty will be assessed for this factor.

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



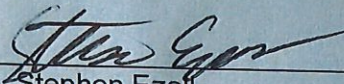
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satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.

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Kayla Lyon, Director  
Iowa Department of Natural Resources

  
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Mr. Tim Sletten

Dated this 9 day of  
July, 2021.

  
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Mr. Stephen Ezell

Dated this 9<sup>th</sup> day of  
July, 2021.

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