

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

<p>IN THE MATTER OF:</p> <p>RAYMOND F. SMITH, DES MOINES COUNTY, IOWA</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2021-AQ-12</p>
---	---

To: Raymond F. Smith
12673 Flint Bottom Road
Burlington, Iowa 52601-8711

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Raymond F. Smith for the purpose of resolving solid waste and air quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Benjamin Stracuzzi, Field Office 6
Caroline Davis, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:

Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-238-3429

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
RAYMOND F. SMITH

pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Raymond F. Smith owns property located at 12673 Flint Bottom Road in Burlington, Iowa (the site). Improper solid waste disposal and illegal open burning has occurred at the site.

2. On May 3, 2021, DNR Field Office 6 received a phone call from the Burlington Fire Department (Fire Department) to report unauthorized burning at 12673 Flint Bottom Road (the site). The site is owned by Raymond F. Smith. According to the Fire Department report, on May 3, 2021, the Fire Department saw a large column of black smoke rising from behind the site. The Fire Department went to the site and found a burn pile containing what appeared to be several flat screen televisions and other electronics. The Fire Department extinguished the fire and counted the remains of at least seven flat screen televisions along with other plastic materials. No one was at the site at the time of the fire. Several photos were taken at the site. The Fire Chief then met with Mr. Smith at his business, Total Plaza, located on Sunnyside Avenue in Burlington, and Mr. Smith acknowledged that there were televisions burning at the site. Mr. Smith stated that he did not know he could not burn them. The Fire Chief informed Mr. Smith that a report would be filed with DNR and that DNR would likely contact him. The Fire Chief also left a pamphlet containing Iowa's open burning rules with Mr. Smith.

3. In addition to his other businesses located in Total Plaza Mr. Smith's family owns and operates the Smash-N-Bash business in Burlington, which destroys items including televisions and other electronics for the recreational activity of paying customers, resulting in trade waste accumulation and a potentially hazardous waste stream. As the result of a complaint investigation about Smash-N-Bash conducted by DNR Field Office 6 in January through May 2021, Smash-N-Bash was informed by DNR Field Office 6 in writing of the hazardous nature of and proper disposal of televisions and other electronics. However, since the May 2021 DNR investigation, Smash-N-Bash has stopped accepting TVs to use as part of its business.

4. On May 5, 2021, Caroline A. Davis of DNR Field Office 6 began an investigation of the complaint received by DNR as a result of the above-mentioned incident. The Fire Department had provided its report and photos taken at the site.

5. A May 10, 2021, Notice of Violation (NOV) letter was sent to Mr. Smith, along with a DNR document listing the history of violations at the site, the Fire Department report, and a copy of the open dumping and open burning regulations.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
RAYMOND F. SMITH

6. On May 13, 2021, Ms. Davis called Mr. Smith and told him that he would be receiving an NOV letter from DNR regarding the unauthorized burning. Ms. Davis gave Mr. Smith an overview of the NOV and told him that DNR would be requesting landfill receipts for proper disposal of the remaining ash and debris located at the site. Mr. Smith was cordial and said the Fire Department had told him that someone from DNR would be contacting him. Ms. Davis told Mr. Smith to call her at DNR Field Office 6 if he had any questions regarding the NOV letter.

7. In July and August 2021, Mr. Smith disposed of solid waste from the site and has provided receipts to DNR from the Des Moines County Solid Waste landfill. Mr. Smith has provided DNR with pictures of the cleaned site.

8. Mr. Smith has a history of illegal open dumping and illegal open burning occurring at the site. On April 9, 2018, DNR Field Office 6 received an anonymous complaint stating that an Iowa DOT subcontractor, known as Batey's LTD and Ames Construction, stating that tree and brush debris from Iowa DOT road construction activities along Highway 61 in Burlington was being dumped and burned on private property owned by Raymond Smith and located at 12673 Flint Bottom Road, Burlington (the site).

9. In April 2018, Bert Noll of DNR Field Office 6 visited the site to investigate the complaint. An April 16, 2018, Letter of Non-Compliance was issued to the DOT subcontractor and was mailed to Mr. Smith as well. At that time, Mr. Smith was provided with information about and the location of the prohibition against illegal open burning.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in subrule 23.2(2) (variances) and subrule 23.2(3) (exemptions). The open burning of solid waste materials, as described above, is a violation of the provisions of 567 IAC 23.2. The open burning of trade waste is specifically prohibited. The open burning of solid waste materials at the site, as described above, is a violation of the provisions of 567 IAC 23.2.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
RAYMOND F. SMITH

4. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. The facts in this case demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and Raymond F. Smith agrees to the following:

1. Mr. Smith shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at the site and at any location in the State of Iowa, and shall comply in the future with the regulations concerning disposal of solid waste and open burning; and

2. Within 30 days of the date this order is signed by the director, Mr. Smith shall pay a penalty of \$1,000.00.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, the director is authorized to assess administrative penalties, as follows:

Iowa Code section 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. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the type of solid waste disposal violations involved in this matter.

Iowa Code section 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 and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$1,000.00 penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – 567 IAC Chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that “where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, DNR shall take enforcement action which includes

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
RAYMOND F. SMITH

penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states that “reasonable estimates of economic benefit should be made where clear data are not available.”

While Mr. Smith initially avoided paying disposal fees for televisions, electronics, and other household trash that has been burned for the purpose of disposal, in July and August 2021, Mr. Smith disposed of the materials at a landfill and provided landfill receipts to DNR.

Therefore, no amount is assessed for economic benefit.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter.

Improper solid waste disposal and illegal open burning can degrade air and water quality and contribute contaminants to both land and water resources as well as threaten public health.

Open burning of the household trash and electronics, including televisions, which contain plastic material and potentially hazardous waste, releases smoke and uncontrolled emissions of various air pollutants. Particulates in smoke generally have diameters of less than 10 micrometers, with many smaller than 2.5 micrometers (fine particulates), the size of particles is directly linked to their potential for causing health problems. For example, burning plastic materials releases toxins into the air and into the ground around the burn site, including dioxins, furans, polycyclic aromatic hydrocarbons, particulate matter, heavy metals (such as lead, arsenic, selenium and cadmium) and likely other pollutants.

Further, the open burning of trade waste, which occurred at the site, is specifically prohibited.

For these reasons, \$400.00 is assessed for this factor.

Culpability – Factors to be considered in determining the amount to be assessed for culpability include the degree of intent or negligence; the standard of care required by the laws of the state; and whether the violator has taken remedial measures or mitigated the harm caused by the violations.

Mr. Smith has a duty to remain knowledgeable of DNR regulations and to be alert to the probability that his conduct is subject to DNR’s rules. Open burning prohibitions have

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
RAYMOND F. SMITH

been in place for over 45 years and improper solid waste disposal regulations have been in place for many years. Further, Mr. Smith was specifically made aware of the prohibition against illegal open burning when DNR Field Office 6 provided him with a copy of a Letter of Non-Compliance in April 2018 for illegal open dumping and open burning that took place on his property.

Therefore, \$500.00 is assessed for culpability.

Aggravating Factor -

In April 2018, Mr. Smith was provided with information about and the location of the prohibition against illegal open burning. However, illegal open burning occurred again at the site in May 2021.

Therefore, an additional \$100.00 is for Aggravating Factors.

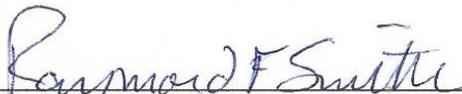
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Raymond F. Smith. For that reason, Raymond F. Smith waives his right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

Kayla Lyon, Director
Iowa Department of Natural Resources



Raymond F. Smith

Dated this 12 day of
AUGUST, 2021.

DNR Field Office 6; Anne Preziosi; VII.B.2.