

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF: STEVE SEELYE, MARSHALL COUNTY, IOWA	ADMINISTRATIVE ORDER NO. 2021-AQ-17
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To: Steve Seelye
420 Main Street
P.O. Box 107
Ferguson, Iowa 50078

I. SUMMARY

This administrative order (order) requires Steve Seelye to comply with the provisions in Section V of the Order, subject to the appeal rights stated in this Order.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Anthony Bigger, Field Office 5
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-238-7297

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 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 pursuant to

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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. On April 26, 2021, a complaint was filed with DNR Field Office (FO) 5 about open burning of rubber tires on the property located at 2940 Lafayette Avenue in Marshall County (the site). The site is a 5.58 acre plot of land with a house and several out buildings. The site is located on the south end of the small unincorporated town of Van Cleve, Marshall County, Iowa. The property is owned by Edith Pothast, who is the mother of current resident Cheryl Davenport.

2. On April 27, 2021, a second complaint was received by DNR FO 5. Anthony Bigger of DNR FO 5 investigated the complaint on April 27 and found several large piles of burning tires with many steel belts in each burning pile. The burned tires and steel rims were mixed with some trees and brush. Mr. Bigger also observed several large piles of trash and debris dumped in a location south east of the house and several burn pile locations along the east side of the property behind the pole barn. Additionally, there were several large holes throughout the property where burnt trash and debris was being buried on site.

3. On the evening of April 27, 2021, Mr. Bigger spoke with Ms. Davenport about the observations made during his April 27 site visit. Ms. Davenport explained that she had been out of town, and had hired Steve Seelye to clean up the site. She had paid Mr. Seelye \$4,000.00 to do the work while Ms. Davenport was gone. Ms. Davenport had told Mr. Seelye to clear out the brush and over growth around the property, to remove the trash and debris, and to dispose of the tires located at the site. She had stated to Mr. Seelye that only brush, trees, and an old wooden corn crib were supposed to be burned.

4. On April 28, 2021, Mr. Bigger sent a Notice of Violation letter (NOV) to Ms. Davenport, informing her of the prohibition against illegal open burning and illegal open dumping.

5. On April 29, 2021, Mr. Bigger returned to the site to speak with Mr. Seelye about the open burning and to require him to stop burning rubber tires and debris, and to refrain from on site burial. When Mr. Bigger returned to the site, Mr. Seelye was not present, but one of his workers was there. Mr. Bigger instructed the worker to dump dirt on the burning tires and to stop any further clean up and burning on this site. Mr. Bigger attempted to contact Mr. Seelye by phone and left several messages, but received no response.

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6. Mr. Bigger sent Mr. Seelye an April 29, 2021, NOV letter, informing Mr. Seelye of the DNR rules prohibiting illegal open burning and illegal open dumping.

7. On June 1, 2021, Mr. Seelye provided DNR with photographs showing the cleaned-up site. Mr. Seelye also provided DNR with landfill and tire recycling receipts totaling \$6,384.79.

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 tires 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.

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 Steve Seelye to do the following:

1. Steve Seelye 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;

2. Within 60 days of the date this order is signed by the director, Steve Seelye shall pay a penalty of \$750.00.

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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 order with a \$750.00 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 penalties which at least offset the economic benefit.” 567 IAC 10.2(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available.”

Mr. Seelye was paid \$4,000.00 for his work at the site, and he has provided DNR with receipts for clean-up of the site totaling \$6,384.79. For these reasons, 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. As stated above, several complaints were received by DNR. Further, the open burning of tires, which occurred at the site, is specifically prohibited.

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For these reasons, \$375.00 should be 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.

Steve Seelye 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 been in place for over 45 years and improper solid waste disposal regulations have been in place for many years.

Therefore, \$375.00 is assessed for culpability.

VII. APPEAL

Pursuant to Iowa Code section 455B.175(1)(a) and 567 IAC Chapter 7, a written notice of appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The notice of appeal must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 5621 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this administrative 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.

Kayla Lyon, Director
Iowa Department of Natural Resources

DNR Field Office 5; Anne Preziosi; VII.B.2.