

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>David Omar Mercado</p>	<p style="text-align:center">ADMINISTRATIVE ORDER</p> <p style="text-align:center">NO. 2022-SW-<u>02</u></p>
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To: David Omar Mercado
14164 113th Avenue
Davenport, Iowa 52804

RE: Illegal Hauling and Disposal of Waste Tires.

I. SUMMARY

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Mr. David Omar Mercado to address the illegal hauling and disposal of waste tires. Mr. Mercado is required to immediately cease waste tire hauling and disposal, and to remove and properly dispose of waste tires pursuant to the provisions below. Mr. Mercado is also required to pay an administrative penalty of \$10,000.00 due to the ongoing and repeated nature of these violations.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Bert Noll, Environmental Specialist
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison St.
Washington, Iowa 52353
Ph: (319) 653-2135

**Relating to legal requirements and
administrative penalty:**

David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Division
1023 W. Madison St.
Washington, Iowa 52353
Ph: (319) 653-2135

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 Chapter 455D, which addresses waste tire disposal and the criteria for legitimate recycling in Iowa, and authorize the Director to issue any order necessary to secure compliance with those criteria, including removal and proper

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disposal of solid waste; 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 relevant facts are stated in chronological order:

1. Mr. Mercado currently resides at 14164 113th Avenue, Davenport, Iowa, 52804, which is a residential class property in Scott County. Mr. Mercado rents this property and has hauled and accumulated well in excess of 500 passenger tire equivalents (PTE) to this property.

2. On September 7, 2021, DNR Field Office (FO) 6 received an email from the Scott County Health Department (SCH) that it had received a complaint that two individuals were hauling and storing waste tires at 14164 113th Avenue, Davenport, Iowa. SCH investigated the complaint and provided DNR with pictures and information regarding the individuals who reside at this residence. According to the information provided by SCH, one of the individuals who resided at the address was David Mercado. The individuals were reportedly being paid by local businesses to pick up waste tires, thereby undercutting legitimate licensed waste tire haulers and recyclers. According to the SCH investigation, there were two semi-truck cargo boxes full of waste tires on the property and a large pile of waste tires in the backyard.

3. On September 8, 2021, SCH received information from the Scott County Sheriff's office that the tenants at 14164 113th Avenue, Davenport, were Timothy Peters and David Omar Mercado.

4. On September 10, 2021, DNR FO6 received further information from SCH that its staff had visited several local tire businesses who stated that Mr. Mercado had been picking up their waste tires.

5. On September 13, 2021, SCH staff met with Mr. Mercado at his residence. Mr. Peters provided receipts for 10 tons of tires that were picked up by K&S Tire Recycling, Inc. He explained to SCH that he needed to pick up further tires from local businesses to pay for the trailer pick up from K&S.

6. On September 15, 2021, SCH was notified by Gravert's Auto Company that Mr. Peters and Mr. Mercado had picked up their waste tires the previous day and provided a receipt. SCH advised Gravert's to obtain the services of a licensed tire hauler and recycler for future waste tire disposal.

7. On September 28, 2021, staff from SCH and DNR FO6 met with Tim Peters and Mr. Mercado at 14164 113th Avenue, Davenport, IA, to discuss the waste tire hauling and accumulation in violation of Iowa law. According to SCH

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staff observations, one of the storage containers on the property had been half empty at the time of her last visit and was now full again.

8. On October 6, 2021, DNR staff spoke with the owner of “All Kinds of Things” storage in Davenport, Iowa. He notified DNR that Mr. Mercado had rented two storage units (one 10’x40’ and one 10’x30’) and filled them both with waste tires. According to the owner, Mr. Mercado promised to remove the tires from the units but, to date, he had not and he had ceased paying rent.

9. On October 14, 2021, a Notice of Violation was issued to Mr. Mercado for non-compliance with Iowa law.

10. On November 16, 2021, DNR staff visited Mr. Peters’ and Mr. Mercado’s residence at 14164 113th Avenue, in Davenport, Iowa to determine if any waste tires on the property had been removed. No one was home at the time, and there appeared to be more tires on the property than during previous visits.

11. On December 12, 2021, DNR staff again visited the property and noted that there had been no progress on tire removal.

IV. CONCLUSION OF LAW

1. Iowa Code § 455B.307 prohibits a private entity 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 unless the entity has been granted a permit by the DNR which allows the dumping or depositing of solid waste on land owned or leased by the entity. The above-stated facts establish a violation of this statutory prohibition.

2. Iowa Code Chapter 455D regulates recycling of materials that would otherwise be solid waste. Section 455D.4A addresses the requirements a facility must meet to establish that the facility is legitimately recycling material.

3. Iowa Code § 455D.4A(3) authorizes the DNR to deem material that is not legitimately recycled to be solid waste.

4. Iowa Code § 455D.11(2) prohibits the land disposal of waste tires, unless the tire has been processed in a manner established by the DNR. The above-stated facts establish a violation of this statutory prohibition.

5. Iowa Code § 455D.23 authorizes the DNR to require material that is not legitimately recycled to be properly disposed of.

6. 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 Iowa Administrative Code (IAC) chapters 100-123.

7. The Commission has adopted 567 IAC 100.4 for the regulation of open dumping in Iowa. The provision prohibits a private entity 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 DNR authorizing the disposal of solid waste. The above-stated facts establish multiple and continued violations of this prohibition on open dumping.

8. The Commission has adopted 567 IAC 116.3 which, in part, requires waste tire haulers to register annually with the DNR. Only registered waste tire haulers are authorized to haul tires in the state of Iowa. The above-stated facts establish multiple violations of this regulation.

9. The Commission has adopted 567 IAC 117.4(1) to prevent accumulation of waste tires on a property. The provision states that no business or individual shall store more than 500 passenger tire equivalents without obtaining a permit for a waste tire stockpile pursuant to 117.4(2). The above-stated facts establish a violation of this regulation.

V. ORDER

THEREFORE, the DNR orders the following:

1. Mr. Mercado must immediately cease the hauling of waste tires in the state of Iowa, and must comply with applicable Iowa waste tire hauling regulations in the future.

2. Mr. Mercado must immediately cease the open dumping of waste tires in the state of Iowa, and must comply with all waste tire disposal regulations in the future.

3. Within 60 days of the date this Order is signed by the Director, Mr. Mercado must remove and properly dispose of all tires located in Davenport, Iowa, or at any other location in the state of Iowa. Proof of proper disposal must be provided to DNR FO6 within 10 days of such disposal.

4. Mr. Mercado must pay an administrative penalty of \$10,000.00 due to the ongoing and repeated violations referenced herein within 60 days of this Order being signed by the Director.

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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.

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 penalty 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. The administrative penalty assessed by this Order is determined as follows:

a) 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, the department 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.”

There was a significant economic benefit realized by Mr. Mercado by a) failing to obtain a waste tire hauler license, b) failing to properly dispose of waste tires, and c) receiving payment to dispose of waste tires. The annual registration fee for a waste tire hauler license is \$50.00, plus the cost of a \$150,000 (minimum) financial assurance bond (estimated to cost approximately \$1,500.00 per year). Additionally, the economic benefit from the illegal disposal of waste tires including handling, transportation, and tire disposal costs is estimated to be \$7,500.00. This estimate is based on the estimated 2,500 waste tires located at the Davenport property multiplied by a \$3.00 per tire disposal cost. This does not account for the tires illegally disposed of at the storage facility in Davenport. As such DNR estimates, very conservatively, a \$9,050.00 economic benefit.

As such, DNR assesses a penalty of \$9,050.00 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.

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Open dumping of waste tires damages the environment, prevents proper management of disposing of solid waste and may encourage or inspire others to open dump. Open dumping of waste tires threatens the integrity of Iowa DNR's environmental programs and efforts to protect our natural resources. Similarly, failure to obtain the proper registration to haul waste tires prevents the DNR from protecting interests associated with the proper management of waste tires, including protecting those businesses that do comply with Iowa's waste tire regulations.

As such, \$3,000.00 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.

Waste tire and open dumping prohibitions have been in place in Iowa for more than 40 years. It is the responsibility of Mr. Mercado to know and abide by these rules and he is fully aware of them from previous DNR correspondence.

Given the magnitude of the non-compliance including the most recent illegal disposal of tires at the storage facility in Davenport, \$3,000.00 is assessed for this factor.

4. As DNR's administrative penalty authority is capped at \$10,000.00 by rule, DNR assesses a penalty of \$10,000.00 for the violations enumerated in this Order.

VII. APPEAL RIGHTS

This Order is subject to appeal pursuant to Iowa Code § 455B.110 and the contested case rules promulgated pursuant to that section. An appeal must be received by the DNR within 60 days of the date this Order issued, at which time a contested case hearing will be scheduled before an Administrative Law Judge. Failure to appeal will result in this Order being considered final agency action.

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order may result in the

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imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and/or civil penalties.

Kayla Lyon, Director
Iowa Department of Natural Resources

CC: DNR Field Office 6,
David Scott,
Sara Anders, 625 Cedar St, Davenport, Iowa, 52802 (Property Owner)

VI.C.