

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>Mark Snyder</p>	<p style="text-align:center">ADMINISTRATIVE ORDER</p> <p style="text-align:center">NO. 2022-SW- <u>03</u></p>
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To: Mark Snyder
310 Riverview Drive
Red Oak, Iowa 51566

Re: Non-compliance with Iowa solid waste regulations, open dumping.

I. SUMMARY

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Mr. Mark Snyder to resolve violations of Iowa law governing solid waste disposal.

As detailed below, Mr. Snyder shall dispose of all solid waste on the referenced property at a permitted landfill, provide landfill disposal receipts to the DNR, comply with Iowa solid waste regulations in the future, and pay an administrative penalty of \$10,000.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Kevin Moler, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 4
1401 Sunnyside Lane
Atlantic, Iowa 50022
Phone: 712-243-1934

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
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

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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 promulgated or permits issued pursuant thereto; 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. Mark Snyder's private residence is located at 310 Riverview Drive, Red Oak, Iowa. Mark Snyder's construction business operates out of the 310 Riverview Drive address. Mark Snyder is also part-owner of a pond property across from and west of 310 Riverview Drive (pond property).

2. On July 14, 2020, DNR Field Office (FO) 4 received a complaint that Mr. Snyder was dumping solid waste on his pond property.

3. On July 16, 2020, FO4 staff met with Mr. Snyder at his residence. Mr. Snyder stated that he owns a roofing company and a recent hailstorm had kept his roofing company busy so he was disposing of this roofing waste on his property until he had time to load it and haul it to the landfill. Also, he stated COVID had prevented the landfill from operating during normal hours, so he had not been able to dispose of solid waste in a proper timeframe. Mr. Snyder allowed DNR staff to visit the pond property. He also informed staff where the key to the gate padlock was located whenever DNR staff needed access. The inspection revealed what appeared to be no burning or burying of waste. A copy of the applicable solid waste regulations was provided to Mr. Snyder.

4. On July 20, 2020, DNR issued a Letter of Noncompliance (LNC) to Mr. Snyder informing him that he may be in violation of Iowa solid waste regulations if the waste located on the pond property was not properly disposed of in a timely manner.

5. On September 22, 2020, FO4 staff conducted a follow-up visit to the pond property to determine compliance status. Several piles had not been removed and additional waste piles were added since the July 16 visit.

6. On September 23, 2020, FO4 staff sent a Request for Information (RFI) letter to Mr. Snyder requesting a timeline for removing waste piles and submitting landfill receipts.

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7. On December 4, 2020, FO4 staff conducted a follow-up visit to the pond property and noted that some of the waste piles had been hauled away. However, as of that date, Mr. Snyder had not submitted landfill receipts to FO4. Additional piles remained on the pond property, as well.

8. On June 2, 2021, FO4 staff conducted a follow-up site visit to the pond property and noted that waste piles documented in previous photos were removed from the site, but also two additional piles appeared to have been added since the December 4, 2020, site visit.

9. On July 16, 2021, FO4 staff conducted a follow-up site visit and noted piles of solid waste similar to previous visits.

10. On August 9, 2021, FO4 issued a Notice of Violation (NOV) to Mr. Snyder based on observations and documented site conditions from the previous follow up visits. Mr. Snyder was given until August 20 to remove and properly dispose of the solid waste to avoid further enforcement action.

11. On August 27, 2021, FO4 staff conducted a follow-up site visit to determine if waste piles had been removed from the pond property. Staff located Mr. Snyder at his home and reviewed the DNR's previous requests regarding proper disposal of the solid waste and providing documentation of proper disposal. Mr. Snyder stated he had been busy and had not had time to dispose of the waste as required. Upon inspection of the pond property, new piles of waste were noted. Mr. Snyder was informed that the matter would likely be referred for further enforcement action.

12. In mid-October, 2021, the DNR offered a settlement agreement to Mr. Snyder in the form of a Consent Order. Mr. Snyder failed to respond to the offer.

13. In December, 2021, DNR notified Mr. Snyder that failure to reach agreement on a settlement would result in the issuance of this Order with an increased administrative penalty.

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.

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3. Iowa Code § 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste, including appliances. 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 violations of this regulatory prohibition.

V. ORDER

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

1. Mr. Snyder must cease the illegal disposal of solid waste and comply with Iowa's solid waste disposal regulations at all times in the future.

2. All solid waste on the pond property or located at any other location owned or operated by Mr. Snyder must be properly disposed of within 60 days of this Order being signed by the Director. Receipts showing proper disposal must be provided to DNR FO4 within ten days of such proper disposal.

3. Mr. Snyder acknowledges that depositing waste from his business any place other than at a permitted solid waste disposal facility—even if temporarily—is a violation of Iowa law. As such, all waste from his business will be properly disposed of in the future.

4. Within 60 days of the date this Order is signed by Director, Mr. Snyder shall pay an administrative penalty of \$10,000.00.

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.

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

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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. 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 that were 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.”

Based on the evidence of waste located on the pond property, an estimated tipping fee of \$81.00 per ton and associated hauling costs, DNR estimates an economic benefit over time of approximately \$3,000.00. As such, \$3,000.00 is 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.

Improperly disposing of solid waste creates a nuisance condition, and the degradation of asphalt shingles can result in significant environmental impacts. Additionally, allowing the illegal disposal of solid waste threatens the integrity of the DNR’s regulatory program. 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 of the violator, and whether the violator has taken remedial measures to address the harm caused by the violations.

The DNR provided the necessary information to Mr. Snyder to allow him to resolve this issue without further enforcement action being necessary. However, he has failed to come into compliance. As such, \$3,000.00 is assessed for this factor.

- d) Aggravating Factor: The DNR has provided Mr. Snyder a long period of time to come into compliance, including the opportunity to enter a settlement agreement to settle the violations referenced herein. Mr. Snyder has failed to come into compliance despite the ongoing efforts by DNR. As such, the DNR is increasing the administrative penalty by \$1,000.00.

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VII. APPEAL

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, including failure to timely pay any penalty, may result in referral to the Iowa Attorney General to obtain injunctive relief and civil penalties.

Kayla Lyon, Director
Iowa Department of Natural Resources

CC: DNR Field Office 4; David Scott; VI.C