

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

IN THE MATTER OF:

Brenda and Bradley Miller

ADMINISTRATIVE
CONSENT ORDER

NO. 2022-SW- 04

To: Brenda and Bradley Miller
824 Taylor Avenue
Lowden, Iowa 52255

RE: Storage/Burning of Waste Tires.

I. SUMMARY

This administrative consent order (Order) is entered between the Iowa Department of Natural Resources (DNR) and the Millers to address the illegal storage and burning of waste tires. The Millers are required to properly dispose of the tires referenced herein within 90 days of the Director signing this Order, and must ensure that no additional tires are burned. There is no administrative penalty assessed in this Order, but a penalty may be assessed in the future in a separate Order if the tires on the property are not properly disposed of in a timely manner.

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 facts are relevant to this matter:

1. On September 13, 2021, DNR Field Office (FO) 6 received information that a large number of waste tires from the B&M Pitstop tire pile at 1239 N. Lincoln Avenue, Davenport, Iowa had been taken to a property at 824 Taylor Avenue, Lowden, Iowa. Brenda and Bradley Miller own and reside at the Lowden property.
2. On September 17, 2021, DNR FO6 staff visited 824 Taylor Avenue in Lowden and observed a large pile of tires. Staff also observed a number of burn pits with a large number of tire radials indicating tires had been burned.
3. On the same day, Brenda Miller called DNR staff and explained that she and Bradley allowed Billy Peters, a relative of Bradley, to bring the tires to the Lowden property because the City of Davenport was requiring him to remove the tires from the North Lincoln Avenue property—which the Miller's also own. Mrs. Miller indicated they did not know this was a violation of state law and they were just trying to help Billy out. She also stated that the tires that burned were by accident as part of a barn roof that had blown off and knocked some of the tires into the pit where the barn remnants were burned. DNR staff informed Mrs. Miller that stockpiling waste tires at any location greater than 500 passenger tire equivalents (PTEs) and burning tires are both violations of Iowa law. Staff also informed Mrs. Miller that they would be receiving a Notice of Violation (NOV) for these violations. Finally, staff noted that no more waste tires may be brought to the property, and no additional waste tires should be burned.
4. On September 21, 2021, an NOV was sent to the Millers.
5. On September 30, October 5, and October 15, 2021, DNR staff and the Millers spoke over the phone concerning disposal of the waste tires. Mrs. Miller indicated she was researching ways to dispose of them. Staff explained that disposal options for tires are limited. Most recently, Mrs. Miller indicated she was in talks with Liberty Tire to pick up the tires.

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

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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 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 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 and the Millers agree to the following:

1. The Millers must immediately cease the illegal storage and disposal of waste tires in the state of Iowa, and must comply with all waste tire disposal regulations in the future.

2. Within 90 days of the date this Order is signed by the Director, the Millers must properly dispose of all tires located at the Taylor Avenue property.

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Proof of proper disposal must be provided to DNR FO6 within 10 days of such disposal.

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. The DNR has determined that no administrative penalty will be issued at this time. Given that the Millers were apparently unaware of the nature of the disposal issues in this matter and their verbal commitment to take necessary action to properly dispose of the tires, no penalty is being issued in this Order. This may change in the future if timely disposal does not occur.

VII. APPEAL RIGHTS

As this Order is entered into by consent, there is no right of appeal.

VIII. NONCOMPLIANCE WITH THIS ORDER

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

Brenda Miller
Brenda or Bradley Miller

Dated this 18 day of
December, 2021.

CC: DNR Field Office 6, David Scott, VI.C.