

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

IN THE MATTER OF:

**Upcountry Fab, LLC, and Mr.
Alexander Buck**

ADMINISTRATIVE
CONSENT ORDER

NO. 2022-SW- 05
NO. 2022-AQ- 02

To: Alexander J. Buck, Registered Agent
Upcountry Fab, LLC
2626 Payne Road
Des Moines, Iowa 50310

Re: Illegal disposal and open burning of solid waste.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR), Upcountry Fab, LLC (the Company) and Mr. Alexander Buck to resolve violations of Iowa law governing disposal and burning of solid waste.

As detailed below, Mr. Buck and the Company agree to comply with Iowa solid waste disposal and open burning regulations at all times in the future. Additionally, they will jointly pay an administrative penalty of \$1,530.00.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Anthony Bigger, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 5
502 E 9th Street
Des Moines, Iowa 50319
Phone: 515-725-0268

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: UPCOUNTRY FAB, LLC and MR. ALEXANDER BUCK

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; Iowa Code §§ 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 that Division; 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 December 27, 2021, DNR Field Office (FO) 5 received an anonymous complaint concerning the open burning of rubber tires on the property located at 24205 North Avenue in Dallas County. This is the location of the Company.
2. On December 28, 2021, DNR FO5 staff investigated the complaint and found a recent burn site with several sets of steel belts, many nails from pallets and other debris in the burn pile.
3. On January 5, 2022, DNR FO5 staff issued a Notice of Violation to Mr. Buck informing him of the Iowa open burning regulations and notifying him that the matter would be referred to the DNR Legal Services Bureau for further enforcement.

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.
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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: UPCOUNTRY FAB, LLC and MR. ALEXANDER BUCK

4. The Commission has adopted 567 IAC 100.4 which prohibits the illegal disposal of solid waste. The above-stated facts establish violations of this provision.

5. Finally, the Commission has adopted 567 IAC 23.2 which prohibits the open burning of combustible materials, including tires and other solid waste. The above-stated facts establish violations of this regulatory provision.

V. ORDER

THEREFORE, the DNR orders and the Company and Mr. Buck agree to the following:

1. The Company and Mr. Buck will cease and prevent the illegal open burning of combustible material and will comply with all applicable Iowa air quality regulations in the future.

2. The Company and Mr. Buck will cease and prevent the illegal disposal of solid waste at any location in the state, and will comply with all Iowa solid waste regulations in the future.

3. Finally, the Company and Mr. Buck will jointly pay an administrative penalty of \$1,530.00 within 30 days of this Order being signed by the Director.

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. Iowa Code § 455B.146 authorizes civil penalties of up to \$10,000.00 per day for air quality 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 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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: UPCOUNTRY FAB, LLC and MR. ALEXANDER BUCK

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.”

Burning tires rather than properly disposing of them at a permitted landfill saved disposal costs estimated at \$30.00.

- 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.

State and federal air quality and solid waste disposal regulatory programs to protect health and environment are undermined by improper open burning and solid waste disposal. Improper open burning of waste tires can degrade air quality in the immediate area. From the complaints received, smoke was causing a nuisance and possible health problems for neighbors.

As such, \$1,000.00 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 business knew, or should have known, that burning tires and solid waste is illegal in Iowa. The regulations have been in effect for decades.

As such, \$500.00 is assessed for this factor.

4. The DNR had determined that a penalty of \$1,530.00 is warranted and reasonable to settle this matter administratively.

VII. APPEAL RIGHTS

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

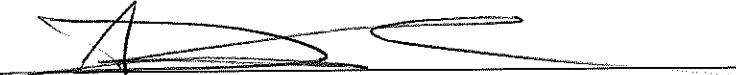
VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement of this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code § 455B.146. Compliance with Section V (Order)

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: UPCOUNTRY FAB, LLC and MR. ALEXANDER BUCK

of this Order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section IV (Conclusions of Law) of this Order.

Kayla Lyon, Director
Iowa Department of Natural Resources



Mr. Alexander Buck

Dated this 1 day of
February, 2022.

CC: DNR Field Office 5; David Scott; VI.C; VII.C.1.

