

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

IN THE MATTER OF:

Nick Ohl; Ray Ohl

ADMINISTRATIVE
CONSENT ORDER

NO. 2022-SW- 08
NO. 2022-AQ- 03

To: Nick Ohl
304 E. Myrtle Street
Dow City, Iowa 51528

Ray Ohl
210 W. Park Street
Dow City, Iowa 51528

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), Mr. Nick Ohl, and Mr. Ray Ohl (the Ohls) to resolve violations of Iowa law governing disposal and burning of solid waste.

As detailed below, the Ohls agree to cease the illegal disposal and burning of solid waste, to comply with Iowa law governing solid waste disposal in the future, to maintain and provide copies upon request to the DNR of disposal records for any future demolition and disposal of structures, and to collectively pay an administrative penalty of \$3,000.00 within 90 days of this Order being signed by the Director.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Kristi Burg, 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

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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 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. Mr. Nick Ohl owns a trailer court located at 402-512 Fulton Street, Dow City, Iowa.

2. On October 12, 2014, Mr. Nick Ohl was issued a letter of noncompliance by the DNR for improper disposal and open burning of two trailer homes at the trailer court. No asbestos checks were done. The letter explained applicable solid waste disposal regulations and the general restriction on the open burning of solid waste.

3. On October 6, 2021, DNR Field Office (FO) 4 received a complaint alleging that a home from 110 N. School Street, Dow City, Iowa was torn down and disposed of outside of the Dow City city limits at the east end of the Ohl Trailer Court. Mr. Ray Ohl was the contractor who demolished the home, owned by Mr. Tom Hast. In a telephone conversation between DNR and Mr. Ray Ohl, he stated that his intention was to have a "controlled burn" since the solid waste was outside of the Dow City city limits. Mr. Ohl was notified by the DNR on that call that the burning of solid waste is illegal in Iowa. He was also notified that the solid waste would have to be properly disposed of at the Crawford County Landfill.

4. On October 7, 2021, a letter of noncompliance was issued to Mr. Ray Ohl and Mr. Tom Hast for the illegal disposal of solid waste. Mr. Nick Ohl, the property owner where the demolished home was hauled, was copied on the letter.

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5. On October 22, 2021, Mr. Tom Hast contacted DNR FO4 stating that someone set the demolished home on fire. Mr. Hast was notified by the Dow City Fire Chief, Joe Gorden. In a telephone conversation between DNR and Chief Gorden, he stated that Mr. Nick Ohl reported a "controlled burn" for 525 Fulton Street, Dow City, to the Crawford County Dispatch Center at 3:47 a.m. Chief Gorden was aware of the previous complaint and disposal requirement and responded to the site with the Assistant Fire Chief. After a verbal altercation with Mr. Nick Ohl, the Dow City Fire Department responded to the site and applied 3,500 gallons of water in an attempt to extinguish the fire.

On the same day, DNR staff visited the site. Mr. Ray Ohl was moving dirt and ashes around with a skid steer. He stated he didn't know who started the fire, but was aware that burning the illegally-disposed of solid waste was a violation of Iowa law. He also stated that as a Dow City Volunteer fire fighter, he was called to the scene by the fire chief at approximately 5:30 a.m. Mr. Ray Ohl was informed that the entire remains of the demolished home would need to be disposed of at the Crawford County Landfill and receipts submitted to DNR FO 4.

Mr. Ray Ohl provided one receipt that day for the shingles from the home that were taken to the Crawford County Landfill on the previous day. The landfill total was \$266.75 for 4.85 tons of shingles.

6. On October 26, 2021, Mr. Joe Gorden, Dow City Fire Chief, faxed the final fire report to FO 4. The report confirmed the facts enumerated above.

7. On October 27, 2021, a Notice of Violation was issued, via certified mail, to Mr. Ray Ohl and Mr. Nick Ohl for illegal solid waste disposal and open burning.

8. On November 15, 2021, photos were texted from Mr. Ray Ohl to DNR FO 4 showing the site having been cleaned up. A landfill receipt showing disposal of 6.31 tons for \$347.05 was also submitted.

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 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 demolished homes and other solid waste. The above-stated facts establish violations of this regulatory provision.

V. ORDER

THEREFORE, the DNR orders and the Ohls agree to the following:

1. The Ohls will cease and prevent the illegal open burning of combustible material and will comply with all applicable Iowa regulations in the future.

2. The Ohls 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 Ohls will jointly pay an administrative penalty of \$3,000.00 within 90 days of this Order being signed by the Director. The penalty may be paid in monthly installments over 3 months or paid in full.

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

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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 DNR’s review of the size of the demolished home, the solid waste from the home would weigh approximately 82 tons. Mr. Ray Ohl has submitted receipts totaling 11.16 tons, but some of that weight is dirt from the burned remnants. Assuming ten tons of the home has been properly disposed of, there would be approximately 72 tons of waste that was burned.

As such, the DNR is assessing \$2,000.00 conservatively for this factor in the interest of reaching a settlement.

- 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. The open burning of a demolished home contributes to the degradation of large-scale ambient air quality. Persistent smoke in the air results in serious health risk and creates a nuisance condition. Further, failure to address the intentional illegal disposal and open burning of solid waste threatens the integrity of the regulatory program.

As such, \$500.00 is assessed for this factor in the interest of reaching a settlement.

- 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 violators in this matter were aware of the applicable laws. Nick Ohl had been notified of applicable law by DNR, and Mr. Ray Ohl states he is a

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volunteer firefighter who should be aware that the claimed "controlled" burns of solid waste is illegal.

As such, \$500.00 is assessed for this factor in the interest of reaching a settlement.

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) 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. Nick OHL
Mr. Ray OHL

Dated this _____ day of
_____, 2022.

CC: DNR Field Office 4; David Scott; VI.C; VII.C.1.