

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

IN THE MATTER OF:

City of Bloomfield, Iowa

ADMINISTRATIVE
CONSENT ORDER

NO. 2022-SW-10

NO. 2022-AQ- 05

To: City of Broomfield
Tomi Jo Day, City Manager
111 Franklin Street
Bloomfield, Iowa 52537

Re: Illegal open burning and disposal of solid waste.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and the City of Bloomfield, Iowa, (Bloomfield) to resolve violations of Iowa law governing the burning of trees and other solid waste.

As detailed below, Bloomfield agrees to cease the illegal disposal and burning of tree waste and other solid waste, to comply with Iowa law governing burning of trees and other solid waste in the future, and to pay an administrative penalty of \$2,000.00 within 60 days of this Order being signed by the Director.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Anthony Kerker, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison Street
Washington, Iowa 52353
Phone: 515-201-2314

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: CITY OF BLOOMFIELD

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 March 31, 2021, DNR Field Office (FO) 6 received a complaint from a Bloomfield resident stating that smoke from the Bloomfield tree dump/burn site was impacting his home. The complainant provided photos.

2. On April 7, 2021, DNR FO6 staff investigated the complaint. Staff confirmed that burning of what appeared to be trees and tree trimmings had occurred at the site. Staff also observed that miscellaneous non-woody solid waste had been dumped and burned at the site. Staff spoke with Bloomfield's Director of Public Works, Richard Wilcox, regarding the complaint. Mr. Wilcox stated that he was unaware that the burning had occurred and indicated that the tree disposal site had recently been moved to the location. Mr. Wilcox reported that this was intended to be used as a tree dump site and not a burn site. Mr. Wilcox was informed that a letter would be forthcoming and that Bloomfield would be required to submit a plan of action to address the violations.

3. On April 14, 2021, DNR issued a Letter of Non-Compliance (LNC) to Bloomfield for open burning and the improper disposal of solid waste. The LNC reiterated that the site did not have controlled access and did not meet separation distance requirements required for a tree burn site. Additionally, DNR noted that any burning must be supervised. A written plan of action was required by May 17, 2021.

4. On April 27, 2021, a second complaint was submitted to FO6 reporting that the tree dump site was burning again. The complainant emailed pictures to FO6.

5. On April 29, 2021, a Notice of Violation (NOV) was issued to Bloomfield. The NOV stated that the burn site did not meet the requirements of

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CITY OF BLOOMFIELD

Iowa regulations, and that continued use of the site for burning wood waste would result in referral of the matter to DNR's legal bureau for further enforcement.

6. On May 13, 2021, Mr. Wilcox reported that the existing tree dump was closed indefinitely as of May 7, 2021 while Bloomfield researched alternative locations.

7. On May 20, 2021, Mr. Wilcox reported that Bloomfield would be installing controlled access to the existing tree dump site and that work on this effort would start on May 24th. DNR staff requested information as to how Bloomfield intended to operate the tree dump once the gates were in place. DNR again noted that the location did not meet the tree burn separation distances in Iowa regulations so no burning could occur.

8. On September 16, 2021, Bloomfield's City Administrator, Ms. Day, asked if the same requirements would apply to the site if Bloomfield did not own the land. Staff responded stating that the same requirements would apply.

9. On September 20, 2021, Ms. Day stated that she would share the information with the city council. She indicated that Bloomfield still has the area fenced off and gates in place for controlled access and that the site remained closed until the City could figure out how they were going to control the entrance. Ms. Day also indicated that Mr. Wilcox had met with the two land owners located within the one-quarter mile separation distance and that both had agreed they would give signed permission as soon as the city attorney could draft agreements.

10. On December 17, 2021, DNR FO6 received a third complaint that Bloomfield's tree dump site was on fire. The complainant reported that his residence was getting smoked out. Photos were provided via email.

11. On December 21, 2021, FO6 staff responded to the complaint. After checking out the burn pile, staff visited Bloomfield City Hall and spoke with a City of Bloomfield employee. DNR staff learned that this had been an intentional, scheduled burn. DNR requested copies of the signed waivers from all property owners within the one-quarter mile restricted area.

12. On December 28, 2021, DNR FO6 issued a Letter of Inquiry to Bloomfield again requesting copies of the written and signed waivers. DNR noted that failure to provide the waivers—or if the waivers had not been obtained prior to the most recent burn event—would result in further enforcement.

13. On January 10, 2022, DNR FO6 staff spoke via phone with Gayla Harrison, Attorney for the City of Bloomfield. She requested information as to what was required in the waivers. Staff notified Ms. Harrison that referral was imminent. During the conversation, DNR was informed that Mr. Wilcox's employment with Bloomfield was terminated on October 12, 2021. Ms. Harrison indicated that some

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CITY OF BLOOMFIELD

of the prior communication with Mr. Wilcox was lost around that time, and that the Bloomfield staff had been working to locate signed waivers but had been unsuccessful. Ms. Harrison also stated that the next opportunity she would have to discuss this issue with the newly-constituted City Council would be at the regularly-scheduled meeting on January 20, 2022.

14. On January 20, 2022, the Bloomfield City Council voted to immediately close the existing tree dump site.

15. On January 24, 2022, Rusty Sands, the new Bloomfield Public Works Director, contacted DNR via email to discuss the proposed new location for the tree and tree trimmings burn site.

16. On January 26, 2022, Mr. Sands and FO6 staff discussed requirements for the new location.

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.

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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CITY OF BLOOMFIELD

V. ORDER

THEREFORE, the DNR orders and Bloomfield agrees to the following:

1. Broomfield must be in full compliance with Iowa law—including obtaining written waivers from neighboring property owners where required—in order to operate a tree-burn site. This includes, but is not limited to, compliance with controlled access requirements, separation distance requirements, and supervision of burning.
2. Any solid waste, other than trees and tree trimming ash, that has been disposed of on the existing closed burn site referenced in the facts above must be disposed of at a sanitary landfill within 30 days of this Order being signed by the Director. This includes any waste that is in or immediately adjacent to the existing tree burn pile.
3. Within 60 days of the date that the Director signs this order, Broomfield must pay an administrative penalty of \$2,000.00.

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. 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 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.”

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: CITY OF BLOOMFIELD

Bloomfield purposely burned the tree pile and other solid waste at the now-closed burn site in violation of Iowa law. Burning saved Bloomfield both disposal and staffing costs.

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

- 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.

Open burning of woody debris and other solid waste resulted in the exposure of neighbors to smoke and emissions. Particulates in smoke have aerodynamic diameters of less than 10 micrometers, with many smaller than 2.5 micrometers (fine particulates), the size of particles is directly linked to their potential for causing health problems. Additionally, it is unknown the amount and types of other solid waste burned which would have resulted in the potential for hazardous or toxic emissions.

As such, \$1,000.00 is assessed for this element.

- 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.

Bloomfield was notified that the site could not be used as a burn site yet continued to use the tree pile disposal area as a burn site.

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

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: CITY OF BLOOMFIELD

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



For the City of Bloomfield

Dated this 3rd day of
MARCH, 2022.

CC: DNR Field Office 6; David Scott; VI.C; VII.C.1.