

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

<b>IN THE MATTER OF:</b>  <b>JERRY EVERITT</b>	<b>ADMINISTRATIVE CONSENT ORDER</b>  NO. 2022-SW-13 NO. 2022-AQ- <u>11</u>
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To: Jerry Everitt  
16851 Canoe Road  
Strawberry Point, Iowa 52076

Re: Illegal waste tire storage, open burning, and non-compliance with Iowa storm water regulations.

**I. SUMMARY**

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Mr. Jerry Everitt to resolve violations of Iowa law governing the open-burning of solid waste, the storage of waste tires, and storm water discharge regulation.

As detailed below, in order to settle this matter administratively, the DNR is not seeking an administrative penalty. However, Mr. Everitt must comply with Iowa law moving forward as enumerated in Section V, below.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Andrea Errthum, Env. Specialist  
Iowa Department of Natural Resources  
Field Office No. 1  
1101 Commercial Court, Suite 10  
Manchester, Iowa 52057  
Phone: 563-927-2640

**Relating to legal requirements:**

David Scott, Attorney  
Iowa Department of Natural Resources  
1023 W. Madison Street  
Washington, Iowa 52353  
Phone: 319-321-8504

**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; Iowa Code § 455B.175, which authorizes the Director

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to issue orders necessary to cease violations of Iowa Code § 455B.197 (National Pollution Discharge Elimination System (NPDES) permitting program); 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 7, 2022, DNR Field Office (FO) 1 received a call from the Clayton County Sheriff's Office stating that the Volga Fire Department and Sheriff Deputy Eric Van Horne were on site at 15084 Canoe Road, Strawberry Point around noon after receiving a report of a fire and black smoke. Three piles of burned/burning tires were extinguished by the Volga Fire Department. According to Deputy Van Horne's Investigative Report, he spoke with owner Jerry Everitt on site. Mr. Everitt told Deputy Van Horne that he "likes doing it after it snows and the wind is blowing this way." Deputy Van Horne told Mr. Everitt that the DNR or EPA would be in touch and recommended that Mr. Everitt reach out first.

2. On March 14, 2022, staff from DNR FO1 visited the property and spoke to Mr. Everitt. Staff explained that it was illegal to burn the tires and that he would need to find a different way to dispose of them. Mr. Everitt said that no one would take them, but that he would not burn them anymore.

3. On the same day, DNR staff visited the burn site. Staff noted remains of the tires and the rims sitting in the ashes. Mr. Everitt stated that he has no way to remove the tractor tires from the rims so he burns the rubber away and sells the rims for scrap metal. In the grassy field behind the property, the weeds were about waist high, but the tops of scattered piles of tractor tires could be seen above the weeds throughout the field. Mr. Everitt mentioned that he starts the fires using pieces of wood from the farm buildings that have fallen down on the property. Staff noted that shingles were still on the burn pile and informed Mr. Everitt that he could not burn the debris without removing the shingles as shingles, like the tires, could not be burned. Staff also informed Mr. Everitt that he would need to find a way to dispose of the tires and that he would be getting a Notice of Violation (NOV) letter and possibly a referral which may include a monetary penalty.

4. Based on the site visit and photos, DNR staff determined that there were more than 500 passenger tire equivalents (PTE) stored on the property.

5. On March 31, 2022, DNR issued an NOV to Mr. Everitt addressing illegal burning, improper storage of waste tires, and the fact that the facility did not have an NDPEs permit.

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**IV. CONCLUSIONS OF LAW**

1. Iowa Administrative Code 567 IAC 23.2 prohibits the open burning of combustible materials, including tires and other solid waste. The above-stated facts establish violations of this regulatory provision.

2. Iowa Administrative Code 567 IAC 64.3 requires facilities such as that operated by Mr. Everitt to obtain and comply with an NPDES storm water discharge permit. The facility does not have such a permit in violation of this regulatory requirement.

3. Iowa Administrative Code 567 IAC 117.4 restricts the number of PTEs stored at a business to 500. The above-stated facts establish a violation of this restriction.

**V. ORDER**

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

1. Mr. Everitt will cease and prevent the illegal open burning of combustible material, including waste tires, and will comply with all applicable air quality regulations in the future.

2. Mr. Everitt will, within 30 days, apply for an NPDES permit for his business and comply with all requirements of the permit in the future.

3. Mr. Everitt will comply with the waste tire storage limit (500 PTE) at all times in the future.

**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.

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4. In the interest of reaching settlement and Mr. Everitt's commitment to comply with Iowa regulations moving forward, the DNR is not seeking an administrative penalty as part of this Order. DNR reserves the right to pursue an administrative penalty in a separate order in the future if Mr. Everitt does not come into compliance.


**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.

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Kayla Lyon, Director  
Iowa Department of Natural Resources

  
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Mr. Jerry Everitt

Dated this 27 day of  
April, 2022.

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