

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF: JASON DELANEY; JR RECYCLING, LLC	ADMINISTRATIVE ORDER NO. 2022-SW- 07 CONSENT AMENDMENT 1
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To: Jason R. Delaney
120 Thomas Street
Cascade, Iowa 52033

Jason Delaney, Registered Agent
JR Recycling, LLC
734 Walnut Road
Peosta, Iowa 52068

RE: Removal and disposal of waste tires.

I. SUMMARY

This administrative order amendment (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Mr. Jason Delaney to address the illegal disposal and storage of waste tires. Mr. Delaney is required to 1) comply with Iowa laws governing waste tire storage and disposal and tire recycling at all times in the future; 2) to maintain accurate records pursuant to this Order and to the Iowa Administrative Code; and 3) to pay an administrative penalty of \$4,000.00 due to the historic nature of these violations.

Upon signature of the Parties, this Amendment replaces, in full, DNR unilateral order 2022-SW-07.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Tom McCarthy, Env. Specialist Sr.
Iowa Department of Natural Resources
Field Office No. 1
1101 Commercial Court, Suite 10
Manchester, Iowa 52057
Ph: (563) 927-2640

**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

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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 §§ 455D.4A and 455D.23, which address 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 disposal; 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 relevant facts are stated in chronological order:

1. JR Recycling, LLC was issued a waste tire processing permit (Permit No. 31-WTM-01-15P-PRT) on December 10, 2015 that authorized the company to operate a waste tire processing facility (PRT) in accordance with the requirements of 567 Iowa Administrative Code (IAC) 117. The permit was valid for a term of three years.

2. In 2018, the DNR denied a permit renewal application because the facility was deemed by the City of Cascade, Iowa, to be in violation of the City's zoning regulations. As such, the permit expired in December, 2018.

Mr. Delaney states that he began the process to seek rezoning of his property to allow for a change in the zoning regulations to accommodate processing of tires. The application was presented to the City on April 3, 2019. That application came before the City for public hearing on May 13, 2019 and was denied.

3. Following legal action by the City, on May 15, 2019, the City ordered that all waste tires be removed within 60 days.

4. On March 5, 2020, staff from DNR Field Office (FO) 1 received a complaint that Mr. Delaney had moved tires from his business location in Cascade to a farm located at 28359 31st Street, Bernard, Iowa (Beringer Farm).

5. On March 10, 2020, DNR FO1 staff visited the Beringer Farm site and estimated 27,945 passenger tire equivalents (PTE, hereafter, Tires) on the property. During a meeting with Mr. Delaney on that day, he confirmed he had moved the tires to the Beringer Farm site.

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Mr. Delaney states that all tires had been removed to be processed at the Beringer Farm and placed in an area that measured 36.1 x 39 feet and 19.6 feet high.

6. On April 15, 2020, the owner of the Beringer Farm location notified DNR that he had agreed to allow storage of the tires on his property for a temporary period, but that he was unaware that such storage was illegal.

7. On April 27, 2020, DNR issued a Notice of Violation (NOV) to Mr. Delaney noting that, among other violations, the tire storage at both sites violated Iowa law. Mr. Delaney was ordered to provide records regarding tire processing and disposal, and instructed that only a licensed hauler and processor could remove and process tires.

Mr. Delaney states that Delaney's Auto and Ag, another business that Mr. Delaney operated, at that date, had already sold \$417,000 in tires, and was engaging in removal services through three licensed hauling entities and maintained records of customers being offered whole tires for silage pit usage during rye season.

8. On September 16, 2020, the DNR approved a variance request by Mr. Delaney to allow for tire processing. The variance was issued in good faith that Mr. Delaney would process the remaining tires at both properties. The variance included specific restrictions, including monthly processing reporting, no additional tires being collected, and a deadline for processing of December 31, 2020, at which time the variance would expire. Finally, the variance noted that as of January 1, 2021, storage of tires in excess of 500 PTE must be approved by the DNR in writing.

9. On January 22, 2021, DNR issued a second NOV to Mr. Delaney for violations of Iowa's tire storage and processing regulations. The NOV summarized events occurring after the issuance of a variance allowing for tire processing, and the results of a January 13, 2021 site inspection. Little, if any, processing of tires had occurred.

Mr. Delaney states that this was due to a machine break down for parts which could not be sourced which prevented Mr. Delaney from further processing.

10. At the request of Mr. Delaney, the variance was extended until March 29, 2021, to allow Mr. Delaney to process and dispose of the remaining tires.

Mr. Delaney states that, in part, the variance was necessary and further extensions were required due to delays that were outside of the control of Mr. Delaney including COVID related issues, difficulty in sourcing parts for

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machines necessary to complete the work, weather, and issues with landfill access.

11. On April 2, 2021, DNR staff met with Mr. Delaney to inspect the Cascade and Beringer Farm properties. Staff noted that, while there had been improvement at the properties, there still remained a significant number of waste tires at the Beringer Farm property.

Mr. Delaney states that on that date at Delaney's Auto and Ag, which is not the subject of this order, there were 141 whole tires.

12. On May 4, 2021, the DNR issued a third NOV to Mr. Delaney for continued violations of Iowa's tire storage and processing regulations. The NOV required Mr. Delaney to complete the clean-up of the waste tire sites within 30 days and to provide records for all processing and disposal of tires initially referenced in the April, 2020, NOV.

13. On June 22, 2021, the DNR issued a fourth NOV to Mr. Delaney for failing to complete tire removal. The NOV recognized partial compliance, but noted that thousands of tires remained on the properties after over a year of efforts by the DNR to encourage and allow processing and removal. The NOV noted that the matter would be submitted to DNR legal services for further enforcement consideration.

14. On December 6, 2021, DNR staff met with Mr. Delaney and his counsel to discuss the matters addressed in this Order. Mr. Delaney provided invoices and receipts related to tire disposal and discussed the potential for settling the matter.

At that meeting, Mr. Delaney stated he was not storing and had not disposed of any tires, other than those being stored at his business location in Cascade, Iowa as Delaney's Auto and Ag continued to operate as normal. Mr. Delaney also provided proof at that meeting that there were no tires located in the hoop building as evidenced by photographs. Additionally, Mr. Delaney contested the DNR's estimate in April, 2020, that there were approximately 27,900 tires on the Beringer property.

15. At that meeting, Mr. Delaney provided a series of receipts which purported to represent proper disposal of tires.

16. Following two months of efforts to reach a settlement, no agreement was entered. As such, a unilateral order was issued subject to appeal.

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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 solid waste on land owned or leased by the entity. Despite the current status of tire disposal, the above-stated facts establish a violation of this statutory prohibition over a number of years.

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.23 authorizes the DNR to require material that is not legitimately recycled to be properly disposed of.

5. 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.

6. 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. Despite the current status of tire disposal, the above-stated facts establish multiple violations of this prohibition on open dumping over multiple years.

7. 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 over multiple years.

V. ORDER

THEREFORE, the DNR and Mr. Delaney agree to the following:

1. Mr. Delaney currently has his business property in Cascade in compliance with used tire storage requirements based on the DNR's most recent inspection in April, 2022.

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2. Mr. Delaney will comply with all Iowa tire storage, disposal and recycling requirements in the future. This includes, but is not limited to,

- a) Compliance with all requirements in 567 IAC 117.
- b) There will be no waste tire processing of any type by Mr. Delaney at any location.
- c) Mr. Delaney will maintain accurate records of all waste tires generated on his properties and all waste tires removed from his business properties for a period of 24 months. These records will be maintained on the respective property for review by DNR staff upon request.
- d) Mr. Delaney shall maintain a contract with an Iowa certified waste tire hauling company for removal of tires from his property. The contract shall be available upon request from DNR staff.

3. Mr. Delaney has stated affirmatively that he is unaware of any location in the state of Iowa where tires have been stored or disposed of, other than at his businesses or the Beringer Farm property. Discovery of any other illegal-disposal sites will be considered a violation of this Order.

4. At all times in the future, Mr. Delaney must comply with the legitimate recycling criteria established in Iowa Code § 455D.4A, including the speculative accumulation recordkeeping requirement enumerated in Iowa Code § 455D.4A(7). As such, Mr. Delaney must maintain accurate records of all tires stored on, and removed from, his personal and business properties. Failure to maintain such accurate records will constitute a violation of this Order.

5. Mr. Delaney shall pay an Administrative Penalty of \$4,000.00 within 60 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. Given the daily penalties that will apply should this matter go to civil court, applicable rules require that the department consider not only the maximum daily penalty in the Code for the type of violation, but also the maximum penalty for cumulative violations under consideration. See 567 IAC 10.2(4).

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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 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." This includes delayed costs. 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available."

Based on a conservative estimate by DNR professional staff that approximately 27,000 tires were stored at properties controlled by Mr. Delaney for multiple years and an approximate disposal cost of \$2.00 per tire, Mr. Delaney avoided approximately \$64,000.00 in disposal costs plus transportation costs for multiple years.

Mr. Delaney disputes that there were approximately 27,000 tires stored. Mr. Delaney estimates that he had approximately 650 used tires and 281 junk tires stored at the Cascade location; 141 whole tires and tires in process covering an area of 36.5 feet x 39 feet (19.6 feet high) at the Berringer farm location; and a 53-foot trailer which was half full of waste or tires to be disposed.

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

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.

The DNR's waste tire program depends on processors to be properly permitted, and to follow permit requirements, and to comply with restrictions on waste tire storage for parties that are not permitted. Moving tires to different locations in an apparent effort to avoid compliance with Iowa law directly threatens the DNR waste tire program and threatens public health and safety.

As such, in the interest of settlement, DNR is assessing \$1,000.00 for this factor.

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c) Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations.

Mr. Delaney has been notified of DNR waste tire rules and regulations on multiple occasions and he is aware of waste tire restrictions in Cascade, Iowa. These interactions go back to at least late-2017, and have resulted in ongoing non-compliance addressed in four NOV's over the past two years.

As such, in the interest of settlement, DNR is assessing \$1,000.00 for this factor.

4. As such, the DNR is assessing a penalty of \$4,000.00 for the violations enumerated in this Order.

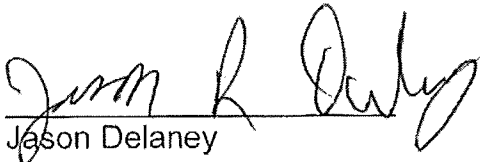
VII. APPEAL RIGHTS

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

VIII. NONCOMPLIANCE WITH THIS ORDER

Failure to comply with any requirement enumerated in Section V of this Order may result in the imposition of further administrative penalties or referral of the matter to the Iowa Attorney General to obtain injunctive relief and/or civil penalties.

Kayla Lyon, Director
Iowa Department of Natural Resources


Jason Delaney

Date May 9, 2022

CC: DNR Field Office 1; David Scott; City of Cascade, Iowa.