

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

<p>IN THE MATTER OF:</p> <p>Hanson & Sons Tire, LLC; Mr. Che Hanson</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2022-SW- <u>14</u></p>
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To: Mr. Che Hanson, Owner and Registered Agent
Hanson & Sons Tire, LLC
1501 Central Avenue East
Clarion, Iowa 50525

RE: Non-compliance with Iowa waste tire storage and disposal regulations.

I. SUMMARY

This administrative consent order (Order) is entered between the Iowa Department of Natural Resources (DNR) and Mr. Che Hanson to address the illegal storage and disposal of waste tires. Mr. Hanson is required to remove and properly dispose of waste tires pursuant to the provisions below and is also required to pay an administrative penalty of \$10,000.00 due to the ongoing nature of these violations.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Madelynn Nelson, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 2
2300 15th St. SW
Mason City, Iowa 50401
Ph: 641-424-4073

**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

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 Chapter 455D, which restricts the land disposal of tires, addresses criteria for legitimate recycling in Iowa, and authorizes the Director to issue any order necessary to secure compliance with those criteria, including removal and proper

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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. On February 26, 2014, DNR received an anonymous complaint that Hanson & Sons Tire, LLC, located at 1407 Central Avenue East in Clarion, had an excessive number of tires.

2. On February 28, 2014, DNR staff investigated the complaint and estimated that the number of discarded tires stored was 500+/- passenger tire equivalents (PTEs) and was not actionable because Iowa's rule allows up to 500 PTEs to be stored on a property. A letter was sent to owner Che Hanson outlining the discarded tire requirements and transmitted a copy of Iowa Administrative Code 567 IAC 117.

3. On August 12, 2019, DNR staff investigated another complaint that there was an excessive number of tires present at Hanson & Sons Tire's new address, 1501 Central Avenue East (the Site). Staff determined that, even subtracting the tires Mr. Hanson was claiming were for resale (an estimated 250 PTEs) there were well more than 500 PTEs present. Mr. Hanson was advised that Iowa regulations governing tire recycling require that the tires claimed to be for resale must be orderly stacked and that some sort of inventory must be maintained which would allow a specific tire to be quickly retrieved. Mr. Hanson was further advised that, moving forward, DNR would likely consider all un-inventoried tires to be discarded and counted toward the 500 PTE limit.

4. On January 3, 2020, DNR staff conducted a follow-up visit and noted numerous additional tires had been brought to the site, with an estimated 1,000+ PTEs being present. A Notice of Violation (NOV) was issued with the requirement that the number of tires be reduced to below 500 PTEs within 60 days. Mr. Hanson was warned that failure to comply could result in a referral to DNR Legal Services Bureau with a recommendation for a financial administrative penalty.

5. In March, 2020, DNR staff had a discussion with Mr. Hanson that he was still well over the 500 PTE maximum storage requirement. Mr. Hanson claimed that the COVID-19 pandemic was preventing his vendor from disposing of the tires despite his repeated requests. Mr. Hanson was cautioned that he must resume tire removal as soon as his vendor was responsive.

6. On September 24, 2021, DNR staff investigated another complaint that there was an excessive number of tires present at the Site. DNR estimated that there were 1,500 PTEs present, plus the tires that were being claimed as resale stock (an estimated 300 additional PTEs). No inventory was provided which

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demonstrated that the latter were exempt from the 500 PTE requirement. Mr. Hanson stated he would properly dispose of the excess tires and reach compliance by the end of November, 2021.

7. On October 11, 2021, a second NOV was issued to Mr. Hanson reiterating the requirements outlined in the January 3, 2020, NOV. DNR stated that the matter would be referred to DNR's legal services bureau for administrative enforcement if the 500 PTE limit was not attained by December 31, 2021.

8. On November 19, 2021, DNR staff again visited the Site, but did not observe meaningful progress toward compliance since the September 24, 2021, visit. Staff advised Mr. Hanson that the compliance deadline of December 31, 2021 was final. Mr. Hanson indicated that he understood and promised compliance.

9. On January 4, 2022, DNR staff drove by the Site and noted the site was not in compliance. DNR notified Mr. Hanson via email that a site visit would be conducted on January 7, 2022, to determine compliance.

10. On January 7, 2022, DNR staff visited the Site along with City of Clarion (the City) officials. Mr. Hanson was present and provided an "inventory" of tires which he claimed demonstrated that many of the tires were stored for resale. The discarded tires were not plainly labeled nor was there a map or other mechanism that would allow Mr. Hanson to retrieve a specific tire upon demand.

11. During this visit, Mr. Hanson forbade DNR and the City from entering the property, but the tires were readily visible from public rights-of-way. DNR noted that, while there were still easily more than 1,500 PTEs present, the number of tires had been noticeably reduced since the DNR drive-by observation three days prior.

12. On the same day, DNR was notified via citizen complaint that Mr. Hanson had been disposing of tires at a farm at 2271 Nelson Avenue, Clarion, Iowa, which was owned by Hanson & Sons Tire employee Patrick McCormick. The City volunteered to investigate this allegation and shortly thereafter confirmed that this was indeed true.

13. On January 10, 2022, DNR staff visited 2271 Nelson Avenue and documented that approximately 100 semi-tractor tires and approximately 200 farm tractor tires which, based upon tire tracks, appeared to have been brought to that location in recent days. Based on 20 pounds per PTE enumerated in 567 IAC 117, and assuming that a semi tire weighs 100 pounds and a tractor tire weighs 400 pounds, DNR estimated that more than 4,000 PTEs had been unlawfully disposed at the McCormick farm.

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14. On January 11, 2022, DNR staff spoke with Mr. McCormick via telephone. Mr. McCormick freely admitted that Mr. Hanson had promised him remuneration to allow discarded tires to be transported to his property, and that all the tires present at his property were from the Site. Mr. McCormick was advised to properly dispose of the tires and maintain receipts of proper disposal. He was advised that an NOV would be issued if the tires were not immediately removed.

15. On March 3, 2022, DNR staff visited 2271 Nelson Avenue in rural Clarion and determined that the quantity of discarded tires present was materially the same as it had been on January 10, 2022.

16. On March 9, 2022, DNR issued a NOV to Mr. Hanson and Mr. McCormick for the unlawful land disposal of tires and for exceeding the 500 PTE limit of discarded tires.

17. On April 15, 2022, Mr. Hanson submitted an email response to the most recent NOV. He stated that the tires on the McCormick property would be removed by June, 2022. He did not address the ongoing violations of Iowa law relative to tire storage and disposal for multiple years prior.

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. The above-stated facts establish a violation of this statutory prohibition.

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.11(2) prohibits the land disposal of waste tires, unless the tire has been processed in a manner established by the DNR.

5. Iowa Code § 455D.23 authorizes the DNR to require material that is not legitimately recycled to be properly disposed of.

6. 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.

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7. 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. The above-stated facts establish multiple and continued violations of this prohibition on open dumping.

8. 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.

9. The Commission has adopted 567 IAC 117.5 to address acceptable used tire storage for resale. The regulation specifically requires a business to store tires in an organized manner which provides for accurate descriptions and inventories of the types and sizes of tires stored. Additionally, the regulation states that used tires stored for more than a year without such documentation will be considered waste tires subject to the 500 PTE storage restriction.

V. ORDER

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

1. Within 60 days of this Order being signed by the Director, Mr. Hanson must remove and properly dispose of all tires, at both the business Site and the McCormick Farm, down to a total below 500 PTEs. Based up Chapter 567 IAC 117, a tractor tire shall be considered 20 PTEs and a semi tire shall be considered 5 PTEs. Mr. Hanson must submit receipts to DNR showing proper disposal of tires within 10 days of removal/disposal.

2. Mr. Hanson must implement an inventory and storage process that complies with the requirements of 567 IAC 117.5. The inventory system shall be provided to the DNR on request. Failure to develop and maintain an inventory system will result in the DNR determining that all tires on site are waste tires.

3. Mr. Hanson will pay an administrative penalty of \$10,000.00 due to the ongoing nature of the violations. -Payment Plan, \$1,000 per month. DGS

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

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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.

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

Using the conversion factors cited in Chapter 567 IAC 117, DNR estimates that there are 1,000 PTEs at the business Site, plus another 2,000 PTEs which Mr. Hanson is claiming as used tires for resale. Further, Mr. Hanson has disposed of an estimated 4,000 PTEs at the McCormick Farm. Based on a disposal cost of \$3.00 per tire, Mr. Hanson has avoided significant disposal costs over the life of this matter.

As such, the DNR considers assessing the \$4,000.00 maximum administrative penalty amount reasonable 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.

Mr. Hanson's refusal to abide by Iowa tire storage and disposal regulations have resulted in numerous citizen's complaints regarding eyesore and nuisance and City citations for encroaching upon the right-of-way. Additionally, failing to comply with the applicable regulations threatens the integrity of the regulatory program for those parties that do comply with the law.

As such, \$3,000.00 is assessed 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. Hanson has been notified of DNR waste tire rules and regulations on multiple occasions and he is aware of waste tire restrictions applicable to his business. These interactions go back many years.

As such, \$3,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

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


VIII. NONCOMPLIANCE WITH THIS ORDER

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



Digitally signed by Kayla Lyon
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Kayla Lyon, Director
Iowa Department of Natural Resources


Mr. Che Hanson

Dated this 9 day of
May, 2022.

CC: DNR Field Office 2, David Scott, VI.C.