

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF: RICK SPEES, DBA SPEES AUCTION AND REAL ESTATE JEFFERSON COUNTY, IOWA	ADMINISTRATIVE ORDER NO. 2022-AQ-13
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To: Rick Spees
Dba Spees Auction and Real Estate
1960 Libertyville Road, Fairfield, IA 52556

I. SUMMARY

This administrative requires Rick Spees, dba Spees Auction and Real Estate, to comply with the provisions of Section V of the Order, subject to the appeal rights stated in this Order.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Ryan Stouder, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:

Anne Preziosi, Attorney for DNR
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-238-3429

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 administrative consent order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 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

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Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Rick Spees owns property and an auction business (Spees Auction Center) located at 1947 Highway 1 North, Fairfield, Iowa. Mr. Spees has owned this property since 2016. Illegal open burning and open dumping has occurred at this location (the auction business site). Mr. Spees lives at 1960 Libertyville Road, Fairfield, Iowa.

2. On September 29, 2021, DNR Field Office 6 (DNR FO6) received an anonymous complaint indicating that Richard Spees was burning trash at the auction business site. The caller stated that the trash was from unsold auction items. The illegal open burning of waste at the auction business site was conducted approximately 450 feet from the nearest residence and within 1,350 feet of several hundreds of residents on the north end of the City of Fairfield.

3. On September 29, 2021, Ryan Stouder of FO6 investigated complaint and observed a burn pile on the west side of the property at the auction business site. The burn pile included a burned tractor tire, a mattress, various cans including paint cans, Amazon boxes, and household waste items. No one was around during the on-site investigation.

4. Mr. Stouder called Mr. Spees to inform him that DNR FO6 had received a complaint regarding Mr. Spees' auction business site. Mr. Spees told Mr. Stouder that he had added five boxes of auction material to the burn pile to start a fire to burn landscape waste and trees. Mr. Stouder told Mr. Spees that he had observed a burned tire and other waste material. Mr. Spees stated that he had not burned that material.

5. Also, on September 29, 2021, DNR FO6 received an anonymous complaint stating that Mr. Spees was burning trash at his residential property, located at 1960 Libertyville Road, south of Fairfield. The complainant stated that the open burning occurring at the residential property might include auction waste material.

6. On September 30, 2021, Mr. Stouder conducted a complaint investigation at Mr. Spees' residential property located at 1960 Libertyville Road, in Fairfield Iowa. No evidence of recent burning was observed, although old burn piles were observed.

7. DNR FO6 issued an October 4, 2021, Notice of Violation letter to Mr. Spees regarding the illegal open burning and open dumping that had occurred at the auction business site.

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IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in subrule 23.2(2) (variances) and subrule 23.2(3) (exemptions). The open burning of solid waste materials, as described above, is a violation of the provisions of 567 IAC 23.2. The open burning of waste from the auction business, which is trade waste, is specifically prohibited. The open burning of solid waste materials at the auction business site, as described above, is a violation of the provisions of 567 IAC 23.2.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency 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. The facts in this case demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders Rick Spees to do the following:

1. Rick Spees shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at the auction business site and at any location in the State of Iowa, and shall comply in the future with the regulations concerning disposal of solid waste and open burning;

2. Within 30 days of the date this order is signed by the director, Rick Spees shall collect, containerize, and dispose of all solid waste materials remaining at the auction business site, and Mr. Spees shall obtain and provide copies of landfill and recycling receipts to FO6 to document proper disposal of the solid waste;

3. Within 30 days of the date this order is signed by the director, Rick Spees shall pay a penalty of \$3,400.00.

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VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, the director is authorized to assess administrative penalties, as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the type of solid waste disposal violations involved in this matter.

Iowa Code section 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 and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$3,400.00 penalty. The administrative penalty assessed by this order is determined as follows:

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, DNR 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.”

Rick Spees received economic benefit by avoiding costs for disposal of the auction business waste. The cost of a 20-yard roll-off dumpster and hauling of waste material would be at least \$450.00. The cost of solid waste disposal for 20 yards of waste at the Southeast Iowa Multi-County Solid Waste Agency landfill is \$45.00 per ton, which would cost at least \$900.00. Waste tire disposal cost for a tractor tire would be \$50.00 per farm tire.

Therefore, Mr. Spees gained at least \$1,400.00 in economic benefit and that amount is assessed for economic benefit.

Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute.

Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. A maximum of \$3,000.00 may be assessed for gravity.

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Improper solid waste disposal and illegal open burning can degrade air and water quality and contribute contaminants to both land and water resources as well as threaten public health.

The illegal open burning of waste was conducted approximately 450 feet from the nearest resident and within 1350 feet to several hundreds of residents on the North end of the City of Fairfield.

Open burning of the business waste and household trash and tires which contain hydrocarbons and potentially hazardous waste, releases smoke and uncontrolled emissions of various air pollutants. Particulates in smoke generally have 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. For example, burning plastic materials releases toxins into the air and into the ground around the burn site, including dioxins, furans, polycyclic aromatic hydrocarbons, particulate matter, heavy metals (such as lead, arsenic, selenium and cadmium) and likely other pollutants.

The violations cited in this administrative consent order threaten the integrity of a regulatory program. Further, the open burning of trade waste, which occurred at the auction business site, is specifically prohibited.

For these reasons, \$1,000.00 is assessed for gravity.

Culpability – Factors to be considered in determining the amount to be assessed for culpability include the degree of intent or negligence; the standard of care required by the laws of the state; and whether the violator has taken remedial measures or mitigated the harm caused by the violations. A maximum of \$3,000.00 may be assessed for culpability.

Mr. Spees has a duty to remain knowledgeable of DNR regulations and to be alert to the probability that his conduct is subject to DNR's rules. Further, Mr. Spees was specifically made aware of the prohibitions against illegal open burning and open dumping.

Therefore, \$1,000.00 is assessed for culpability.

VII. APPEAL

Pursuant to Iowa Codes section 455B.175(1)(a) and 567 IAC Chapter 7, a written notice of appeal may be filed with the Director, at the address provided above, within 60 days of the date of issuance of this Order. The notice of appeal must identify the specific

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portion of portions of this Order being appealed and include a short and plain statement of the reasons for the appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section “V. Order” of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146.

Kayla Lyon, Director
Iowa Department of Natural Resources

DNR Field Office 6; Anne Preziosi; VII.B.2.