

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

IN THE MATTER OF:

**WHITAKER, DAVID**

ADMINISTRATIVE  
CONSENT ORDER

NO. 2022-SW- 15  
NO. 2022-AQ- 14

To: David Whitaker  
101 Highway 69  
Huxley, Iowa 50124

Re: Illegal disposal and open burning of solid waste.

**I. SUMMARY**

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Mr. David Whitaker to resolve violations of Iowa law governing the open-burning and illegal disposal of solid waste.

As detailed below, Mr. Whitaker agrees to cease the illegal burning of solid waste and the illegal disposal of solid waste, and to comply with applicable Iowa regulations in the future. Additionally, Mr. Whitaker will pay an administrative penalty of \$2,500.00 within 60 days of the date this Order is signed by the Director.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Malia Schepers, Env. Specialist  
Iowa Department of Natural Resources  
Field Office No. 5  
502 East Ninth Street  
Des Moines, Iowa 50319  
Phone: 515-725-0370

**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

**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

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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 December 31, 2021, DNR Field Office (FO) 5 received an anonymous complaint that there was a large fire at 55892 290<sup>th</sup> Street, Cambridge, Iowa, with large amounts of black smoke.

2. On January 3, 2022, DNR FO5 staff visited the property and witnessed a large smoldering burn pile to the west of the residence. Remaining ash and debris showed items burned included at a minimum 12 tires, metals, construction and demolition materials, a bathtub, treated telephone poles, tree limbs and other unidentified materials.

3. On the same day, DNR FO5 staff contacted the property owner, Mr. David Whitaker, by phone. He stated he was the property owner and he was burning brush. When asked about the tires and other material in the burn pile, he stated he had lit an existing pile. Based on staff observations, fresh tracks in the snow indicated that debris was recently pushed in a pile. Regardless, Mr. Whitaker stated he would clean up the remaining debris the following day and submit receipts.

4. On January 4, 2022, Mr. Whitaker emailed receipts and a picture of the site cleaned up. Bell Salvage had been contracted by Mr. Whitaker to remove other scrap metal from the site and assisted in cleaning up the burn pile. The email included documentation from Bell Salvage stating that they had assisted in cleaning up the burn pile.

5. On January 6, 2022, a Notice of Violation (NOV) was issued to David Whitaker. Copies of applicable open dumping and air quality rules were enclosed. Mr. Whitaker had expressed interest in open burning the existing structures on the property, including a house and a shed, in the future. It was explained in the NOV, and the previous phone conversation, that this was not acceptable.

**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

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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 waste tires. 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 tires and other solid waste. The above-stated facts establish violations of this regulatory provision.

**V. ORDER**

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

1. Mr. Whitaker will cease and prevent the illegal open burning of combustible material and will comply with all applicable regulations in the future.

2. Mr. Whitaker will cease and prevent the illegal disposal of solid waste and will comply with all applicable regulations in the future.

3. Finally, Mr. Whitaker will pay an administrative penalty of \$2,500.00 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. Iowa Code § 455B.146 authorizes civil penalties of up to \$10,000.00 per day for air quality violations.

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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 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.”

DNR estimates there were 12 tires in the burn site as well as a variety of other solid waste. Considering removal, disposal and transportation costs, DNR assesses \$1,000.00 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 open burning of tires and other solid waste results in toxic emissions impacting both public health and the environment. Major byproducts and heavy metals from burning tires include cadmium, chromium, nickel and zinc, Volatile Organic Compounds (VOCs), Semi-volatile Organic Compounds (SVOCs), Polynuclear Aromatic Hydrocarbons (PAHs), particulate matter, carbon monoxide, sulfur, nitrogen oxides, acid gasses, sulfates and many others. There are several residences in the immediate area.

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

- 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.

Regulations prohibiting the illegal disposal and open burning of waste have been in force in Iowa for decades.

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

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- d) Mitigating Factor: Mr. Whitaker acted quickly to clean up the property and properly dispose of the remaining waste. As such, the penalty amount is decreased by \$500.00.

**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

  
\_\_\_\_\_  
Mr. David Whitaker

Dated this 24<sup>th</sup> day of  
May, 2022.

CC: DNR Field Office 5; David Scott; VI.C; VII.C.1.