

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

<p>IN THE MATTER OF:</p> <p>DAVID HORRAS</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2022-SW- <u>17</u> NO. 2022-AQ- <u>17</u></p>
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To: David Horras
1077 Pine Avenue
Brighton, Iowa 52540

Re: Illegal open burning and disposal of waste tires.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and David Horras to resolve violations of Iowa law governing the burning of waste tires with certain landscape waste.

As detailed below, Mr. Horras agrees to cease the illegal disposal and burning of waste tires, to comply with Iowa law governing burning of trees and other waste in the future, and to pay an administrative penalty of \$6,400.00 within 60 days of this Order being signed by the Director.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Anthony Kerker, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison Street
Washington, Iowa 52353
Phone: 515-201-2314

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

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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 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 June 9, 2022, Iowa DNR Field Office (FO) 6 received an anonymous complaint that a pile of brush with waste tires was being burned on Don Whitham's property. The complainant stated that Mr. Whitham has had a pile of about 150 tires in the past. The smoke from the fire was also stated to be black-dark gray.

2. On June 10, 2022, DNR staff visited the property and saw approximately six piles of woody debris. Within each pile of woody debris there were approximately 10-20 waste tires. Out of the six piles, two piles of woody debris including the remains of tires have been burned. On the same day, DNR issued a Notice of Violation to the property owner instructing him to cease the illegal burning of waste tires.

3. On June 14, 2022, DNR staff drove by the property and observed no changes on site had occurred.

4. On June 20, 2022, Mr. Don Whitham—the property owner—came to Iowa DNR Field Office 6 to speak to Kurt Levetzow (DNR FO6 Supervisor). Mr. Levetzow explained generalities of complaint investigations, but didn't know the specifics of this investigation at that time. Don Whitham left his business card requesting a call back once the investigating DNR field staff was back in the office.

5. On June 21, 2022, DNR FO6 staff conducted a follow-up visit at the Don Whitham property. All of the piles of woody debris including the waste tires had been burned. At each burn site the remains of burned waste tires were observed at each location. Staff talked with a party operating an excavator on the property—Mr. Brian Baker. Mr. Baker provided the name of the Property Owner and the Contractor hired to dispose of timber on the property, Mr. Dave Horras.

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6. On June 22, 2022, DNR staff called Mr. Whitham to discuss the complaint investigation. Staff explained that this matter would likely be referred to DNR Legal Services Bureau for enforcement action due to the continued burning of tires. Mr. Whitham explained that the tires are from David Horras who is renting the property from Mr. Whitham.

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

V. ORDER

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

1. Any solid waste, other than trees and tree trimming ash, that remains at the burn sites referenced in the facts above must be disposed of at a sanitary landfill within 30 days of this Order being signed by the Director. This includes any waste that is in or immediately adjacent to the existing tree burn pile.

2. Mr. Horas must comply with Iowa laws governing open burning and solid waste/waste tire disposal at all times in the future.

3. Within 60 days of the date that the Director signs this order, Mr. Horras must pay an administrative penalty of \$6,400.00.

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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. 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 an economic benefit of \$400.00 based on avoided and transportation costs for the disposal of waste tires and other miscellaneous household waste located in the burn piles.

As such, \$400.00 is assessed for this element.

- 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.

Open burning of waste tires results in highly toxic emissions impacting the health of public health and the environment.

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

- c) Culpability: The factors to be considered in determining the

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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.

It has been illegal to burn waste tires in the state of Iowa for decades. Mr. Horras knew or should have known using waste tires in this manner is illegal. An NOV was also issued to the property owner which presumably was conveyed to Mr. Horras.

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

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.

~~Kayla Lyon, Director~~ Alex Moon, Deputy Director for Kayla Lyon, Director
Iowa Department of Natural Resources



Mr. David Horras

Dated this 27 day of
July, 2022.

CC: DNR Field Office 6; David Scott; VI.C; VII.C.1.

Ticket: 112531

Date: 7/26/2022

SEMCO Landfill
29997 Hwy 78
Richland, IA 52585

Charge Card Customer Hauler: Charge Card Customer

Time In: 11:09 AM

Time Out: 11:28 AM

Origin: Jefferson County & Small Towns

Material: Construction and Demolition @ \$45.00 per tn

Gross: 58200
Tare: 32060
Net: 26140

Subtotal: \$588.15

Total Charge: \$588.15
Amount Paid: \$588.15
Thank You

certify that this load contains no hazardous waste or other banned material

Name _____

Phone _____

Ticket:112543

Date:7/26/2022

SEMCO Landfill
29997 Hwy 78
Richland, IA 52585

Charge Card Customer Hauler: Charge Card Customer

Time In:01:14 PM

Time Out:01:21 PM

Origin: Jefferson County & Small Towns

Material: Construction and Demolition @ \$45.00 per tn

Gross: 58020

Tare: 31220

Net: 26800

Subtotal: \$603.00

Total Charge: \$603.00

Amount Paid: \$603.00

Thank You

certify that this load contains no hazardous waste or other banned material

Name _____

Phone _____