

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

<p>IN THE MATTER OF:</p> <p>Daniel & Linda Faye Troyer</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2022-SW- <u>18</u> NO. 2022-AQ- <u>19</u></p>
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To: Daniel & Linda Faye Troyer
15650 215th Street
Bloomfield, Iowa 52357

Re: Illegal open burning and disposal of solid waste. Non-compliance with asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP) handling and removal regulations.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Daniel and Linda Faye Troyer (Troyers) to resolve violations of Iowa law governing disposal and burning of solid waste and disposal of asbestos.

As detailed below, the Troyers agree to cease the illegal disposal and burning of solid waste, to comply with asbestos removal and disposal regulations, and to pay an administrative penalty of \$4,000.00 within 6-months of this Order being signed by the Director.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Mark Heiderscheid, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison Street
Washington, Iowa 52353
Phone: 319-653-1622

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DANIEL & LINDA FAYE TROYER

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 May 21, 2022, DNR Field Office (FO) 6 received a call from a DNR Park Ranger at Lake Wapello State Park regarding a tire and asphalt shingle fire at 14572 Hwy 2 in Bloomfield, Iowa. Property records show the property is owned by the Troyers. The Park Ranger had been contacted by the Davis County Sheriff's Department at the request of the Bloomfield Fire Department.
2. On May 22, 2022, photos taken by the Park Ranger were submitted to DNR FO6 staff for review.
3. On May 24, 2022, DNR FO6 staff conducted a site investigation. An administrative search warrant was obtained prior to accessing the property. The Davis County Sheriff escorted DNR Field Staff. Staff noted a demolished building that had been burned and that was still smoldering at the entrance to the property and a ravine toward the rear of the property full of tires that had been burned. Photographs were taken to document observations.
4. On June 1, 2022, DNR FO6 received the Bloomfield Fire Department Incident Report. A Notice of Violation (NOV) was issued to the property owner, which included a copy of the search warrant and outlined the corrective actions that needed to be taken. Additionally, the NOV noted that the matter was being referred to DNR Legal Services for further enforcement.
5. On August 8, 2022, Mr. Troyer responded to DNR's initial offer of settlement with a request to decrease the penalty amount and with evidence that the prior owner did not disclose the solid waste on the property in question. DNR took the information submitted by Mr. Troyer into consideration and revised the settlement offer accordingly in a manner consistent with Iowa law.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DANIEL & LINDA FAYE TROYER

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. The Commission has adopted 567 IAC 23.2 which prohibits the open burning of combustible materials, including demolished homes and other solid waste. The above-stated facts establish violations of this regulatory provision.

6. Pursuant to Iowa Code § 455B.133, the Commission adopted 567 IAC 23.1(3), which adopts by reference the federal regulations regarding asbestos removal. The federal EPA has delegated to the state of Iowa the authority to implement and enforce the demolition and renovation portions of the federal asbestos NESHAP, found at 40 Code of Federal Regulations (CFR) part 61, subpart M.

7. 40 CFR 61.145(a) requires a person to thoroughly inspect a structure for asbestos containing material prior to demolition to determine which section of the NESHAP apply. The above-stated facts establish violations of this provision.

8. 40 CFR section 61.145(b)(1) requires complete written notification to be submitted to the DNR prior to beginning demolition or renovation. The specific requirements for this notification are contained in the subsection and must be completed thoroughly and accurately. The above-stated facts establish violations of this provision.

9. 40 CFR 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The above-stated facts establish violations of this provision.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DANIEL & LINDA FAYE TROYER

10. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. The facts in this case indicate a violation of this provision.

11. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. The facts in this case indicate a violation of this provision

12. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. The above-stated facts establish violations of this provision.

V. ORDER

THEREFORE, the DNR orders and the Troyers agree to the following:

1. The Troyers will ensure the proper disposal of any solid waste remaining on the property at a permitted landfill.
2. The Troyers will comply with Iowa Solid Waste and Asbestos regulations at all times in the future.
3. The Troyers will pay an administrative penalty of \$4,000.00 within 6 months of the date that this Order is signed by the Director. Payments may be made on a monthly basis until the debt is satisfied, or may be paid in full at any time. The Order number should be included with the payment and payments should be addressed to the address on the first page of this Order.

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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: DANIEL & LINDA FAYE TROYER

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."

The Troyers avoided numerous costs when they illegally-burned a structure and tires. This includes, but is not limited to, hiring a certified asbestos inspector and contractor to properly inspect the structure for, and abate, asbestos containing material, avoiding landfill and recycling cost for the proper disposal of demolition waste and any other regulated material, and avoiding disposal cost for properly disposing of tires.

In the interest of reaching settlement, no penalty is being assessed 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.

State and federal air quality and solid waste disposal regulatory programs to protect health and environment are undermined by improper open burning and solid waste disposal and exposure of asbestos by illegal burning. The open burning of a structure and of tires contributes to the degradation of large-scale ambient air quality. Persistent smoke in the air results in serious health risk and creates a nuisance condition. Further, failure to address the intentional illegal disposal and open burning of solid waste threatens the integrity of the regulatory program.

As such, \$3,000.00 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
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The violators in this matter were, or should have, been aware of the applicable laws. Restrictions on open burning of solid waste and asbestos have been in place for many years.

In the interest of settlement, \$1,000.00 is assessed for this factor.

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
Iowa Department of Natural Resources



Daniel & Linda Faye Troyer

Dated this 5 day of
Sept, 2022.

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