

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

<p>IN THE MATTER OF:</p> <p>JEFF HOEG</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2022-SW- <u>19</u> NO. 2022-AQ- <u>21</u></p>
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To: Jeff Hoeg
2747 170th Street
Traer, Iowa 50675

Re: Illegal open burning of tires and illegal disposal of solid waste.

I. SUMMARY

This administrative consent order (Order) is entered into by the Iowa Department of Natural Resources (DNR) and Mr. Jeff Hoeg to resolve violations of Iowa law governing the disposal and burning of tires and solid waste.

As detailed below, Mr. Hoeg agrees to cease the illegal disposal and burning of combustible material, to comply with disposal and burning regulations in the future, and to pay an administrative penalty of \$1,300.00 within 60 days of this Order being signed by the Director.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Bill Gross, Env. Specialist Sr.
Iowa Department of Natural Resources
Field Office No. 5
502 E. 9th Street
Des Moines, Iowa 50319
Phone: 515-238-7871

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 September 16, 2022, Iowa DNR Field Office 5 (FO5) received a report from an officer of the Tama County Sheriff's Department stating that there was a lot of black smoke from a fire (including tires) near Traer. The deputy reported the owner claimed that the tire fire was accidental. The deputy subsequently sent photos of the fire by phone text.

2. On September 19, 2022, FO5 staff visited the property and met with the property owner, Jeff Hoeg. The burn site was west of the residence. The site is a former pole building. The structure still had a few poles smoldering and many partially-burned tires and charred steel tire wire remained on the floor of the building. Mr. Hoeg reported that about twenty tires were burned. He reported he had burned the farm building but did not intend to burn the tires. He subsequently stated that he had been investigating options for proper disposal of the tires via Liberty Tire company.

3. On September 26, 2022, FO5 issued a Notice of Violation (NOV) to Mr. Hoeg for the improper open burning of tires and for illegal solid waste disposal. The NOV included copies of applicable regulations. Mr. Hoeg was also informed of further enforcement action by referral to DNR's legal services.

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

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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.

V. ORDER

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

1. Mr. Hoeg will comply with Iowa Solid Waste disposal regulations and open burning restrictions at all times in the future.
2. Mr. Hoeg will pay an administrative penalty of \$1,300.00 within 60 days of the date that this Order is signed by the Director.
3. Mr. Hoeg will remove and properly dispose of all burned material at the Tama County Landfill within 30 days of the date this Order is signed by the Director and provide copies of receipts to DNR FO5 within 10 days of the date 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.
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

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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.”

Tire disposal or recycling costs approximately \$5.00 per tire. For 20 tires, disposal would total \$100.00. Transportation cost for the 40-mile round trip to the Tama landfill for 20 tires would cost approximately \$200.00.

Therefore, \$300.00 is 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 are enacted to protect health and environment. These programs are undermined by improper open burning and solid waste disposal. The open burning of tires contributes to the degradation of 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, \$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.

The prohibition against open burning of tires has been well-publicized for many years. Mr. Hoeg states that the burning of the tires was accidental, and he has removed and properly disposed of remaining material at the site.

In the interest of settlement, no penalty is being assessed for this factor.

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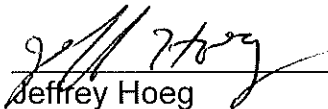
VII. APPEAL RIGHTS

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



Jeffrey Hoeg

Dated this 7 day of
November, 2022.

jeffreychoe@gmail.com

CC: DNR Field Office 5; David Scott.

Jeffreychoeg@gmail.com

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