

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF: MICHAEL ARENDS BLACK HAWK COUNTY, IOWA	ADMINISTRATIVE ORDER NO. 2022-AQ-24
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To: Michael Arends
33498 110th Street
Cedar Falls, Iowa 50613

I. SUMMARY

This administrative order (order) requires Michael Arends 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:

Carl Berg, Field Office 2
Iowa Department of Natural Resources
2300 15th Street SW
Mason City, Iowa 50401
Phone: 641-424-4073

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 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.

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III. STATEMENT OF FACTS

1. Michael Arends operates a construction company at his homestead located at 33498 110th Street, Cedar Falls, Iowa 50613.

2. On May 27, 2022, DNR Field Office 2 (FO2) received a complaint stating that Mr. Arends frequently burns construction waste on this property.

3. On June 7, 2022, David Knoll of FO2 investigated the complaint and observed a single appliance that had been burnt in a pile of tree waste that originated from the property. No other violations were documented. On June 16, 2022, DNR issued a Notice of Violation letter regarding Mr. Knoll's June 7 observations.

4. On June 27, 2022, Carl Berg of FO2 conducted a follow up investigation of the BINARM Inc. property adjacent to Beaver Creek, and Mr. Berg determined that Mr. Arends had not conducted any additional removal of solid waste and open burning wastes deposited after initial cleanup efforts.

5. On August 5, 2021, FO2 received a complaint alleging the dumping and burning of construction and demolition waste at the 110th Street property.

6. On August 6, 2021, Mr. Berg investigated the complaint and spoke with Mr. Arends at the site. Mr. Berg observed a burn pile still smoldering. Multiple tires and tire beads, a window air conditioner, insulation, sinks, metal siding, concrete slabs and blocks, grubbed trees and branches, and other construction and residential wastes were observed in the burn pile. Mr. Arends admitted to burning of wastes from his son's remodel and a rental property.

7. An August 20, 2021, Notice of Violation letter (NOV) was issued by DNR to Mr. Arends for illegal open burning and open dumping. Also, on August 20, 2021, FO2 received a complaint stating that Mr. Arends was dumping solid waste on the banks of Beaver Creek near New Hartford.

8. On August 23, 2021, Mr. Berg investigated the August 20, 2021, complaint. During the investigation, Mr. Berg found solid waste and concrete deposited on the banks and floodplain of Beaver Creek on the property of BINARM Inc.

9. A September 10, 2021, NOV was issued to Mike Patterson of BINARM Inc. for open dumping and for failing to get a floodplain permit for the riprap project on Beaver Creek. In a September 30, 2021, email, BINARM Inc. property owner Mike Patterson confirmed that Mr. Arends deposited the wastes on BINARM Inc. property as part of a riprap project. Mr. Patterson stated that he and Mr. Arends had agreed upon a timeline for proper disposal of the wastes.

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10. A follow up inspection was conducted by FO2 on November 10, 2021, to determine that the illegal placed solid waste removal had been removed from the Beaver Creek dump area. FO2 observed that there was solid waste still remaining on the stream bank, requiring additional removal.

11. A November 18, 2021, letter was sent by FO2 to Mr. Arends, stating that additional clean-up was necessary at the Beaver Creek stream bank on the BINARM Inc. property.

12. Mr. Arends has a history of illegal open burning and dumping, and has specifically been informed in writing by FO2 of the prohibitions against illegal open burning and dumping.

13. DNR FO1 received a complaint on September 9, 2020, stating that Mr. Arends was hauling and burning demolition material at his acreage. FO1 forwarded the complaint to FO2. On September 16, 2020, Sheila Bly of FO2 investigated the complaint and stopped at Mr. Arends 110th Street property. Ms. Bly observed smoldering landscape waste. She also observed a tire, pallet, and stormwater filter sock in a pile of landscape waste. However, the solid waste had not been burnt at that time. A September 23, 2020, Letter of Non-Compliance was issued to Mr. Arends for the illegal open burning of landscape waste that originated from construction activities.

14. On August 8, 2013, FO2 received an anonymous complaint that Mr. Arends was hauling construction and demolition waste from Cedar Falls to an acreage he owns in Grundy County. The complainant stated that Mr. Arends was placing the waste in a hole and burning it. The acreage is located on the south side of Hwy 57 about one-half mile west of the Grundy-Black Hawk county line, which is the 110th Street property.

15. On August 13, 2013, Mr. Berg stopped at Mr. Arends 110th Street property and observed a large burn pile visible from the highway. Construction and demolition wastes were observed still smoldering.

16. On August 19, 2013, Mr. Berg further investigated the complaint and discussed his findings with Mr. Arends. Mr. Arends was burning trade waste from a fitness facility as part of the demolition project being he had contracted to conduct.

17. A September 3, 2013, NOV was issued for open dumping and open burning of demolition waste on Mr. Arends 110th Street property.

18. On March 26, 2014, Mr. Berg visited Mr. Arends 110th Street property to follow up regarding whether material was properly disposed. Mr. Berg confirmed that the material was adequately disposed and no further action was required.

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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 tires is specifically prohibited.

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 Michael Arends to do the following:

1. Michael Arends shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at his 110th Street property, at the Beaver Creek area described above, 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, Michael Arends shall collect and dispose of or recycle all solid waste materials remaining at his 110th Street property and at the Beaver Creek area described above, and Mr. Arends shall obtain and provide copies of landfill and recycling receipts to FO2 to document proper disposal of the solid waste;

3. Within 30 days of the date this order is signed by the director, Michael Arends shall pay a penalty of \$10,000.

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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 \$10,000.00 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.”

Michael Arends saved time and money by stockpiling and burning the solid waste in lieu of transportation to and disposal at a permitted landfill. The tipping fee for waste at the Black Hawk County Sanitary Landfill is \$42.25 per ton. It is conservatively estimated that approximately 100 tons of solid waste were not properly disposed at a permitted landfill. Therefore, the total estimated cost saved based only on landfill tipping fees is \$4,225.00.

A penalty of \$4,225.00 is recommended for this factor.

Gravity of the Violation – 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 solid waste threatens both the environment and human health. It damages air quality and can cause significant acute and chronic health effects. Particulate matter from the open burning of tires, appliances and construction wastes can release toxic substances into the air. Open dumping damages the environment and prevents proper management of the solid waste stream. Allowing parties to burn solid

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waste rather than properly disposing of it in a landfill may encourage or inspire others to do the same.

A penalty of \$2,775.00 is recommended for this factor.

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. Arends 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. Arends was specifically made aware of the prohibitions against illegal open burning and open dumping in 2013.

Therefore, \$3,000.00 is assessed for culpability.

VII. APPEAL

Pursuant to Iowa Code 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 portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 567 IAC Chapter 7.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitute full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this administrative 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 2; Anne Preziosi; VII.B.2.