

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

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| <p>IN THE MATTER OF:</p> <p>Ronald Aukes</p> | <p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2022-SW- 21 _____ NO. 2022-AQ- 26 _____</p> |
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To: Ronald Aukes
1321 400th Street
Buffalo Center, Iowa 50424

Re: Open burning of solid waste/ Illegal disposal of solid waste/ Illegal storage of discarded appliances.

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Mr. Ronald Aukes for the purpose of resolving certain solid waste disposal, storage and open burning violations.

As detailed below, at all properties owned by Mr. Aukes, he must cease the illegal burning, storage and disposal of solid waste, properly dispose of any remaining solid waste and appliances, comply with Iowa solid waste and air quality regulations in the future, and pay an administrative penalty of \$5,000.00 within 60 days of this Order being signed by the Director of the DNR.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Sheila Bly, Env. Specialist Sr.
Iowa Department of Natural Resources
Field Office No. 2
2300 15th St. SW
Mason City, Iowa 50401
Phone: 641-424-4073

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
Legal Services Bureau
Wallace State Office Building
502 E. 9th St.
Des Moines, Iowa 50319
Phone: 515-725-8239

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
[Include Order Number with Payment]

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ISSUED TO: RONALD AUKES

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 and regulations adopted pursuant to that part; 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 relevant to this matter:

1. On April 25, 2022, the Winnebago County Sheriff's Office received a complaint concerning the open burning of hazardous substances at 1278 400th Street, Buffalo Center, Iowa.
2. On May 9, 2022, the Winnebago County Sheriff's Office forwarded the open burning complaint to DNR Field Office (FO) 2.
3. On May 18, 2022, FO2 staff visited the property to investigate the complaint and documented discarded appliances and scrap metal in one location and a burn pile containing materials such as tires, appliances, carpet, foam, plastics, recyclable materials, asphalt shingles, and furniture. A pool of roofing tar was also observed adjacent to the burn pile.
4. On May 19, 2022, FO2 staff spoke to the property owner, Mr. Ronald Aukes, who stated that he has several rental properties and when his dumpster gets full, he brings the excess materials (trade wastes) to his property at 1278 400th Street and burns them. It appears that this practice has been on-going over time, as this was not the first time that material had been burned at the property. DNR staff informed him of the administrative rules applicable to solid waste disposal and open burning and told him that the remaining wastes must be properly disposed of at a permitted landfill. Staff also requested copies of the landfill receipts when completed.
5. On June 6, 2022, a Notice of Violation (NOV) was sent to Mr. Aukes for open burning and for the improper disposal of appliances and solid waste.
6. On June 16, 2022, Mr. Aukes sent copies of six receipts from the Kossuth County Transfer Station to FO2 staff. The receipts show that 12.16 tons of material was disposed of at the transfer station between May 24 and June 9, 2022.

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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. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. The Commission has adopted 567 IAC 100.4 for the regulation of open dumping in Iowa. The provision 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 and pursuant to the terms of a permit granted by the agency authorizing the disposal of solid waste. The above stated facts establish violations of this regulatory prohibition.

5. The Commission has adopted 567 IAC 118.4 to address the proper storage of discarded appliances in a manner that will prevent damage to compressors, capacitors, refrigerant lines, and mercury-containing components, among other restrictions.

6. The Commission has adopted 567 IAC 23.2 which regulates open burning of combustible materials in Iowa. The regulation specifically prohibits individuals from allowing, causing or permitting open burning of combustible materials in Iowa, except in certain situations that are not applicable to this matter. The above stated facts establish violations of this provision.

V. ORDER

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

1. Mr. Aukes must cease the illegal disposal and burning of solid waste at any property in the state of Iowa.

2. Mr. Aukes must properly dispose of all solid waste and appliances he has stored or disposed of at any property in Iowa.

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3. Mr. Aukes must comply with all applicable Iowa regulations governing solid waste disposal, appliance storage and disposal, and the burning of combustible materials at all times in the future.

4. Mr. Aukes must pay an administrative penalty of \$5,000.00 within 60 days of the Director signing this Order.

VI. 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. Additionally, Iowa Code § 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.

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 fine 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. DNR has determined that in this instance based on the facts above, a penalty of \$5,000.00 is warranted pursuant to these criteria as explained below.

- a) Economic Benefit: 567 IAC 10 requires the DNR to consider and recoup the costs saved or likely saved due to non-compliance. The chapter authorizes the DNR to estimate economic benefit if clear data is unavailable.

In this matter, Mr. Aukes avoided paying landfill disposal fees for proper disposal of the solid waste that was burned, including transportation costs. Based on the amount of waste observed on the property and evidence that such burning had occurred on more than one occasion in the past, \$2,000.00 is assessed for this factor.

- b) Gravity of the Violations: Elements to consider when determining the gravity of a violation include, but are not limited to, the actual or threatened harm to the environment or public health and safety, whether the violation threatens the integrity of the regulatory program, and the penalty amount authorized. Illegal disposal of solid waste by open dumping threatens both the environment and human health. Improperly disposing of solid waste damages the

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environment, prevents proper management of the solid waste stream, and may encourage or inspire others to open dump. Open dumping also threatens the integrity of DNR's environmental regulatory program. Additionally, open burning damages air quality in Iowa and can cause significant acute and chronic health effects. The incidents of open burning referenced in this Order threaten the integrity of the regulatory program and DNR efforts to protect human health and natural resources in the state of Iowa. A penalty of \$2,000.00 is assessed for the gravity of these violations.

- c) Culpability: The factors to be considered in determining the "culpability" of the violator include the degree of intent or negligence, whether this is a repeat violation, and whether the violator has taken remedial measures to address the harm caused by the violations. Open dumping and open burning prohibitions have been in place in Iowa for more than 40 years. Therefore, a penalty of \$1,000.00 is assessed for this factor.

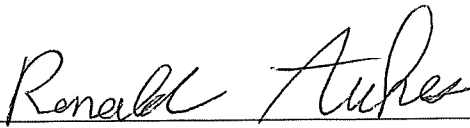
VII. APPEAL RIGHTS

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.307 and 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



Mr. Ronald Aukes

Dated this 29th day of
November, 2022.

CC: DNR Field Office 2; David Scott