

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

IN THE MATTER OF:

Cody Ritter

ADMINISTRATIVE
CONSENT ORDER

NO. 2023-AQ- 03

To: Cody Ritter
3251 240th Street
Charles City, Iowa 50616

Re: Illegal open burning of combustible material.

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Mr. Cody Ritter (Ritter) to resolve violations of Iowa clean air regulations prohibiting the open burning of combustible material.

As detailed below, Mr. Ritter agrees to cease the illegal burning of combustible material, to comply with Iowa law at all times in the future, and to pay an administrative penalty of \$4,500.00 within sixty days of this Order being signed by the Director.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Daniel Watterson, Env. Specialist
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
1023 W. Madison Street
Washington, Iowa 52353
Email: david.scott@dnr.iowa.gov
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.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 August 29, 2022, the Floyd County Sheriff's office contacted DNR's Field Office 2 (FO2) regarding a large party being advertised online, which would include a large fire. Deputy Travis Bartz was directed to the DNR webpage for copies of the state of Iowa's open burning regulations.

2. On September 7, 2022, the local fire department and the sheriff's office respond to a fire on Mr. Ritter's property. This was apparently not the advertised party.

3. On September 8, 2022, Sheriff Deputies delivered a copy of the open burning rules to Mr. Ritter, prior to the advertised party.

4. On September 26, 2022, Deputy Bartz contacted FO2 to inform the DNR that the advertised party had occurred on September 24th and that a car and trailer were burned. He included screen-shot photos from the internet showing the car on fire. He also provided before- and after-photos of the burn pile. A video of the party was found online and showed the car and trailer being burned.

5. On October 3, 2022, staff from DNR FO2 observed the burn pile debris from the road since Mr. Ritter was not present. Mr. Ritter called DNR later that same day and said he thought the trailer could be burned since he cleaned it out after receiving the open burning rules. He claimed to have removed the railroad ties from the burn pile, as well, and stated that he did not burn any tires. He stated that a "car may have got a little hot," as well. DNR staff notified Mr. Ritter that a video clearly shows a car burning, so he would be receiving a Notice of Violation (NOV) for open burning, and would likely be referred to DNR's legal services for further enforcement.

6. On October 11, 2022, DNR sent the NOV to Mr. Ritter for prohibited open burning of combustible material.

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7. On November 4, 2022, Mr. Ritter contacted DNR FO2 and requested time to complete clean-up of the ash and remaining debris.

8. November 16, 2022, Mr. Ritter sent a copy of the landfill receipt for ash disposal.

IV. CONCLUSIONS OF LAW

The Environmental Protection Commission has adopted 567 IAC 23.2, which prohibits the open burning of combustible materials in the state of Iowa unless an exception applies to the material. The materials burned during this fire are not subject to an exception, so the facts above establish violations of this regulation.

V. ORDER

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

1. Mr. Ritter will comply with Iowa open burning regulations at all times in the future.

2. Mr. Ritter will pay an administrative penalty of \$4,500.00 within 60 days of the date that this Order is signed by the Director. Mr. Ritter may seek a payment plan if necessary.

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.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

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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.”

In the interest of settlement, the DNR is not seek a penalty 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.

DNR FO2 staff, the local sheriff’s office and the local fire department were forced to address this event. The public health of neighboring home owners was threatened due to emissions from illegal burning. The fire released toxins from the tires, plastics, fabrics, and automotive fluids into the air. The fire also threatens the integrity of the state of Iowa’s air quality programs.

As such, \$2,500.00 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.

Open burning restrictions in Iowa have been in place for over 40 years and Mr. Ritter was informed by the sheriff’s office prior to the fire of the specific rules. Although he claimed to have removed some items from the burn pile, a fully functioning car obviously would not meet the exemptions for open burning. Mr. Ritter was also involved in a similar case in 2019 at a friend’s property which resulted in a referral to DNR’s legal department. So, he was well aware of the legal requirements for open burning in Iowa.

As such, \$2,000.00 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)

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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

Cody Ritter
Cody Ritter 

Dated this 10th day of
January, 2023.

CC: DNR Field Office 2; David Scott