

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p><b>CHAD ROCHE</b></p>	<p style="text-align:center">ADMINISTRATIVE ORDER</p> <p style="text-align:center">NO. 2023-SW-02</p>
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To: Chad Roche  
4828 Finch Avenue  
Northwood, Iowa 50459

CC: Chad Roche  
57121 110<sup>th</sup> Street  
Wells, Minnesota 56097

RE: Illegal storage and hauling of waste tires.

**I. SUMMARY**

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Mr. Chad Roche to address the illegal storage and transportation of waste tires. Mr. Roche is required to remove and properly dispose of waste tires pursuant to the provisions below and to cease the transportation of waste tires without a permit. In addition, Mr. Roche is required to pay an administrative penalty of \$10,000.00 within 60 days of the date that this Order is signed by Director.

Any questions regarding this Order should be directed to:

**Relating to technical requirements:**

Madelynn Austin, 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 and  
administrative penalty:**

David Scott, Attorney  
Iowa Department of Natural Resources  
Legal Services Division  
1023 W. Madison St.  
Washington, Iowa 52353  
Ph: (319) 653-2135

**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

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1 (solid waste) and the rules and regulations adopted pursuant to that part; Iowa Code §§ 455D.4A and 455D.23, which address criteria for legitimate recycling in Iowa and authorize the Director to issue any order necessary to secure compliance with those criteria, including removal and proper disposal; 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 relevant facts are stated in chronological order:

1. On March 31, 2022, DNR Field Office (FO) 2 received an anonymous complaint stating that there was a significant stockpile of tires at 4828 Finch Avenue between the Casino and Lake Mills (the property). The complainant stated that the accumulation of tires had significantly increased over the last year.

2. On April 5, 2022, FO2 staff determined that the property was owned by Mr. Arthur Flattum of Albert Lea, Minnesota. Staff contacted Mr. Flattum prior to proceeding inspecting the property. He indicated that he had not been to the property recently, but that he'd heard "it's a dump." Mr. Flattum stated that he was renting the property to Chad Roche and provided Mr. Roche's contact information.

On the same day, staff contacted Mr. Roche, who agreed he had been working at the property and would meet staff on the property. FO2 staff proceeded to the property. Mr. Roche indicated that he was currently in the process of closing on the land from Mr. Flattum. Mr. Roche showed staff around the property and stated his plan of starting a tire-processing business and using tire shreds for reuse/repurpose. He obtained a tire shredder in the spring of 2021 but had not used it. He was unaware of state regulations and permit requirements applicable to tires.

Staff informed Mr. Roche that he was in violation of Iowa Administrative Code Chapters 116 and 117. After discussion on how to get into compliance, Mr. Roche verbally agreed to properly dispose of 500 tires a month until he was in compliance with storage limits. It was also agreed that Mr. Roche's first receipt would be due to FO2 by the first of June, 2022.

As of the date of this Order, Mr. Roche owns the property.

3. On April 15, 2022, a Notice of Violation (NOV) was issued to Mr. Roche for illegal waste tire storage and hauling. The NOV stated that failure to remove and properly dispose of the tires would result in an enforcement referral to DNR's Legal Services Bureau with a recommendation for a financial penalty.

4. On May 15, 2022, Mr. Roche closed on the property.

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5. On June 6, 2022, FO2 staff called Mr. Roche and the call went straight to voicemail.

6. On June 7, 2022, Mr. Roche responded and indicated that he had been taking cars to the shredder and would throw 5 tires in with those cars and thought maybe 200 tires had been removed so far. No receipt for tire disposal was received after this conversation.

7. On July 12, 2022, Mr. Roche texted Ms. Nelson that he would send receipts.

8. On July 14, 2022, FO2 staff reached out to Mr. Roche asking if they could meet with him at the property and check out progress. Mr. Roche indicated his grandmother had COVID and he had been exposed and asked for a later follow up.

9. On July 25, 2022, staff again reached out to Mr. Roche again to meet at the property for follow-up. He indicated he was sick and would let FO 2 know when he would be able to meet.

10. On August 11, 2022, the parties agreed to meet at the property on Wednesday August 17, 2022, to review compliance status. Subsequently, Mr. Roche stated he would be unable to participate on the 17<sup>th</sup>.

11. On August 17, 2022, FO2 staff traveled to rural Worth County and viewed the property via the bean field next to the property. Staff determined that no progress had been made to date.

12. On August 22, 2022, FO2 staff met with Mr. Roche at the property. Mr. Roche had notes on how many tires he had removed from the property. There was a dump-trailer in the driveway intended for scrap metal that he indicated he could throw 10 tires into before the scrap yard would reject his load. He indicated that he usually throws tires on rims in there, which he had continued to collect. Mr. Roche also had a trailer loaded up with tires on it that he indicated he would be taking to Liberty Tires in Shakopee on August 24, 2022. He believed there were 400 tires on the trailer. He indicated he would send receipts when he disposed of the load at Liberty.

13. As of August 29, 2022, staff had not received any receipts from Mr. Roche to date.

14. On September 15, 2022, DNR received a receipt for tire disposal from Liberty Tire showing the removal of approximately 5 tons of tires. No additional receipts have been received.

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15. In October, 2022, the DNR offered a settlement agreement to Mr. Roche. Despite initial communication between DNR and Mr. Roche, Mr. Roche failed to respond to the settlement request or to comply with Iowa law. Additional efforts by DNR to reach Mr. Roche have also been unsuccessful.

**IV. CONCLUSION OF LAW**

1. Iowa Code § 455B.307 prohibits a private entity 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 unless the entity has been granted a permit by the DNR which allows the dumping or depositing of solid waste on land owned or leased by the entity. The above-stated facts establish a violation of this statutory prohibition.

2. Iowa Code Chapter 455D regulates recycling of materials that would otherwise be solid waste. Section 455D.4A addresses the requirements a facility must meet to establish that the facility is legitimately recycling material.

3. Iowa Code § 455D.4A(3) authorizes the DNR to deem material that is not legitimately recycled to be solid waste.

4. Iowa Code § 455D.23 authorizes the DNR to require material that is not legitimately recycled to be properly disposed of.

5. 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 Iowa Administrative Code (IAC) chapters 100-123.

6. The Commission has adopted 567 IAC 100.4 for the regulation of open dumping in Iowa. The provision prohibits a private entity 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 DNR authorizing the disposal of solid waste. The above-stated facts establish multiple and continued violations of this prohibition on open dumping.

7. The Commission has adopted 567 IAC 116.3 requires a waste tire hauler to register annually in accordance with the provisions of 567 IAC Chapter 116. The above-stated facts establish a violation of this regulation.

8. The Commission has adopted 567 IAC 117.4(1) to prevent accumulation of waste tires on a property. The provision states that no business or individual shall store more than 500 passenger tire equivalents without obtaining a permit for a waste tire stockpile pursuant to 117.4(2). The above-stated facts

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establish a violation of this regulation.

**V. ORDER**

**THEREFORE**, the DNR orders the following:

1. Mr. Roche will cease the collection of waste tires and will comply with applicable Iowa regulations governing waste tire disposal, storage and transportation in the future.
2. Mr. Roche will remove all waste tires from the property in excess of 500 PTE within 90 days of the date of this Order. Receipts establishing proper disposal must be provided to DNR FO2 within 10 days of disposal.
3. Mr. Roche will pay an administrative penalty of \$10,000.00 within 60 days of the Director signing 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.

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 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 economic benefit for failure to obtain an annual waste tire hauler license is the annual registration fee of \$50.00 plus the cost of a \$150,000.00 (minimum) financial assurance bond -- estimated to be valued at \$1,500.00

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per year. The economic benefit of the illegal disposal of waste tires should be included as the cost of proper disposal of the waste tires including handling, transportation, and tire disposal costs. It is estimated there were 95,000 tires stored on the property. Multiplied by \$3.00 per tire for disposal equals \$285,000.00. As such, \$286,550 is determined for total economic benefit.

In the interest of settlement, DNR assesses a penalty of \$4,000.00 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.

Illegal storage and disposal of waste tires damages the environment, prevents proper management of disposing of solid waste and may encourage or inspire others to open dump. Illegal disposal also threatens the integrity of Iowa DNR's environmental programs and efforts to protect our natural resources. Failure to obtain the proper registration to haul waste tires prevents the DNR from protecting interests associated with the proper management of waste tires.

As such, \$3,000.00 is assessed for the gravity of the violations.

c) Culpability: The factors to be considered in determining the culpability of the violator include the degree of intent or negligence, and whether the violator has taken remedial measures to address the harm caused by the violations.

Waste tire disposal and transportation regulations have been in place in Iowa for more than 40 years. It is the responsibility of Mr. Roche to know and abide by these rules.

Therefore, \$3,000.00 is assessed for this factor.

## **VII. APPEAL RIGHTS**

This Order is subject to appeal pursuant to Iowa Code § 455B.110 and the contested case rules promulgated pursuant to that section. An appeal must be received by the DNR within 60 days of the date this Order issued, at which time a contested case hearing will be scheduled before an Administrative Law Judge. Failure to appeal will result in this Order being considered final agency action.

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**VIII. NONCOMPLIANCE WITH THIS ORDER**

Failure to comply with any requirement of this Order may result in the imposition of further administrative penalties or referral to the Iowa Attorney General to obtain injunctive relief, and/or civil penalties.

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Kayla Lyon, Director  
Iowa Department of Natural Resources

CC: DNR Field Office 2, David Scott.