

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

IN THE MATTER OF:

Mike Burken

ADMINISTRATIVE
CONSENT ORDER

NO. 2023-SW-07

NO. 2023-AQ-08

To: Mike Burken
1440 459th Ave.,
Clinton, Iowa 52732

Re: Open burning of solid waste/ Illegal disposal of solid waste

I. SUMMARY

This administrative consent order (Order) is entered into between the Iowa Department of Natural Resources (DNR) and Mr. Mike Burken for the purpose of resolving certain solid waste disposal, storage and open burning violations. Similar orders have been issued to the other parties referenced in the facts below.

This Order requires Mr. Burken to cease the illegal burning, storage and disposal of waste tires, to comply with Iowa solid waste, tire storage and air quality regulations in the future, and pay an administrative penalty of \$4,500.00 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:

Anthony Kerker, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 6
1023 West Madison Street
Washington, Iowa 52353
Phone: 515-201-2314

Relating to legal requirements:

David Scott, Attorney
Iowa Department of Natural Resources
1023 West 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
[Include Order Number with Payment]

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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 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 December 3, 2022, DNR Field Office (FO) 6 received an anonymous complainant concerning the accumulation of tires on property owned by Mr. Thomas Stevenson.

2. On the morning of December 5, 2022, the anonymous complainant provided additional pictures of Brandenburg knocking down trees and placing tires into piles of trees to be burned.

3. On December 5, 2022, the anonymous complainant called Iowa FO 6 to report that Mr. Stevenson and staff from Blue Hyll dairy were dumping tires on the Stevenson property. The tires were reportedly being placed within the brush piles to accelerate the fire.

4. Also on December 5, 2022, Iowa DNR's Conservation Officer for Clinton County received a phone call regarding the above-described illegal open burning. The complainant was directed to FO 6, however, the Conservation Officer drove past the site and observed dark smoke rising from a stand of trees East of Almont, Iowa and Smith Cemetery in Clinton County. The officer also visited with Mr. Stevenson about what is occurring on the property. Mr. Stevenson admitted to burning 6-10 tires at that time.

5. On the morning of December 6, 2022, the anonymous complainant provided additional photos to DNR FO 6 of an excavator picking up tires and placing them into the burn piles. The anonymous complainant notified DNR that additional tires were being burned.

6. On December 6, 2022, staff from DNR FO 6 arrived at the site of the complaint. Staff observed an excavator knocking down trees in the timber and placing them into a burn pile. Piles of waste tires were observed near the burn piles. Staff met and discussed the matter with Mr. Terrill Saunders, excavator

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operator for Brandenburg. Mr. Saunders told staff that he had been placing tires in the burn piles to help burn the piles of trees. Mr. Saunders stated that he thought it was legal to burn tires if they originated on the property. DNR staff notified Mr. Saunders that burning tires is illegal and must cease. During this conversation, DNR staff noted a pile of tires on the property and the remains of several burned tires in some of the piles of wooded debris. Mr. Saunders was instructed to remove all waste tires from the unburned piles of wooded debris. Finally, Mr. Saunders explained that Blue Hyll Dairy and Thomas Stevenson had brought loads of tires to the property.

7. After speaking with Mr. Saunders, staff proceeded to drive to the nearby Blue Hyll Dairy. Staff discussed the matter with Mr. Burken. Mr. Burken stated that tires were brought over to the property to help burn the trees on site. Mr. Burken also stated that the Blue Hyll Dairy has a problem with someone illegally-dumping tires on the property, and he was trying to dispose of them. Staff notified Mr. Burken that burning tires is illegal and they discussed the disposal of tires.

8. Finally, DNR staff visited with the property owner, Mr. Stevenson. Mr. Stevenson acknowledged burning the tires on his property and thought it was legal to do so. DNR instructed Mr. Stevenson to stop burning tires and to remove all unburned tires from the unburned piles of wooded debris.

9. On December 7, 2022, Notices of Violation (NOVs) were issued to the responsible parties, including Thomas Stevenson, Mike Burken (Blue Hyll Dairy), and Joe Brandenburg (Brandenburg Drainage Inc.).

10. On December 13, 2022, DNR staff conducted a follow up visit to the properties where the burning has been taking place. The tires that had been stored on the site had been removed, but multiple burned tire remains were found throughout the property.

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

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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 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. Burken agrees to the following:

1. Mr. Burken and the Blue Hyll Dairy must cease the illegal disposal and burning of solid waste, including waste tires, at any property in the state of Iowa.

2. Mr. Burken and the Blue Hyll Dairy must comply with all applicable Iowa regulations governing solid waste disposal and the burning of combustible materials at all times in the future.

3. Mr. Burken and the Blue Hyll Dairy must pay an administrative penalty of \$4,500.00 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

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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 \$4,500.00 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 the interest of settlement, the DNR has determined that no penalty will be 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 environment, prevents proper management of the solid waste stream, and may encourage or inspire others to improperly dispose of solid waste. Additionally, open burning of tires 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 \$3,000.00 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. Illegal disposal and open burning prohibitions have been in place in Iowa for more than 40 years.

As such, a penalty of \$1,500.00 is assessed for this factor.

VII. APPEAL RIGHTS

As this Order is entered by consent of the parties, there is no right of appeal.

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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. Mike Burken

Dated this 3 day of
March, 2023.

CC: DNR Field Office 6; David Scott