# IOWA DEPARTMENT OF NATURAL RESOURCES ADMINISTRATIVE ORDER

IN THE MATTER OF:

ADMINISTRATIVE
ORDER

Brian Young
NO. 2023-AQ- 23

To: Brian Young 11697 180<sup>th</sup> St Dumont, Iowa 50625

Re: Illegal open burning.

### I. SUMMARY

This administrative order (Order) is issued by the Iowa Department of Natural Resources (DNR) to Mr. Brian Young to address violations of Iowa law governing the open burning of combustible material.

As detailed below, Mr. Young is required 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 \$7,000.00 within sixty days of this Order being signed by the Director.

Any questions regarding this Order should be directed to:

## Relating to technical requirements:

Madelynn Austin, Env. Specialist Iowa Department of Natural Resources Field Office No. 2 2300 15<sup>th</sup> Street, SW Mason City, Iowa 50401

Phone: 641-424-4073

# Payment of penalty to:

Director of the Iowa DNR Wallace State Office Building 502 East Ninth Street Des Moines, Iowa 50319-0034

## Relating to legal requirements:

Bradley Adams, Attorney
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa, 50319
Phone: 515-664-8894

#### 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 February 4, 2023, DNR Field Office (FO) 2 received a complaint from the Butler County Emergency Coordinator referencing an uncontrolled brush burn on February 4, 2023. The complainant stated Mr. Brian Young called in the fire when it got out of control and spread to nearby buildings. Upon investigation, DNR staff determined that the property where the burn occurred is owned by Kongkham Chanthavisouk of Minneapolis, MN.
- On February 8, 2023, staff from DNR FO2 visited the property. The burn pile was still smoldering and the ground was covered with tire beads and some tire rims. Staff estimated that over 1,000 tires had been burned. During this inspection, DNR staff met with Mr. Young, who indicated that he was not renting the property, but that he was friends with the owner and he had been living there for two years. The owner had a relative living on site who recently died. Mr. Young indicated he had been caretaking for the relative and had been working on cleaning the place up. He stated that he just had an area of trees cleared by someone and did not realize the person piled the brush on top of a pile of tires. He also stated that he did know the brush pile was within 5 feet of the large pile of tires. He did not give a name of who cleared the brush on the property. Based on the inspection, staff determined that the footprint of the burned tires was approximately 50x50 feet. The entire area was covered with tire beads and the area was still smoldering. Mr. Young indicated there were "a thousand or so" tires in the area. Mr. Young indicated that he had someone lined up to come and clean the scrap metal and cleanup the burn area. DNR staff asked to be notified when this happened.
- 3. On February 10, 2023, Mr. Young notified DNR that he was actively cleaning up the site and that he planned to cooperate with the investigation. He also requested that any penalty be reasonable based on his ability to pay.

4. On February 13, 2023, a Notice of Violation (NOV) was issued for the open burning violation to Mr. Young. He was also notified that further enforcement action with an administrative penalty was being considered.

#### IV. CONCLUSION OF LAW

The Environmental Protection Commission has adopted 567 IAC 23.2(1) which prohibits a person from allowing, causing, or permitting the open burning of combustible materials. Certain exceptions to this rule are not applicable. As such, the above-stated facts establish multiple violations of this regulatory provision.

#### V. ORDER

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

- 1. Mr. Young will comply with lowa's open burning regulations and waste tires storage regulations at all times in the future and immediately cease the burning of tires or any other regulated combustible material.
- 2. Mr. Young will provide proper-disposal receipts to DNR FO2 within 10 days of properly disposing of solid waste remaining on the property.
- **3.** Mr. Young will pay an administrative penalty of \$7,000.00 within 60 days of the date that this Order is signed by the Director.

#### 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. 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 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 Butler County Transfer Station charges \$5.00 each for a car tire. Liberty Tire in Des Moines, Iowa would likely charge \$3.50 across their scale. By Mr. Young's own admission, at least 1,000 tires were burned. At an average of \$4 per tire for disposal, \$4,000 was avoided in disposal fees.

As such, \$4,000.00 is assessed for this factor.

b) <u>Gravity of the Violations</u>: 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.

The open burning of waste tires releases toxins that pollute the air and groundwater, and pose a significant risk to human health and the environment. This fire caused toxic substances to be released into the atmosphere. Additionally, this fire threatens the integrity of DNR's environmental programs and efforts to protect natural resources.

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

c) <u>Culpability</u>: 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.

The prohibition of burning combustible materials, including waste tires, has been in place for over 40 years. It is the responsibility of Mr. Young to know and abide by lowa law.

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

This Order is subject to appeal pursuant to Iowa Code § 4558.110 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.

## 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.

Kayla Lyon, Director Iowa Department of Natural Resources

CC: DNR Field Office 2; Bradley Adams