

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

Dennis L. Reich

ADMINISTRATIVE
ORDER

NO. 2023-AQ-22

To: Dennis Leo Reich
1641 President Avenue
Mason City, IA 50401

Re: Illegal open burning.

I. SUMMARY

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

As detailed below, Mr. Reich 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 \$3,100.00 within sixty days of this Order being signed by the Director.

Relating to technical requirements:

David Knoll, Env. Specialist Senior
Iowa Department of Natural Resources
Field Office No. 2
2300 15th Street, SW
Mason City, Iowa 50401
Phone: 641-424-4073

Relating to legal requirements:

Bradley Adams, Attorney for the DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, IA 50319
Phone: 515-664-8894

Payment of penalty to:

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

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: DENNIS L. REICH

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 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 promulgated or permits issued pursuant thereto; Iowa Code sections 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 section 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 July 8, 2021, David Knoll, a DNR Environmental Specialist Senior, investigated a complaint alleging Dennis Leo Reich was illegally demanufacturing and open burning appliances at a local business in Mason City, IA. The complaint was unfounded and no violations were observed. Mr. Knoll spoke with Mr. Reich over the phone and discussed the open burning rules. Mr. Reich stated he was very aware of the appliance demanufacturing and the open burning rules and was in full compliance with them.
2. On April 13, 2023, at 10:35 PM, State Patrol Dispatch (Cedar Falls) reported via the DNR emergency response line that a tire fire was actively taking place at 4077 Vine Avenue in Worth County near Grafton. A 911 caller reported multiple fires on the property. The Grafton Fire Department was called to put out the fire. The property owner, James Prince, was not at the scene. When contacted, Mr. Prince requested anyone who was there be charged with trespassing. Five individuals were arrested by the Worth County Sheriff's Office for trespassing, including Mr. Reich. Mr. Reich admitted to Worth County Sheriff Deputy Kevin Knudson that he had burned 25 tires. When told to stop burning tires, Mr. Reich unloaded the rest of the tires from a trailer onto the ground.
3. On April 27, property owner James Prince contacted Mr. Knoll and reiterated that the individuals at the site did not have permission to be there. Mr. Knoll asked if he knew how many tires had been at the site prior to the burning and Mr. Prince stated he had not been to the site for a while, but believed there were not very many. Mr. Prince granted permission to visit the property to conduct the open burning investigation.

Madelynn Austin, DNR Environmental Specialist, and Mr. Knoll went to the site to investigate the complaint that same day. The largest burn site on the property was identified as the most recent burn location as it was still producing a slight smoke

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: DENNIS L. REICH

odor. There appeared to be over 100 tire beads in the pile. There were also other prior burn sites that contained smaller amounts of tire remnants. There appeared to be more than 100 unburned tires disposed of at the site.

4. On May 9, a working number for Mr. Reich was obtained by contacting the Worth County Attorney. Mr. Knoll visited with Mr. Reich by phone that same afternoon. Mr. Reich explained he threw on some tires to an already burning brush fire. He revised his estimate to 15-20 tires that he burned, and then to 18 tires. Mr. Knoll inquired where the tires originated and Mr. Reich stated they were already at the property. Mr. Knoll explained that burning tires was illegal and will likely result in further enforcement and a penalty. Mr. Knoll stated a Notice of Violation (NOV) letter would be sent. Mr. Reich was given the opportunity to further explain his side of the story but Mr. Reich declined, stating he would wait until receiving the letter.
5. On May 12, an NOV was issued to Mr. Reich for the illegal open burning of tires. The letter stated the matter is being referred to DNR Legal for consideration of further enforcement action with financial penalty.

IV. CONCLUSIONS OF LAW

Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The 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 a violation of this regulatory provision.

V. ORDER

THEREFORE, the DNR orders the following:

1. Mr. Reich will comply with Iowa'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. Reich will pay an administrative penalty of \$3,100.00 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: DENNIS L. REICH

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.”

Mr. Reich admitted to burning between 18 and 25 tires, although it appears many more were likely burned. A total of 20 tires burned was used as a conservative estimate. The Worth County Transfer Station charges between \$5 and \$20 for the size of tires that appeared to be burned. Conservatively, if 20 tires were burned and they were all passenger size tires, a total \$100 in disposal fees was saved.

As such, \$100.00 is assessed 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’s Field Office 2 fielded a complaint and conducted an investigation of the incident. A Worth County Sheriff’s Deputy and the local fire department also responded to the incident. The open burning of waste tires can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. This fire caused toxic substances to be released into the atmosphere. This fire threatens the integrity of the DNR’s environmental programs and efforts to protect Iowa’s valuable natural resources.

As such, \$1,500.00 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.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
ISSUED TO: DENNIS L. REICH

Open burning (including waste tires) prohibitions have been in place for over 40 years. It is the responsibility of Mr. Reich to know and abide by these rules. During a previous conversation with Mr. Knoll, Mr. Reich stated he was well aware of the open burning rules. Mr. Reich was also arrested for trespassing on the property where the burning took place. Therefore, \$1,500 is assessed for culpability.

As such, \$1,500.00 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.

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) 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

CC: DNR Field Office 2; Bradley Adams