

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

<p>IN THE MATTER OF:</p> <p>JODY ROLFES</p>	<p style="text-align:center">ADMINISTRATIVE ORDER</p> <p style="text-align:center">NO. 2023-AQ- 29_</p>
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To: Jody Rolfes
2114 260th Ave.
Earlville, IA 52036

Re: Illegal Burning of Waste Materials

I. SUMMARY

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

As detailed below, Ms. Rolfes 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 \$2,500.00 within sixty days of this Order being signed by the Director.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Andrea Errthum, Env. Specialist
Iowa Department of Natural Resources
Field Office No. 1
1101 Commercial Ct, Suite 10
Manchester, Iowa 52057
Phone: 563-927-2640 ext. 306

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

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 September 6, 2022, DNR Field Office 1 (FO1) received a complaint alleging that dark black smoke was coming from 2114 260th Avenue, Earlville, IA, owned by David and Jody Rolfes. According to the complainant, the fire department put out a tire fire on September 4, and John Rolfes (son of David and Jody Rolfes) had restarted it. The Earlville fire chief confirmed they were there Sunday.
2. That same day, Delaware County Deputy Jill Knipper, DNR Environmental Specialist Senior Chris Gelner, and DNR Environmental Specialist Andrea Errthum visited the Rolfes' residence and knocked on the door. No one came to the door, but there was a fire burning next to the driveway, and a burning tire/rim were observed in a barrel. Scrap metal, including tire wire and tire rims, were also observed. The group observed a heavy layer of ash and debris on the ground around the burn barrel. Deputy Knipper called Jody Rolfes and there was no answer. Deputy Knipper called later to say that Jody Rolfes had called her back and stated that Jody Rolfes had set the fire on Saturday, September 3; the fire department had put it out on Sunday, September 4; the wind had relit it on Monday, September 5; and that John had lit it the morning DNR arrived on Tuesday, September 6.
3. That same day, Ms. Errthum called Jody Rolfes and informed her that the burning tire was a violation of the open burning rules and that DNR would be sending a Notice of Violation (NOV) letter, as well as an educational handout in the mail. Ms. Rolfes expressed her frustration about the neighbors watching her and told Ms. Errthum that DNR would not be allowed to enter the property without a search warrant.
4. That same day, FO1 received two photos from the complainant of dark smoke coming from the Rolfes' property after the on-site investigation. A deputy drove by and took photos of a white refrigerator burning in the burn area. The refrigerator was not in the burn area during DNR's visit earlier that day.

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5. On September 12, 2022, an NOV, educational handouts, and a copy of the open burning rules were mailed to the Rolfes.
6. On September 23 and 24, 2022, FO1 received complaints supported by photographic evidence that the Rolfes were burning with an attendant smell of burnt rubber. The photos showed dark smoke.
7. On December 7, 2022, a complainant submitted two pictures indicating the Rolfes were burning, taken on October 9, 2022, and December 4, 2022.
8. On December 30, 2022, FO1 received a complaint with photos of black smoke originating from the Rolfes' property, with evidence that tires were placed in the pile.
9. On January 1, 2023, FO1 received another complaint with photos of black smoke originating from the Rolfes' property, with evidence that tires were placed in the pile.
10. On January 17, 2023, FO1 received a complaint accompanied by a photo that there was smoky, smoldering debris at the Rolfes' residence on January 14, 2023, and that tire rims were observed loaded onto a vehicle or cart.
11. On January 18, FO1 Supervisor Shane Dodge, Ms. Errthum and Delaware County Deputy Travis Hemesath arrived at the Rolfes' residence with a search warrant authorizing a search of the property for evidence regarding the open-burn complaints. Ms. Rolfes crumpled the warrant and asked everyone to leave. Ms. Rolfes was offered handouts and documentation of the complaints, but refused them. Steel tire cords, three burned appliances, and residential waste were observed in the burn pile. Per Ms. Rolfes, she had burned wet furniture, bicycle tires and other items that were in her basement when it received water damage. Ms. Rolfes stated that she did not know where the waste tires go, just that "someone picks them up." Waste tires were observed around the property and had filled an outbuilding. The total tire count was estimated to be less than 500 passenger tire equivalents. Ms. Rolfes called Shane Dodge later on their drive back to FO1 to express her frustration with the neighbors before abruptly ending the call.
12. On January 20, 2023, an NOV was mailed to the Rolfes residence regarding the open-burning activities.
13. On January 23, 2023, FO1 received a complaint accompanied by a photo alleging that there was prohibited burning occurring at the Rolfes' residence on January 21st & 22nd.

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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. Ms. Rolfes will comply with Iowa's open burning regulations and waste tire storage regulations at all times in the future and immediately cease the burning of tires or any other regulated combustible material.
2. Ms. Rolfes will pay an administrative penalty of \$2,500.00 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."

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A semi tire weights approximately 110 lbs. The Dubuque Landfill (serves Delaware County) charges \$300/ton of waste or about \$15 per 100 lbs. \$15 divided by 100 lbs. is \$0.15/lb. Multiply \$0.15 by a 110 lb. waste tire is \$16.50 per tire. An estimate of 30 waste semi tires burned would inure an economic benefit of approximately \$500 to Ms. Rolfes.

As such, \$500.00 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.

The open burning of waste tires releases toxins that pollute the air and groundwater, and poses 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. The DNR has received multiple complaints and photos of burning occurring at this location. Tire beads were observed during both visits and between visits the number of burned appliances increased from one to three.

As such, \$1,000.00 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.

The prohibition of burning combustible materials, including waste tires, has been in place for over 40 years. Ms. Rolfes has demonstrated she will continue to burn prohibited materials even after being formally notified of the prohibition against such conduct. Tire beading, appliances and burning tires were observed in the burn area.

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

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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 1; Bradley Adams