

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

<p>IN THE MATTER OF:</p> <p>SUSAN DAWN FITZGERALD APPANOOSE COUNTY, IOWA</p>	<p>ADMINISTRATIVE CONSENT ORDER</p> <p>NO. 2024-AQ- 01 NO. 2024-SW- 01</p>
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To: Susan Dawn Fitzgerald
210 West 5th Street
Moulton, Iowa 52572

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Susan Dawn Fitzgerald, for the purpose of resolving solid waste and air quality violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Bryan Bunton, Field Office 5
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
P: 515-725-0268

Relating to legal requirements:

Anne Preziosi, Attorney for DNR
Iowa Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515-238-3429

Payment of penalty to:

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

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1), which authorizes 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 Division IV (solid waste), and the rules promulgated or permits issued pursuant to those parts; and Iowa Code section 455B.109 and 567 Iowa

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Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Susan Dawn Fitzgerald owns property located at 204 North Maple Street, Moulton, Appanoose County, Iowa (the site). The site has an Appanoose County Parcel ID of 380053008780000 and is located in Sec. 15, T68N, R16W. The site contained an 868 square foot modular home with a 336 square foot wooden deck, and a 576 square foot detached garage.

2. On July 25, 2003, Mr. Edward True, a local resident, called the Centerville Police Department regarding a trailer home being open burned in the town of Moulton. Mr. True also called DNR Field Office 5 to inform DNR of the situation. Also, on July 26, 2023, a complaint was filed with DNR Field Office 5 by Deputy Harvey with the Appanoose County Sheriff's Department, who reported that a trailer home located at 204 North Maple Street (the site) had been burned down to the ground by its owner, Ms. Susan Fitzgerald.

3. On July 26, 2023, Bryan Bunton of DNR Field Office 5 spoke with Ms. Fitzgerald. She admitted to burning down the mobile home, but she stated that she had not realized that it was illegal to do so. She claimed that metals and shingles were removed prior the burning. However, the burning included treated wood, carpets, and other miscellaneous household debris. A large hole was dug for the burn and apparently all solid waste materials were consumed in the fire. Mr. Bunton asked if there was anything buried on site and Ms. Fitzgerald said that there was nothing buried on site.

4. On July 27, 2023, DNR Field Office 5 received an anonymous phone call alleging that a trailer home located at 204 North Maple Street was burned down to the ground by its owner, Ms. Susan Fitzgerald.

5. On July 27, 2023, Mr. Edward True called DNR Field Office 5 and stated his displeasure with the open burning of a trailer home in the town of Moulton. He also emailed photos and videos to DNR Field Office 5 of the open burn pit and of some material being hauled off site.

6. On July 28, 2023, Mr. Edward True called DNR Field Office 5 and again voiced his displeasure with the open burning of a trailer home in the town of Moulton.

7. On August 10, 2023, a similar complaint regarding the site was filed with DNR Field Office 5 anonymously. The complainant reported that the owner of a trailer house buried the trailer house and its contents on a lot in the town of Moulton (the site). The owner lives in the house on the next lot east of the site.

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8. On August 16, 2023, Bryan Bunton of DNR Field Office 5 investigated the site, and found that there were no visible remnants of the mobile home. The site had been leveled and graded. On August 16, Mr. Bunton spoke with local resident Mr. James Welch, who inquired about the Fitzgerald case and possible fines.

9. On August 22, 2023, Mr. Bunton issued a Notice of Violation letter to Ms. Fitzgerald and informed her of the prohibitions contained in Iowa law against illegal open burning and illegal solid waste disposal. Mr. Bunton included in the letter that the matter would be turned over to the DNR Legal Services Section for further enforcement.

10. On August 29, 2023, DNR Field Office 5 received an anonymous phone call inquiring about the outcome of the Fitzgerald case.

IV. CONCLUSIONS OF LAW

1. 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 chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in subrule 23.2(2) (variances) and subrule 23.2(3) (exemptions). The open burning of solid waste materials, as described above, is a violation of the provisions of 567 IAC 23.2.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. Iowa Code section 455B.307 and 567 IAC 100.4 prohibit a private or public agency 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. The facts in this case demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and Susan Dawn Fitzgerald agrees to the following:

1. Susan Dawn Fitzgerald shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at the site above and at any site in the state of Iowa; and shall comply in the future with the regulations concerning disposal of solid waste and open burning;

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2. Within 45 days of the date this order is signed by the director, Susan Dawn Fitzgerald shall pay a penalty of \$1,500.00.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, the director is authorized to assess administrative penalties, as follows:

Iowa Code section 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. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the type of solid waste disposal violations involved in this matter.

Iowa Code section 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 and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a penalty of \$1,500.00. The administrative penalty assessed by this order is determined as follows:

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, DNR 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 building was demolished prior to being burned, and, therefore, no economic benefit was realized for building demolition. However, for proper disposal, the Rathbun Area Solid Waste Management Commission Transfer Station, located at 3020 McCarty Street, in Centerville, Iowa, charges an \$80.00 tipping fee for waste disposal. Based on the size of the modular home, wooden deck, and detached garage, roughly 21.75 cubic yards of waste would have been generated, had it not been burned. This equates to a tipping fee of \$986.58. Assuming \$34.93 was saved in transportation the costs, a total cost savings of \$1,021.51 was realized.

Therefore, a penalty of \$1,021.51 is assessed for this factor.

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Gravity of the Violation – 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. Open burning of solid waste threatens both the environment and human health. It damages air quality and can cause significant acute and chronic health effects. The burning of treated wood, carpets, and other miscellaneous household debris can degrade air quality in the immediate area and emit potentially harmful pollutants into the atmosphere. Smoke is also aesthetically displeasing and potentially creates a nuisance condition. Ashes and other demolition waste can contaminate ground water, and in some cases lower property values. State and federal regulatory programs that protect public health and the environment are undermined by illegal open burning and illegal solid waste disposal activities. In addition, Ms. Fitzgerald was able to underbid contractors who properly dispose of such waste, which also undermines environmental protection regulations.

Therefore, \$300.00 is assessed for this factor.

Culpability – Factors to be considered in determining the amount to be assessed for culpability include the degree of intent or negligence; the standard of care required by the laws of the state; and whether the violator has taken remedial measures or mitigated the harm caused by the violations. A maximum of \$3,000.00 may be assessed for culpability.

Ms. Fitzgerald failed to determine the legality of burning down a residence and adjoining structures prior to hiring a contractor to do so. Thus, Ms. Fitzgerald displayed a certain degree of negligence in this case.

Therefore, \$178.49 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Susan Dawn Fitzgerald. For that reason, Susan Dawn Fitzgerald waives her right to appeal this order or any part thereof.

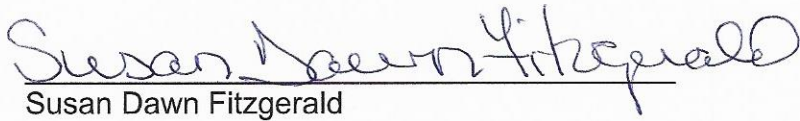
VIII. NONCOMPLIANCE

Failure to comply with this administrative consent order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146. Compliance with Section “V. Order” of this administrative consent

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order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

Kayla Lyon, Director
Iowa Department of Natural Resources



Susan Dawn Fitzgerald

Dated this 10th day of
January, 2024.

DNR Field Office 5