

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: KENTON DAVIS JEFERSON COUNTY	ADMINISTRATIVE CONSENT ORDER NO. 2024-SW- 05
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To: Kenton Davis
 1533 Olive Avenue
 Fairfield, IA 52556

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Kenton Davis for the purpose of resolving solid waste 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:

Anthony Kerker, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353
Phone: 319-653-2135

Relating to legal requirements:

Anne Preziosi, Attorney for DNR
Iowa Department of Natural Resources
6200 Park Avenue
Suite 200
Des Moines, Iowa 50321
Phone: 515-238-3429

Payment of penalty to:

Director of the Iowa DNR
6200 Park Avenue
Suite 200
Des Moines, Iowa 50321

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Kenton Davis owns a parcel of land located in located in Jefferson County, Iowa, and designated as Parcel ID 033315200 (the site). Mr. Davis lives across the road from the site, at 1533 Olive Avenue, Fairfield, IA 52556. A pile of solid waste is located on the site. The solid waste includes plastic items, electronics, and several household waste items, which have been disposed of on the site over a period of years. According to aerial imagery on Beacon (<https://beacon.schneidercorp.com/Application.aspx?AppID=1037&LayerID=22233&PageTypeID=1&PageID=9406>), dating back to 2013, Mr. Davis has used this solid waste pile to burn and otherwise to dispose of solid waste on the site.

2. On March 1, 2022, DNR Field Office 6 received an anonymous complaint of a large pile of trash and plastic materials in a field near 1533 Olive Avenue in Fairfield, Iowa. On March 14, 2022, Field Office 6 sent an informational letter to Mr. Davis regarding this solid waste located at the site. Enclosed with the letter was a copy of DNR's rules prohibiting illegal open burning and solid waste disposal.

3. On June 10, 2022, Field Office 6 received another anonymous complaint that the large pile of trash and plastic materials was still located on the site. Also, on June 10, Field Office 6 Environmental Inspector Anthony Kerker drove near the site and observed a large pile of waste located in an open dump pile on the site.

4. A June 13, 2022, Notice of Violation letter was sent to Mr. Davis, requesting that the improper disposal of solid waste to discontinue on the site. Enclosed with the letter was another copy of DNR's rules prohibiting illegal open burning and solid waste disposal.

5. On July 28, 2022, Mr. Kerker conducted a follow-up visit. The pile of waste remained. Mr. Kerker also observed evidence of past open burning of solid waste on the site. Mr. Kerker left his business card with contact information at the Davis residence.

6. On July 29, 2022, Mr. Kerker and Mr. Davis spoke on the phone regarding the open dump pile on the site. Mr. Kerker explained to Mr. Davis that the illegal dumping of solid waste must not continue. Mr. Davis informed Mr. Kerker that Mr. Davis had plans to purchase a dumpster and would be removing the solid waste from the site during the next several weeks. On August 9, 2022, Mr. Kerker conducted another follow-up visit. A small portion of the solid waste pile had been removed from the site.

7. On September 6, 2022, another follow-up visit was conducted by Mr. Kerker. At that time, no progress had been made toward proper disposal of the solid waste pile. On September 27, 2022, another follow-up visit was conducted by Mr.

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Kerker, who observed that there was still no progress in removing the solid waste located on the site. Mr. Kerker once again left his business card at the Davis residence.

8. Following Mr. Kerker's visit to the site on September 27, Mr. Davis called Field Office 6 and left a message that Mr. Davis planned to remove the rest of the solid waste pile during the coming weekend.

9. On October 5, 2022, Mr. Davis called Mr. Kerker to update the clean-up status of solid waste on the site. Mr. Davis stated he planned to remove the last of the solid waste during the weekend of October 7 through 9, 2022. Mr. Davis stated that three dumpster loads had been removed from the site.

10. On October 24, 2022, a follow-up visit was conducted by Mr. Kerker, who observed that no additional waste had been removed as Mr. Davis has planned in the weeks prior. Mr. Kerker called Mr. Davis and left a voicemail; no call was returned.

11. On November 28, 2022, another follow-up visit was conducted, and still no progress had been made on proper disposal of solid waste on the site. A November 28, 2022, Notice of Violation letter was sent, requesting Mr. Davis to continue to communicate with Mr. Kerker when the rest of solid waste would be removed from the site. Mr. Kerker informed Mr. Davis if no progress was made, then an enforcement action referral could occur. On December 24, 2022, Mr. Davis called Mr. Kerker to discuss the November 28, 2022, Notice of Violation letter. Mr. Davis informed Mr. Kerker that the rest of the solid waste would be cleaned up the week of the phone call.

12. On January 3, 2023, a follow-up visit was conducted. No additional progress had been made towards proper disposal. Mr. Kerker called Mr. Davis, asking when the rest of the solid waste would be removed. Mr. Davis stated that the rest of the solid waste pile would be cleaned up the following weekend. Mr. Kerker informed Mr. Davis that Mr. Kerker would be returning to the property in February.

13. On January 30, 2023, Mr. Davis called Mr. Kerker to update Mr. Kerker on the cleanup process. Mr. Davis stated that one dumpster load had been taken from the solid waste pile. On February 14, 2023, a follow-up visit was conducted. Approximately half of the solid waste had been removed from the site.

14. On March 1, 2023, an information letter was sent to Mr. Davis, informing Mr. Davis that Mr. Kerker had observed that some of the solid waste had been removed from the site. Mr. Kerker requested that Mr. Davis continue to clean up the remaining solid waste on the site to avoid another Notice of Violation letter.

15. On May 30, 2023, a follow-up visit was conducted. No additional progress had been made since the winter of 2023. A June 2, 2023, Notice of Violation letter was sent to Mr. Davis, informing Mr. Davis that Mr. Kerker would revisit the site in the Fall

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of 2023. During the Fall 2023 visit, Mr. Kerker told Mr. Davis that Mr. Kerker was assessing whether enforcement action, including a monetary penalty, would need to occur if no further progress was made towards proper disposal of solid waste located on the site.

16. On August 3, 2023, Mr. Kerker called Mr. Davis to confirm that Mr. Davis had received the June 2, 2023, Notice of Violation letter. A voicemail was left for Mr. Davis, but Mr. Davis did not return the call.

17. On September 26, 2023, another follow-up visit was conducted. No progress had been made towards disposing of the rest of the solid waste on the site.

18. In several phone calls, Mr. Davis informed Mr. Kerker that Mr. Davis was not aware of Iowa's solid waste disposal regulations.

19. Mr. Kerker visited the site on April 10, 2024, and observed that the site had not been cleaned up.

IV. CONCLUSIONS OF LAW

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

2. 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. Iowa Code section 455B.301 defines "solid waste" as garbage, refuse, rubbish, and other similar discarded solid or semisolid materials." The facts in this case demonstrate non-compliance with this provision. According to aerial imagery on Beacon, Mr. Davis has used this solid waste pile to burn and otherwise to dispose of solid waste on the site for many years. Plastic items, electronics, and several household waste items have been disposed of in this location over the years. Further, as stated above, Mr. Davis has failed to clean up the solid waste illegally disposed of on the site, despite numerous communications with Field Office 6.

V. ORDER

THEREFORE, DNR orders Kenton Davis agrees to the following:

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1. Kenton Davis shall cease all illegal solid waste disposal activity at the above-described site and at any location in the State of Iowa, and shall comply in the future with the regulations concerning disposal of solid waste; and

2. Within 90 days of the date this order is signed by the director, Kenton Davis shall collect, containerize, and dispose of all solid waste materials remaining at the site; and

3. Within 90 days of the date this order is signed by the director, Kenton Davis shall pay a penalty of \$2,000.00. However, if all the solid waste located at the site is removed and properly disposed of within 90 days of this order being signed by the director, then the penalty will be reduced by \$1,000.00.

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.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 \$2,000.00 penalty. 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.”

Kenton Davis avoided paying disposal fees for solid waste illegally disposed of on the site. Based on the amount of solid waste within the open dump pile and burning that had occurred in the past, a penalty of \$750.00 is assessed for economic benefit.

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Gravity of the Violation – Improper solid waste disposal and the decomposing of those materials can degrade water quality and contribute contaminants to both land and water resources as well as threaten public health. Open dumping of house-hold trash, electronics, and plastics was conducted on the site for a period of years, potentially exposing neighbors and the environment. Further, improper disposal of solid waste creates a nuisance condition.

Also, the violations cited in this administrative consent order threaten the integrity of a regulatory program. Field Office 6 has actively worked with Mr. Davis since March 2022 to get the site cleaned up, without success.

Therefore, a penalty of \$750.00 is assessed for gravity.

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.

Mr. Davis has a duty to remain knowledgeable of DNR regulations and to be alert to the probability that his conduct is subject to DNR's rules. Open dumping prohibitions have been in place in Iowa for more than 40 years. Mr. Davis informed Field Office 6 that he was not aware that the open dumping that occurred at the site is illegal. However, Mr. Davis was specifically made aware of the prohibitions against illegal open dumping on more than one occasion since March 2022.

Mr. Davis has never added additional waste to the existing pile of solid waste on the property, and he has made progress towards removal of the solid waste located on the site; but he has failed to properly dispose of all of the waste materials located on the site and has failed to meet self-imposed deadlines for removal of all solid waste from the site.

Therefore, \$500.00 is assessed for culpability.

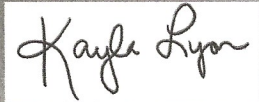
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Kenton Davis. For that reason, Kenton Davis waives his right to appeal this order or any part thereof.

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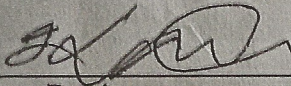
VIII. NONCOMPLIANCE

Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. Failure to comply with this 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.109.



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Kayla Lyon, Director
Iowa Department of Natural Resources



Kenton Davis

Dated this 2 day of
May, 2024.

DNR Field Office 6; Anne Preziosi