

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: CITY OF ROLFE POCAHONTAS COUNTY, IOWA	ADMINISTRATIVE CONSENT ORDER NO. 2024-AQ- 10
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To: City of Rolfe
c/o Jim Pentico, Mayor
319 Garfield Street
Rolfe, Iowa 50581

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and the City of Rolfe, for the purpose of resolving 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:
Michelle Sabatini-Rosacker
Environmental Specialist Senior
Iowa Department of Natural Resources
Field Office 3
1900 N. Grand Ave, Suite E17
Spencer, Iowa 51301
Phone: 712-262-4177

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 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 the rules promulgated or permits issued pursuant to those parts; and Iowa Code section 455B.109 and

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

III. STATEMENT OF FACTS

1. The City of Rolfe, Iowa, (City) established a tree burn site located on a city-owned parcel located south of Railroad Street and east of Grant Street in Rolfe, Pocahontas County, Iowa (the site). The City burned trees on the site that is located less than one quarter mile from homes located in the city without obtaining the required waivers. This burning is in violation of 567 Iowa Administrative Code (IAC) section 23.2(1), which states that “[n]o person shall cause, allow or permit open burning of combustible materials”, except as provided in specified exceptions. 567 IAC 23.2(1)(b) provides the following exemption:

b. Trees and tree trimmings. The open burning of trees and tree trimmings not originated on the premises provided that the burning site is operated by a local governmental entity, the burning site is fenced and access is controlled, burning is conducted on a regularly scheduled basis and is supervised at all times, burning is conducted only when weather conditions are favorable with respect to surrounding property, and the burning site is limited to areas at least one-quarter mile from any inhabited building unless a written waiver in the form of an affidavit is submitted by the owner of the building to the department and to the local governmental entity prior to the first instance of open burning at the site which occurs after November 13, 1996. The written waiver shall become effective only upon recording in the office of the recorder of deeds of the county in which the inhabited building is located. However, when the open burning of trees and tree trimmings causes air pollution as defined in Iowa Code section 455B.131(3), the department may take appropriate action to secure relocation of the burning operation. Rubber tires shall not be used to ignite trees and tree trimmings.

2. On August 27, 2015, DNR Field Office 3 received a complaint regarding the City open burning trees in proximity to residents' homes.

3. On September 4, 2015, Michelle Sabatini-Rosacker of DNR Field Office 3 contacted the City and verified that the City's tree burn site was located within ¼ mile of inhabited buildings. Ms. Sabatini-Rosacker told the City if the City wanted to continue to burn trees at this site, the City would need to obtain waivers for all residents within the required separation distance. Ms. Sabatini-Rosacker requested that copies of the waivers to be sent to her, but she never received any waivers.

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4. On November 13, 2015, DNR Field Office 3 sent a Notice of Violation letter to the City for open burning trees in proximity to residents in violation of the DNR rules.
5. On January 17, 2024, DNR Field Office 3 received a complaint regarding open burning trees on the same site.
6. Ms. Sabatini-Rosacker visited the site on January 25, 2024, and witnessed trees still smoldering on the property at the site. Ms. Sabatini-Rosacker discussed the issue with the current mayor, Jim Pentico. Mayor Pentico admitted to burning the tree piles.
7. On March 7, 2024, a second Notice of Violation letters was sent by DNR Field Office 3 to the City.
8. The City informed DNR Field Office 3 that it had been quoted \$17,000 to hire a company to dispose of the trees by chipping, rather than burning.
9. There has been no previous enforcement against the City.

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 rule 23.2(2) (variances) and rule 23.2(3) (exemptions). The open burning of trees at the City of Rolfe tree burn site, as described above, is a violation of the provisions of 567 IAC 23.2.

V. ORDER

THEREFORE, DNR orders and the City of Rolfe agree to the following:

1. The City of Rolfe shall cease the burning of trees and tree trimmings at the site described above unless the burning site is moved to an area at least one-quarter mile from any inhabited building, or a written waiver in the

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form of an affidavit is submitted by the owner of each inhabited building located within one-quarter mile of the site. The written waivers must be submitted to the City of Rolfe and to DNR Field Office 3. Further, the written waivers shall become effective only upon recording in the office of the recorder of deeds of the county in which the inhabited building is located. The City of Rolfe shall comply with the remainder of the requirements of the open burning exemption contained in 567 IAC 23.2(1)(b). Within 30 days of the date this Administrative Consent Order is signed by the Director, the City of Rolfe shall provide a written plan of action to DNR Field Office 3 for future tree disposal.

2. Within 60 days of the date this order is signed by the director, the City of Rolfe shall pay a penalty of \$7,000.00.

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.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.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 \$7,000.00. 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 City of Rolfe had been quoted \$17,000 to hire a company to dispose of the trees by chipping, rather than burning. This is a small town with minimal resources and no other property meeting the required distance.

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Therefore, \$3,000.00 is assessed for economic benefit.

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.

Open burning damages air quality in Iowa and can cause significant acute and chronic health effects. Particulate matter from the open burning has adverse health effects to nearby residents. This fire and related open burning threatens the integrity of our environmental programs and efforts to protect our natural valuable resources.

Therefore, \$2,000.00 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.

The City of Rolfe had been issued a Notice of Violation in 2015 for the same issue. The City was aware of the law regarding illegal open burning.

Therefore, \$2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of the City of Rolfe. For that reason, the City of Rolfe waives its 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.

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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.

Kayla Lyon, Director
Iowa Department of Natural Resources

 - mayor

City of Rolfe

Dated this 12 day of
JUNE, 2024.

DNR Field Office 3