

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: Marcus & Lucy Yutzy	ADMINISTRATIVE CONSENT ORDER NO. 2024-AQ-18 NO. 2024-SW-12
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TO: Marcus & Lucy Yutzy
15990 240th Street
Bloomfield, Iowa 52537

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and Marcus and Lucy Yutzy (the Yutzys) for the purpose of resolving open burning and solid waste disposal violations which occurred on their property. This administrative consent order requires the Yutzys to pay a \$3,000.00 administrative penalty. In the interest of avoiding litigation, the parties have agreed to the provisions below.

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:

Carrie Schoenebaum, Attorney
Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50312
Phone: 515/444-8165

Payment of penalty to:

Iowa Department of Natural Resources
6200 Park Avenue, Suite
Des Moines, Iowa 50312

II. JURISDICTION

Pursuant to the provisions of 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; Iowa Code section 455B.307(2) which authorizes the Director 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 adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC)

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chapter 10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Marcus and Lucy Yutzy are the deed holders to a property located at 16604 Ice Ave, Drakesville, IA (site).

2. On October 2, 2023 the Department received a complaint alleging large quantities of waste were being dumped and burned at the above referenced site.

3. On October 11, 2023, the Department went to the site to investigate. Once onsite, the Department observed a burn pile with the remnants of plastic siding, shingles, cardboard and other demolition waste. These observations were documented in a photograph.

4. On October 13, 2023, the Department sent a Notice of Violation (NOV) for the above discussed violations. Included with this NOV was a summary of the law and recommended corrective actions.

5. On December 4, 2023, the Department returned to the site for a follow-up investigation. Once on site, the Department observed that additional plastic materials, siding, lumber, shingles, and carboard had been added to the burn pile.

6. On March 22, 2024, the Department returned to the site for a follow-up investigation. Once on site, the Department observed that additional lumber, plastic materials, and carboard had been added to the pile since the last inspection and had been recently burned.

7. On March 25, 2024, a NOV was sent for the above discussed violations. Included with this NOV was a summary of the law and recommended corrective actions.

8. On April 16, 2024, the Department returned to the site to conduct a follow-up investigation. Once on site, the Department observed that the waste that had been added to the burn pile and observed in March had been recently burned.

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 material that was burned does not fall into a listed exemption. Therefore, the above facts demonstrate noncompliance with this provision of law.

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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 such rules at 567 IAC chapters 100-123.

4. Iowa Code section 455B.307 and 567 IAC 100.4 prohibits 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 materials described above were disposed of through burning, rather than properly disposed of at a landfill. The above facts indicate a violation of this provision.

V. ORDER

THEREFORE, the Department orders the Yutzys agree to do the following:

1. The Yutzys shall clean up all solid waste remaining in the burn pile and/or deposited on their property. Solid waste shall be disposed of at a permitted solid waste facility and all copies of landfill or recycling receipts shall be provided to the Department;
2. The Yutzys shall cease all illegal burning and disposal of solid waste; and
3. The Yutzys shall pay a penalty in the amount of \$3,000.00 within 30 days of the date the Director signs this order.

VI. PENALTY

1. 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 that provision.
2. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.
3. 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, the Department 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 \$10,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:
 - a. Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.30(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

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benefit.” 567 IAC 10.30(1) further states, “reasonable estimates of economic benefit should be made where clear data are not available. The Yutzys have avoided paying disposal fees to properly dispose of solid waste. Because most of the solid waste has been consumed by fire the exact amount improperly disposed of is unknown. However, based on solid waste disposal fees it is reasonable to estimate that approximately \$1,500.00 was saved. Therefore, \$1,500.00 is assessed for this factor.

- b. Gravity of the Violation – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The open burning of solid waste releases toxins that pollute the air, may pollute the groundwater, and pose a risk to human health and the environment. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste is required of all persons in this state. Therefore, \$1,000.00 is assessed for this factor.
- c. Culpability – The Yutzys to remain knowledgeable of the Department’s rules for solid waste disposal and open burning. Based on the above considerations, \$500.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

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

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

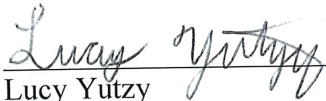
KAYLA LYON, DIRECTOR
Iowa Department of Natural Resources

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Marcus Yutzy

Dated this 27 day of
Sept, 2024.



Lucy Yutzy

Dated this 27 day of
Sept, 2024.

RECEIVED

SEP 30 2024