

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER

IN THE MATTER OF: KELLY ZUNIGA MUSCATINE COUNTY	ADMINISTRATIVE ORDER NO. 2024-SW-14 NO. 2024-AQ-21
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To: Kelly Zuniga
605 S Todds Ferry Road
Conesville, Iowa 52739

I. SUMMARY

This Administrative Order (Order) requires Kelly Zuniga to comply with the provisions of Section V of this order, subject to the appeal rights stated in this Order.

Any questions regarding this 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

II. JURISDICTION

This administrative consent order is issued 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 part; Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules promulgated 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.

III. STATEMENT OF FACTS

1. The site is located at 605 S Todds Ferry Road, Conesville, Muscatine County, Iowa (the site). Mr. Kelly Zuniga lives in a mobile home on the

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property, but does not own the property. The property abuts property owned by Bill's Auto Salvage, located at 2552 Highway 70, Conesville, Iowa.

2. On August 22, 2023, DNR Field Office 6 received an anonymous complaint regarding a large pile of trash and plastic materials being improperly disposed of at the site. The complainant stated that solid waste materials had been dumped and burned at the site for the past couple of years. Field Office 6 Environmental Specialist Anthony Kerker investigated the complaint and was able to observe from the road near the site that a solid waste pile was located at the site, and that illegal open burning and open dumping of solid waste was occurring at the site. An August 25, 2023, Notice of Violation letter (NOV) was issued, citing illegal solid waste disposal and illegal open burning.

3. A follow up visit was conducted by Mr. Kerker on October 6, 2023. Little to no progress in cleaning up the pile of open dumped material had occurred.

4. On December 7, 2023, a second follow up visit was conducted by Mr. Kerker. No progress had been made to bring the property back into compliance. Mr. Kerker left his business card on the door of the dwelling, requesting a call back to discuss the pile of open dumped material further. Later that day, Lisa Garrison, who also lives on the site, called Field Office 6 and left a message for Mr. Kerker. Mr. Kerker returned the call, but was unable to reach Ms. Garrison, so Mr. Kerker left a voicemail. On December 8, 2023, Mr. Kerker called Ms. Garrison again, and unable to make contact.

5. On January 8, 2024, Mr. Kerker called Lisa Garrison and left another voicemail. Ms. Garrison did not return the call.

6. On February 8, 2024, Mr. Kerker conducted a follow up visit to the site. The open dump pile had grown in size with additional solid waste items added to the pile. Mr. Kerker proceeded to contact residents at the property.

7. Mr. Kerker spoke with both Ms. Garrison and Mr. Zuniga at the site. Mr. Kerker requested that both of them stop dumping and burning solid waste illegally.

8. A February 13, 2024, NOV was sent to Mr. Zuniga at his residence located on the site. The NOV requested that illegal open dumping and illegal open burning at the site discontinue, and that receipts from proper disposal of the solid waste at the site be obtained.

9. On February 26, 2024, a second complaint was received by DNR Field Office 6, stating that solid waste was being burned at the site. Mr. Kerker visited the site and observed that the solid waste pile at the site had been burned recently, as the complainants stated.

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10. A March 5, 2024, NOV was sent to Kelly Zuniga at his address at the site. The NOV again stated that illegal open dumping and illegal open burning of solid waste should be discontinued. All three NOVs contained the legal citations regarding illegal open dumping of solid waste and illegal open burning.

11. According to aerial imagery on Beacon, dating back to 2014 the Zuniga family has used the solid waste/open burn pile at the site to dispose of solid waste. Mr. Kerker has observed plastic items, electronics, furniture, and several household waste items disposed of in the solid waste/open burn pile at the site during the time he has been investigating the site.

12. In July 24, 2024, Mr. Kerker observed the site from the road near the site and saw that there was still a solid waste open burn pile located on the site.

13. Mr. Kerker observed the site from the road near the site on October 22, 2024, and saw that the solid waste open burn pile was still located on the site.

14. On or about November 11, 2024, Bill's Auto Salvage Yard cleaned up the illegal open dump and open burn pile at the site, and provided to DNR pictures of the cleaned-up site and a receipt for proper disposal of the materials from the site.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality or air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 564 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). Exemptions listed in subrule 567 IAC 23.2(3) include "residential waste", which is defined in 567 IAC 23.2 as "any refuse generated on the premises as a result of residential activities. The term includes landscape waste grown on the premises or deposited thereon by the elements, but excludes garbage, tires, trade wastes, and any locally recyclable goods or plastics." Residential waste does not include plastic items, which has been open dumped and burned at the site, as stated above. The facts in this case demonstrate non-compliance with these provisions.

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3. 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.

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.

5. 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 these provisions.

V. ORDER

THEREFORE, DNR orders Kelly Zuniga to do the following:

1. Cease all future illegal solid waste disposal activity and illegal open burning at the site.

VI. PENALTY

No penalty is assessed by this Order.

VII. APPEAL

Pursuant to Iowa Code section 455B.175)(1)(a) and 567 IAC Chapter 7, a written Notice of Appeal may be filed with the director, at the address provided below, within 60 days of the of issuance of this Order:

Director
Iowa Department of Natural Resources
6200 Park Avenue, Suite 200
Des Moines, Iowa 50321

The Notice of Appeal must identify the specific portion or portions of this Order being appealed and include a short and plan statement of the reasons for appeal. A contested case hearing may then be commenced pursuant to Iowa Code chapter 17A and 561 IAC Chapter 7.

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VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.109 and 455B.307.

Kayla Lyon, Director
Iowa Department of Natural Resources

C: DNR Field Office 6