

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:  DUANE TESCH WORTH COUNTY, IOWA	ADMINISTRATIVE CONSENT ORDER  NO. 2024-AQ-07 NO. 2024-SW-04
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To: Duane Tesch  
P.O. Box 6  
Carpenter, Iowa 50426

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Duane Tesch, 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:**

Robert Quintero, Field Office 2  
Iowa Department of Natural Resources  
2300 15th Street SW  
Mason City, Iowa 50401  
Phone: 641-424-4073

**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

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
DUANE TESCH

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

**III. STATEMENT OF FACTS**

1. Duane Tesch owns property located at the corner of 1st Street and 1st Avenue, in Grafton, Worth County, Iowa (the site). Mr. Tesch admitted to open burning a 200-gallon fiberglass water tank. Mr. Tesch also open burned a mattress, box spring, speaker, wheeled cart and other miscellaneous items.

2. On July 19, 2023, DNR Field Office 2 received a call from Worth County Sheriff Deputy John Smith, stating he was responding to a burn complaint in Grafton, near the corner of 1st Street and 1st Avenue, for the second time that morning. The Grafton Fire Department had been there and applied water and foam to the burn barrel the first time, and now the Manly Fire Department was on the way to put the fire out completely. The neighbors claimed there was a strong chemical smell coming from the smoldering fire.

3. On July 19, 2023, Robert Quintero of DNR Field Office 2 went to the site and arrived at 11:20 am. Mr. Quintero called Sheriff Deputy John Smith when he arrived. Mr. Quintero observed two volunteer firefighters checking on the burn barrel to confirm the fire was out. Mr. Quintero approached the burn barrel to observe the contents, with Deputy Smith and the two firefighters. Mr. Quintero documented the items that had been burned. The burn pile contained mattress springs, box springs, metal items, a speaker, a wheeled cart and numerous pieces of trash. Mr. Tesch was not present during Mr. Quintero's investigation.

4. Mr. Quintero returned to DNR Field Office 2 and reviewed the past complaint history regarding Mr. Tesch. Mr. Quintero noted that Mr. Tesch has received Notice of Violation letters for open burning in 2000 and unlawful burning of trade waste in 2017. Mr. Quintero found numerous other open burning complaints against Mr. Tesch, where Mr. Tesch was notified of the open burning and solid waste regulations.

5. On July 27, 2023, Mr. Quintero attempted to contact Mr. Tesch but was unable to reach him. Mr. Quintero contacted Mr. Tesch's son Cory Tesch on July 27, 2023. Cory Tesch provided Mr. Quintero with a contact number for Mr. Tesch. Mr. Quintero left a voicemail requesting a call back from Mr. Tesch.

6. On July 28, 2023, Mr. Quintero made another attempt to contact Mr. Tesch. Pat Shuman answered the call and gave the phone to Mr. Tesch. Mr. Quintero asked Mr. Tesch about the fire that took place at his property in Grafton the week prior. Mr. Tesch stated he only burned a 200-gallon fiberglass water tank. Mr. Quintero inquired about the other items that were found around the burn barrel. Mr. Tesch stated that his neighbor

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
DUANE TESCH

threw the mattress and box spring on the fire. Mr. Tesch said he was unaware that the box he threw in the fire contained a speaker and that the wheeled cart was mostly wood.

7. Mr. Tesch stated that he is under a lot of pressure from the City of Grafton to clean up the property and he was just trying to get it done. Mr. Quintero mentioned that DNR Field Office staff had discussed open burning and open dumping rules with Mr. Tesch numerous times before and that copies of those rules were provided to Mr. Tesch in the past. Mr. Tesch stated he was aware that tires could not be burned. Mr. Tesch stated that he would clean up the remaining debris and dispose of it at the landfill.

8. Mr. Quintero informed Mr. Tesch that Mr. Tesch would be receiving a Notice of Violation letter from DNR Field Office 2 regarding the open burning. Mr. Quintero stated that since Mr. Tesch had previously been issued Notice of Violation letters for open burning and improper disposal of trade waste that Field Office 2 would be considering referring the matter to the DNR Legal Services Bureau for further enforcement action, which could include a financial penalty. Mr. Tesch confirmed his mailing address where the letter could be sent.

9. On August 3, 2023, a Notice of Violation letter was issued for the open burning violations. A copy of the DNR rules prohibiting illegal open burning and illegal solid waste disposal was included with the letter. DNR Field Office 2 determined that, as of February 2024, the site was cleaned up.

10. Mr. Tesch has a long history of illegal open burning and illegal open dumping. On May 3, 1996, DNR Field Office 2 received a complaint regarding open burning. DNR Field Office 2 staff investigated and observed burnt remains consisting of waste lumber, shingles, insulated wire, appliance parts, and household waste. A certified letter was sent to Mr. Tesch stating the remaining debris must be properly disposed of. Copies of the open burning and solid waste rules were included in the letter.

11. On September 3, 2000, DNR Field Office 2 received a complaint regarding open burning. DNR Field Office 2 staff investigated and observed burnt remains consisting of tires, treated lumber, and residuals of appliance insulation. Copies of the open burning and solid waste rules were left at the front door. A Notice of Violation letter was issued.

12. On June 19, 2003, DNR Field Office 2 received a complaint regarding open burning and dumping of solid waste. The complainant stated that Mr. Tesch had boasted to a neighbor that "maybe someday he will just light the plastic pile and burn it as the DNR would have forgotten it by now." DNR Field Office 2 staff talked to Mr. Tesch about his activities. Mr. Tesch explained that he was joking with the neighbor regarding the burning of the plastic. Solid waste and tire storage regulations were discussed with Mr. Tesch at that time.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
DUANE TESCH

13. On April 4, 2007, DNR Field Office 2 received a complaint regarding open burning and dumping of solid waste. Due to limited resources available at DNR at the time, this complaint was not aggressively pursued. DNR Field Office 2 staff left a note for Mr. Tesch, stating that he must not burn the piles of open dumped material as they contained improper materials for open burning.

14. On February 8, 2010, DNR Field Office 2 received a complaint regarding open burning. DNR Field 2 staff investigated the complaint and arrived at Mr. Tesch's residence and observed transparent white smoke rising above the home. DNR Field Staff 2 visited with Mr. Tesch about the wood burner in his home. Mr. Tesch was reluctant to allow DNR Field 2 staff to enter his home for a closer look. Mr. Tesch stated if they returned in an hour so he could finish cleaning up he would allow entry to his home. DNR Field Office 2 staff listed for Mr. Tesch the requirements for using a wood burner for residential heating: untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil. DNR Field Office 2 staff told Mr. Tesch if DNR Field Office 2 was contacted again regarding Mr. Tesch's burning activities, and DNR Field Office 2 documented activities contrary to the rules, then Mr. Tesch would be referred to the DNR Legal Services Bureau with a recommendation for a financial penalty.

15. On May 19, 2016, DNR Field Office 2 received a complaint regarding open burning and dumping of solid waste. DNR Field Office 2 staff investigated the complaint and observed a large burn pile by the railroad tracks by Mr. Tesch's residence. The open burn pile showed signs of a recent fire. The ash contained a wide variety of debris remnants including nails and hardware from furniture and some melted plastic.

16. On May 9, 2017, DNR Field Office 2 received complaints regarding open burning and unlawful disposal of trade waste. Field Office 2 received two complaints stating Mr. Tesch was continuing to burn waste at his Toeterville property. Field Office 2 received photos with the second complaint, which indicated the smoke from the fire was sufficiently opaque as to violate Iowa law. Field Staff stated in a letter to Mr. Tesch that if he continued with unlawful burning, he will be referred to DNR Legal Services Bureau with a recommendation for a financial penalty. A Notice of Violation letter was issued.

17. On July 24, 2018, DNR Field Office 2 received a complaint regarding appliance de-manufacturing and open burning. The complaint was against Joy Beckman, but Ms. Beckman stated that Mr. Tesch brought the appliances to the property as he was living with her at the property. Mr. Tesch refused access to the property, resulting in no documented violations.

**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.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
DUANE TESCH

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. As stated above, Mr. Tesch admitted in July 2023 to open burning a 200-gallon fiberglass water tank. The illegal open burning of a mattress, box spring, speaker, wheeled cart, and other miscellaneous items also took place at the site at the same time.

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 Duane Tesch agrees to the following:

1. Duane Tesch shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at the Worth County site 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;

2. Within 60 days of the date this order is signed by the director, Duane Tesch shall pay a penalty of \$2,500.00.

**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 DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
DUANE TESCH

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 \$2,500.00. 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.”

Mr. Tesch has been cited for open burning and illegal disposal of trade waste several times in addition to the most recent Notice of Violation letter issued in July 2023. However, the site has been cleaned up as of February 2024.

Therefore, no amount is assessed for this factor.

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.

DNR Field Office 2 fielded a complaint and investigated the incident in July 2023. The open burning of fiberglass, mattresses and plastic can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. This fire caused toxic substances to be released into the atmosphere. This fire threatens the integrity of DNR’s environmental programs and efforts to protect valuable natural resources.

Therefore, \$1,000.00 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.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER  
DUANE TESCH

It is the responsibility of Mr. Tesch to know and abide by the law in Iowa regarding open burning and open dumping. Mr. Tesch has received three Notice of Violation letters from DNR Field Office 2, regarding illegal open burning and improper disposal of trade waste. DNR Field Office 2 staff has also communicated the law and has provided copies of the relevant rules to Mr. Tesch during other illegal open burning and improper disposal of trade waste complaints that did not result in a Notice of Violation letter.

Therefore, \$1,500.00 is assessed for this factor.

**VII. WAIVER OF APPEAL RIGHTS**

This administrative consent order is entered into knowingly and with the consent of Duane Tesch. For that reason, Duane Tesch waives his 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 order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order.

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Kayla Lyon, Director  
Iowa Department of Natural Resources

          Duane Tesch            
Duane Tesch

Dated this 02-27 day of 24, 2024.

DNR Field Office 2

