

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

IN THE MATTER OF:
Bryan Rohlfen

O'Brien County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2011-AQ- 19

NO. 2011-SW- 22

IO: Bryan Rohlfen
6570 420th Street,
Sutherland, IA 51058

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and Bryan Rohlfen for the purpose of resolving air quality and solid waste disposal violations. 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:

Tom Roos, Environmental Specialist
Field Office 3
1900 N. Grand,
Gateway North, Suite E17,
Spencer, Iowa 51301-2200
Phone: 712/262-4177

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR

Iowa Department of Natural Resources
502 East Ninth Street

Des Moines, Iowa 50319-0034
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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 part; Iowa Code section 455B.307(2) which

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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) 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. Bryan Rohlfen was hired to bulldoze and burn a grove of trees for the owner of property located in O'Brien County at Section 36 T 95N R39W. This property is locally known as 7009 450th Street Sutherland Iowa.
2. While driving on November 15, 2010, Environmental Specialist Senior Bryon Whiting and Environmental Specialist Tom Roos, both of the Department, noticed a large volume of black smoke coming from a burn pile at the above referenced location. They arrived on site at approximately 9:30 am and found Mr. Rohlfen operating an excavator pushing trees into a burn pile. The black smoke coming from the pile was indicative of tires burning. Mr. Rohlfen informed Mr. Roos and Mr. Whiting that several tires had been put in the burn pit. Mr. Roos and Mr. Whiting informed him that the open burning of tires was illegal and that the matter would likely be referred for legal enforcement.
3. On November 15, 2010, a Notice of Violation (NOV) was sent to Mr. Rohlfen for the above discussed violation. This NOV summarized the relevant law and informed Mr. Rohlfen that the matter was being referred to the Department's Legal Services Bureau for enforcement.

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 23.2(2) (variances) and 23.2(3) (exemptions). Mr. Rohlfen allowed the burning of tires. The above stated facts demonstrate noncompliance with this provision.
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. 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

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disposal project approved by the Director. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Mr. Rohlfson agrees to do the following:

1. In the future cease the illegal burning of solid waste including tires; and
2. Mr. Rohlfson shall pay a penalty in the amount of \$1,500.00 to the Department within 30 days of the date the Director signs this order.

VI. PENALTY

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) provides for civil penalties of up to \$5,000.00 per day for solid waste 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, 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 \$1,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department 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, the department 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 Department does not know how many tires Mr. Rohlfson burnt; however, he did save time and transportation costs by burning them rather than taking them to the nearest landfill. Therefore, it is estimated that Mr. Rohlfson saved approximately \$100.00 by not properly disposing of the solid waste.

Gravity of the Violation - Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and poses a risk to human health and the environment. These violations

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threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Therefore, \$900.00 is assessed for this factor.

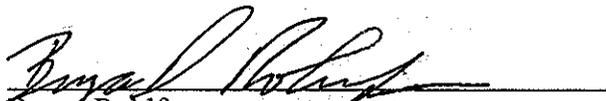
Culpability – Mr. Rohlfesen has a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that his conduct is subject to the Department's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Based on the above 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 Mr. Rohlfesen. For that reason, Mr. Rohlfesen waives his rights to appeal this 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.


Bryan Rohlfesen


Roger L. Lande, Director
Iowa Department of Natural Resources

Dated this 25 day of
July, 2011.

Dated this 1st day of
August, 2011.

Carrie Schoenebaum; DNR Field Office 3; EPA; VI.C and VII.C.1.