IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	ADMINISTRATIVE CONSENT ORDER
Martin Moeller **Henry County, Iowa**	NO. 2014–SW-08 NO. 2014-AQ-16

TO: Martin Moeller
3019 Franklin Avenue
Mt. Pleasant, Iowa 52641

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Martin Moeller for the purpose of resolving violations pertaining to illegal open burning and illegal open dumping of solid wastes. 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:
Jon Ryk
Iowa Department of Natural Resources
Field Office No. 6
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319-653-2135

Relating to legal requirements:
Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515-725-9551

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 chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; 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; 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. On May 8, 2013, Jon Ryk of DNR Field Office No. 6 investigated an anonymous complaint that open burning of tires was occurring on property located adjacent to a residence located at 3019 Franklin Avenue, Mt. Pleasant, Henry County, Iowa. The residence at 3019 Franklin Avenue is the home of Martin Moeller.

2. As he approached the site, Mr. Ryk observed agricultural crop land located west of the residence and a wooded area located on the other side of the cropland. An area of burned tree trunks was located in a wooded area.

3. When he arrived at the site, Mr. Ryk knocked on the door of the residence located at 3019 Franklin Avenue, but there was no answer. Mr. Ryk left his business card with a note on the back explaining the reason for his visit to the property. The note requested that Martin Moeller call Mr. Ryk.

4. While at the site, Mr. Ryk observed a very large burn area approximately 27 feet wide by 70 feet long. It appeared that hundreds of tires had been burned in this area. The evidence of tire burning included the steel banding from tires that had been completely burned, and charred rubber and partially burned tires, as well as some unburned tires laying on the edge of the burn area. The tires included large tractor tires and automobile tires.

5. The large amount of tires burned at this location would have produced oil that exudes into ground and surface water as a result of tire fires. This oil is a significant environmental pollutant. The average passenger car tire is estimated to produce over two gallons of oil when burned. This oily material is also highly flammable. The amount of tires burned would have produced hundreds of gallons of oil when burned. There is a creek located not far from this location.

6. In addition to tires, other solid waste was observed in the main burn area. The solid waste in the main burn area included appliances, steel drums, an automobile gas tank and other automobile parts, one-gallon and five-gallon paint cans, and a large amount of wallboard, which was located at the south end of the burn area.

7. Mr. Ryk also observed a second burn area to the south of the main burn area. This second burn area was approximately ten feet in diameter, and it included mattress springs, tire rubber, cans and bottles.

8. A third burn area, approximately 9 feet by 12 feet, was located to the north of the main burn area, and included the remnants of approximately six burned tires, a dishwasher, cans, bottles, insulation, plastic buckets, and assorted plastic and wood.

9. A fourth burn area, approximately 10 feet by 10 feet, was located even further to the north. There also was a large amount of solid waste dumped throughout the wooded area. Mr. Ryk took pictures at these properties.

10. The properties where the violations occurred consist of two adjacent agricultural parcels located in Salem, Salem Township, in Henry County, Iowa. The total area of the parcels is 74.62 acres. One of the parcels is 37.48 acres in size and the other is 37.14 acres in size. The parcels are owned by Marvin G. Moeller of 301 Main Street, Houghton, Iowa. Marvin G. Moeller is the father of Martin Moeller.

11. On May 9, 2013, Martin Moeller called Mr. Ryk regarding the business card left at the site. Martin Moeller stated that he had taken a pile of boxes out to burn and that the tires must have caught fire when he was burning the boxes. He claimed that he did not intentionally burn tires, although he was aware that tires were located in the area when he set the fire. He stated that he set the fire and then left the site. He saw black smoke from the burning tires when he returned. He explained to Mr. Ryk that his father, Marvin G. Moeller, owns the property and has dumped old tires on the property from a service station also owned by his father.

12. A May 20, 2013, Notice of Violation letter (NOV) was sent to Martin Moeller and Marvin G. Moeller, citing the open burning and open dumping violations. The NOV required that Martin Moeller and Marvin G. Moeller remove all burned and unburned solid waste from the above properties and properly dispose of the solid waste at a licensed solid waste disposal facility by no later than July 10, 2013.

13. On November 27, 2013, Marvin and Martin Moeller submitted to DNR receipts totaling $3,096.56, which represented costs incurred while removing opened dumped materials from the site.

14. On December 19, 2013, Mr. Ryk visited the site and found that, although much of the solid waste and burned items had been removed, cleanup of the site was not complete, A large amount of metal debris remained, including steel banding from tires, wheels, metal fencing, car parts, mattress springs. Remaining solid waste also included plastic debris, partially burned tires, and what appeared to be a pressure tank. In a separate area, there was a large amount of banding from tires and some partially burned tires. Pictures of the remaining solid waste materials were taken.

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). The burning of tires is specifically prohibited. The illegal open burning of solid waste, including a large number of tires, demonstrates violations of 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 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 placed other than a sanitary disposal project approved by the Director. The illegal open dumping of solid waste in this case demonstrates non-compliance with this provision.

V. ORDER

THEREFORE, DNR orders and Martin Moeller agrees to the following:

1. Martin Moeller shall pay a penalty of $5,000.00 within 30 days of the date this order is signed by the Director, and

2. By July 1, 2014, Martin Moeller shall remove all burned and unburned solid waste from the locations identified in this order and shall properly dispose of the solid waste at a licensed solid waste disposal facility, and

3. By July 1, 2014, Martin Moeller shall provide to DNR Field Office No. 6 written documentation that appropriate disposal of all solid waste at the locations identified in this order has occurred,

4. If Martin Moeller wishes to retain the pressure tank and tractor tire rims located at the site for future use, then by July 1, 2014, Martin Moeller shall remove the re-usable materials to a location, such as in or adjacent to the garage on the site, where it is obvious these materials are for future use, and

5. Martin Moeller shall cease all illegal solid waste disposal activity and all illegal open burning of combustible materials at any location in the State of Iowa, and shall comply in the future with the regulations concerning disposal of solid waste and open burning.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of $5,000.00 is assessed by this administrative consent order. The penalty must be paid within 30 days of the date this order is signed by the Director. The administrative penalty is determined 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 solid waste disposal 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, 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. The administrative penalty assessed by this order is determined as follows:

Economic Benefit –Martin Moeller saved time and money on transportation and landfill disposal fees. However, on November 27, 2013, Marvin and Martin Moeller submitted to DNR receipts totaling $3,096.56, which represented costs incurred while performing a partial cleanup of the site. Therefore, no economic benefit is assessed.

Gravity of the Violation – The open burning of tires and other waste can release toxins that pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Further, the open burning of tires releases toxins into the air, including the following contaminants: polycyclic aromatic hydrocarbons (PAHs), benzene, styrene, phenols, and butadiene. The illegal burning in this case involved a large amount of tires. The oil produced by the large amount of tires burned would have polluted the soil and groundwater in the area. The illegal open burning of plastics and appliances with no emission controls also releases air contaminants. Also, illegal open dumping has the potential to create groundwater contamination. Numerous areas of illegal open dumping were located at the site,

with materials being dumped throughout the wooded area as well as in the burn piles. Further, illegal open burning and illegal open dumping threatens the integrity of DNR's environmental programs and efforts to protect the State of Iowa's valuable natural resources. Therefore, $3,000.00 is assessed for the gravity of the violations. $1,500.00 is assessed for illegal open burning, and $1,500.00 is assessed for illegal open dumping.

Culpability –Martin Moeller has intentionally open burned prohibited solid waste materials. Martin Moeller admitted to Mr. Ryk that he started a fire although he knew that a large amount of waste tires were located in the area, and he admitted failing to attend to the fire. Further, there was evidence at the site of repeated instances of illegal open dumping and illegal open burning. Martin Moeller has a responsibility to properly dispose of waste materials, to be knowledgeable of the DNR's requirements, and to be alert to the probability that his conduct is subject to DNR's rules. For the above reasons $2,000.00 is assessed for culpability. $1,000.00 is assessed for illegal open burning, and $1,000.00 is assessed for illegal open dumping.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Martin Moeller. For that reason, Martin Moeller 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 sections 455B.146 and 455B.307. 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.

Bruce Trautman for Chuck Gipp
Chuck Gipp, Director
Iowa Department of Natural Resources

Dated this 23 day of May, 2014.

Martin Moeller

Dated this 9th day of April, 2014.

DNR Field Office 6; Anne Preziosi; VII.C.2